

“Rules, Roles, and Responsibilities in Charitable Conservation Transactions” Workshop
Saving Special Places Conference, Alton, NH, April 7, 2018
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(Excerpt from Land Trust Alliance's 2017 "Land Trust Standards & Practices, Standard 9, Ensuring Sound Transactions")

E. Conservation Easement Drafting

- 1. For every conservation easement,
 - a. Individually tailor it to the specific property
 - b. Identify the conservation values being protected
 - c. Allow only uses and permitted rights that are not inconsistent with the conservation purposes and that will not significantly impair the protected conservation values
 - d. Avoid restrictions and permitted rights that the land trust cannot monitor and enforce
 - e. Include all necessary and appropriate provisions to ensure it is legally enforceable
- 2. Review, on the land trust's own behalf, each potentially tax-deductible conservation easement for consistency with the Treasury Department regulations (U.S.C. §1.170A-14), especially the conservation purposes test of IRC §170(h)

(Excerpt from 2018 Land Trust Accreditation Requirements Manual, "Transactions, Indicator Elements")

In addition, if a tax-deductible transaction:

- 9E2.** Review, on the land trust's own behalf, each potentially tax-deductible conservation easement for consistency with the Treasury Department regulations (U.S.C. §1.170A-14), especially the conservation purposes test of IRC §170(h)
- 10A1.** Inform potential land or conservation easement donors who may claim a federal or state income tax deduction (or state tax credit), in writing and early in project discussions, that: (a) The project must meet the requirements of IRC §170 and the accompanying Treasury Department regulations and any other federal or state requirements, (b) The donor is responsible for any determination of the value of the donation, (c) The Treasury Department regulations require the donor to obtain a qualified appraisal prepared by a qualified appraiser for gifts of property valued at more than \$5,000, (d) Prior to making the decision to sign the IRS Form 8283, the land trust will request a copy of the completed appraisal, (e) The land trust is not providing individualized legal or tax advice
- 10B2.** Sign the Form 8283 only if the information in Section B, Part I, "Information on Donated Property," is complete and is an accurate representation of the gift; (a) Refuse to sign the Form 8283 if the land trust believes no gift has been made or the property has not been accurately described
- 10C2.** Evaluate the Form 8283 and any appraisal to determine whether the land trust has substantial concerns about the appraised value or the appraisal
- 10C3.** Discuss substantial concerns about the appraisal, the appraised value or other terms of the transaction with legal counsel and take appropriate action, such as: (a) Documenting that the land trust has shared those concerns with the donor, (b) Seeking additional substantiation of value, (c) Withdrawing from the transaction prior to closing, (d) Or refusing to sign the Form 8283
- 10C4.** When engaging in transactions with pass-through entities of unrelated parties, particularly those offered or assembled by a third party or described as a syndication by the IRS: (a) Require a copy of the appraisal prior to closing, (b) Decline to participate in the transaction if the appraisal indicates an increase in value of more than 2.5 times the basis in the property within 36 months of the pass-through entity's acquisition of the property, the value of the donation is \$1 million or greater and the terms of the transaction do not satisfy the Land Trust Alliance Tax Shelter Advisory

- Acknowledgement attesting to the accuracy of the report signed by the following:
 - Land trust
 - Landowner, for all easements completed in 2004 or later (or documented attempt to obtain signature)

If a first-time applicant has a baseline documentation report (or current conditions report) for each conservation easement but one or more are missing some of the required content above, a feasible plan with strategies and timelines to upgrade them before its first renewal exists.

- Baseline documentation reports are complete and signed by the land trust and landowner at or before closing. If seasonal conditions prevent this, interim data and a schedule for finalizing the full report are signed by the land trust and landowner at or before closing.
- Baseline documentation reports are distinct documents that represent the property's condition at a point in time.

Tax Deduction ^{1A3, 9E2, 10A1, 10B2, 10C2, 10C3, 10C4}

- Written notification to potential land or conservation easement donors includes the following:
 - The project must meet the requirements of Internal Revenue Code §170 and the accompanying Treasury Department regulations and any other federal or state requirements
 - The donor is required to obtain a qualified appraisal prepared by a qualified appraiser for gifts of property valued at more than \$5,000
 - The land trust will request a copy of the completed appraisal
- Notification of tax code requirements provided to potential donors before closing.
- Individualized legal or tax advice not provided.
- Land trust evaluates the Form 8283 and landowner's appraisal (as detailed below) and documents show the following:
 - Did not knowingly participate in potentially fraudulent or abusive transactions
 - Involved legal counsel as appropriate, especially in potentially fraudulent or abusive transactions
 - Took appropriate action to resolve substantial concerns² with the appraisal, appraised value or other terms of the transaction (Such as documenting concerns were shared with the donor, seeking additional substantiation of value, withdrawing from the transaction prior to closing, refusing to sign the Form 8283.)
(²If the appraised value does not appear defensible in light of the land trust's knowledge of local land values; the appraisal contains unjustified extraordinary assumptions; the appraised value is significantly in excess of the donor's cost or adjusted basis [if recent].)
 - Signed the Form 8283 only when a gift was received
- Form 8283 includes the following:
 - Name of landowner(s) that matches landowner(s) in title investigation
 - Gift description
 - Fair market value of donation that matches appraised value
 - Amount received in a bargain sale, if any

- Donor's cost or adjusted basis Starting in 2019
- Date of gift?
(?For conservation easements, year of gift needs to match year conservation easement recorded.)
- Landowner's qualified appraisal includes the following:
 - Property description for the gift that was donated
 - Effective date not substantially more than 60 days before the donation
 - Value for the entire contiguous parcel, if clearly applies
 - Consideration of enhancement, if clearly applies
- If the land trust pays for the landowner's appraisal, payment to landowner appropriately acknowledged. (Such as on the Form 8283, gift acknowledgement letter, other tax forms.)
- The land trust follows the then current [Land Trust Alliance Tax Shelter Advisory](#), including the following:
 - Comprehensive due diligence and analysis of transactions with pass-through entities of unrelated parties (particularly those offered or assembled by a third-party) conducted before closing to determine if a transaction meets the terms of the Advisory or is otherwise potentially fraudulent or abusive
 - Does not participate in a transaction with a pass-through entity of unrelated parties when a) the appraisal indicates an increase in value of more than 2.5 times the basis in the property within 36 months of the pass-through entity's acquisition of the property and b) the value of the donation is \$1 million or greater

Recordkeeping 9G2, 9G3, (also 11F3 in Stewardship)

- Originals of the following records are retained, kept generally secure and protected from damage or loss:
 - Legal agreements, deeds, conservation easements, amendments
 - Critical correspondence, including those related to project goals, tax and legal matters, enforcement, other matters essential to the project
 - Baseline documentation reports
 - Title insurance policies or evidence of title investigation
 - Surveys, if any
 - Appraisals used to substantiate the purchase price or used by the landowner to substantiate the value on the Form 8283
 - Forms 8283
 - Conservation easement monitoring reports
 - Fee property inspection reports
 - Contracts and leases in effect for long-term land management activities
 - Conservation easement stewardship records, including substantive notices, approvals, denials, interpretations, exercise of significant permitted rights Starting in 2019
- Copies retained of the following records:
 - Critical correspondence (see above)
 - Baseline documentation reports
 - Title insurance policies, if any
 - Unrecorded surveys, if any

(Excerpt from Forest Society's Model Conservation Easement, 6April2018)

AMENDMENT & DISCRETIONARY CONSENT

The Landowner and Easement Holder [and Executory Interest Holder] recognize and agree that unforeseen or changed circumstances could arise in which an amendment to certain terms or restrictions of this Easement would be appropriate and desirable, or that some activities may require the discretionary consent of the Easement Holder, as further described below. To this end, the Landowner and Easement Holder [and Executory Interest Holder] have the right to agree to amendments to this Easement, and the Easement Holder may exercise discretionary consent, all in accordance with:

- The provisions and limitations of this Sect. 14;
- The then-current policies of the Easement Holder; and
- Applicable governmental laws, rules, and/or regulations.

Any amendment or exercise of discretionary consent shall:

- Be consistent with the Purposes of this Easement;
- Not significantly impair Conservation Attributes;
- Not affect the qualification of this Easement or the status of the Easement Holder under any applicable laws, including Sects. 170(h) and [delete ref. to 170(h) if no deduction to be claimed] 501(c)(3) of the Internal Revenue Code of 1986 and regulations promulgated thereunder, as both may be amended, and NH RSA 477:45-47 as may be amended from time to time; and
- Not affect the perpetual duration of this Easement or the perpetual protection of its Purposes.

Any request by the Landowner for an amendment or for discretionary consent shall be in writing and shall describe the proposed amendment or the activity for which consent is sought in sufficient detail to allow the Easement Holder to judge the consistency of the request and of the proposed activity with the Purposes and other terms and conditions of this Easement. To evaluate and then make a determination on the Landowner's request, the Easement Holder shall have the right to engage independent experts, at the Landowner's sole cost, necessary for the Easement Holder to evaluate the adequacy of the proposal. If a proposed amendment or exercise of discretionary consent has aspects which, in some respects, would be detrimental to the Purposes of this Easement and/or would impair the Conservation Attributes, but, in other respects, enhance said Purposes and/or Conservation Attributes, then the Easement Holder shall evaluate the net effect of such impacts when considering any amendment or exercise of discretionary consent. Nothing in this Sect. 14 shall require the Easement Holder [and Executory Interest Holder] to consider, negotiate, or approve any proposed amendment or request for discretionary consent.

- A. **Amendments.** Any amendment shall be executed by the Landowner and the Easement Holder [and Executory Interest Holder], subject to review by the N.H. Attorney General's Office, Charitable Trusts Unit as necessary, and shall be recorded in the Registry of Deeds.
- B. **Discretionary Consent.** If the Landowner and the Easement Holder agree that any activity otherwise prohibited herein or not contemplated by the Easement is desirable, and if the Easement Holder determines, in its sole discretion, that such activity (i) is not detrimental to the Purposes of the Easement and (ii) would not have more than *de minimis* negative impacts on the Conservation Attributes protected hereby, the Easement Holder may then consent to such activity only [after consulting the Executory Interest Holder and] under the conditions and circumstances described herein. The Easement Holder's consent to a proposed use or activity may be limited or restricted in time, locale, or by ownership, and shall be in writing.
- C. Notwithstanding the foregoing, the Landowner and Easement Holder [and Executory Interest Holder] shall have no right or power to agree to any amendment or consent to any activities that would result in the termination of this Easement.



Claiming an Income Tax Deduction for Your Full or Partial Gift of Conservation Easement

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www.forestsociety.org

Landowners usually donate conservation easements (“CE’s”) to the Forest Society with the primary interest of ensuring permanent conservation and good stewardship of their land. Some of these donations involve the *full* gift of a CE, where no money changes hands. Others may involve a *partial* gift, whereby the landowner sells the CE at a price below its appraised value, thus receiving cash for part of the CE’s value (“bargain sale”) and making a gift of the balance to the conservation organization.

Full and partial contributions of CE’s are critical to the Forest Society’s fulfillment of its mission; they not only make conservation projects financially feasible, but also inspire others to be similarly generous. For the landowner, as the “Donor,” such a gift may give the pleasure of “doing the right thing,” and may also provide potential tax benefits.

This document will highlight some of the key issues when a Landowner is considering an income tax charitable deduction for the gift of a conservation easement. As noted below, this is not intended to provide tax or legal advice, and landowners are urged to retain their own professional advisors.

Procedures & Best Practices

The Forest Society, as the “Donee,” must follow certain procedures and best practices in how it receives a donated CE to ensure a sound transaction, to uphold the trust that others place in the organization, and to maintain the organization’s tax-exempt status. The process by which the Forest Society accepts the donation of any given CE is governed by policies and procedures adopted by its Board of Trustees, state laws and regulations overseen by the Charitable Trusts Unit of the NH Attorney General’s Office, federal law and regulations of the Internal Revenue Service (“IRS”), and best practices promulgated by the Land Trust Alliance in its nationally recognized “Land Trust Standards and Practices” and accreditation programs.

If the Donor wishes to claim a charitable contribution tax deduction for his/her gift, the CE must meet certain legal and technical requirements of federal tax law. Since both the Donor and Forest Society must adhere to IRS related requirements, it’s in both parties’ interests to be clear and consistent in how each handles the transaction. Further, the Forest Society has a strong interest in the Donor’s adherence to these standards so as not to get caught up in a problem that might jeopardize the organization’s tax-exempt status, reputation, and status as an accredited land trust.

A CE is granted **in perpetuity**, and the terms and conditions imposed by it are permanent. Federal tax law, charitable gift requirements, and the Forest Society’s policies prohibit amendment or modification of a CE except under exceptional circumstances. Any future amendment or modification will require the review and approval of the Forest Society’s Board of Trustees and the State’s Charitable Trusts Unit, and possibly also the Probate Court.

If there is a **mortgage or other lien on the property** proposed to be conserved, the landowner must, before granting the CE, either remove the mortgage from the CE property¹ or else obtain from the lender or lienholder a written subordination of the mortgage or lien to the CE. As securing a partial release, full discharge, or subordination of a mortgage can be time consuming, the landowner should initiate pursuit of this early in the process. The Forest Society's staff may be able to assist with this key task.

Recommendation for Donor Counsel

The Forest Society strongly recommends that any landowner undertaking a real estate transaction engage his/her own experienced legal, financial, and/or tax counsel. This helps ensure that the landowner is well informed and adheres to all requirements, and that his/her interests are properly reflected in final legal documents. The engagement of professional advisors also strengthens the resulting conservation transaction against possible later challenge. Although the Forest Society's staff tries to provide helpful information, the staff does not render legal, financial, or tax advice. Ultimately, **it is the landowner's responsibility, with his/her advisors, to:**

- **Confirm all applicable, then-current requirements for claiming a charitable deduction;**
- **Determine the eligibility of a gift for charitable deduction purposes; and**
- **Determine the value of the gift and resulting deduction by obtaining a qualified appraisal.**

Appraisal Requirements

To qualify for a charitable deduction, the CE Donor, with his/her advisors, must ensure that the content of the CE and the Donee meet certain IRS requirements.² In addition, the Donor must follow certain U.S. Treasury Department procedures for claiming a deduction.³ For example, the Donor must generally obtain—including paying for—a written appraisal prepared by an independent, professional appraiser to establish the value of the CE at the time of the contribution⁴. Further, the appraiser must complete the appraisal within a certain timeframe tied to the date of the CE gift, and must also use a specific methodology for estimating the value of the CE. Because that methodology requires the appraiser to consider the CE's possible impacts on the value of certain other properties in the vicinity of the CE land, it's important for the **Donor to identify to the appraiser early in the process any other properties in the area that are owned by the Donor, relatives, or others with financial ties to the Donor.**

¹ This can be done by recording either a Partial Release of Mortgage, or a full Mortgage Discharge.

² See Sect. 170(h) of the Internal Revenue Code (IRC) at: https://www.nps.gov/history/local-law/FHPL_IRS.pdf. The Forest Society can provide you with a hardcopy of this or any other documents referenced herein.

³ See: <http://www.gpo.gov/fdsys/pkg/CFR-2011-title26-vol3/pdf/CFR-2011-title26-vol3-sec1-170A-14.pdf>

⁴ The terms "Qualified appraisal" and "qualified appraiser" are detailed in Treasury Regulations 1.170A-13(c)(3) and 1.170A-13(c)(5), respectively. See: <http://www.gpo.gov/fdsys/pkg/CFR-2011-title26-vol3/pdf/CFR-2011-title26-vol3-sec1-170A-13.pdf>

The Forest Society requires that the landowner provide a copy of the landowner’s qualified appraisal report to the staff for its review in association with the IRS tax form that the landowner must submit with his/her tax return to claim the deduction (see section below on “IRS Form 8283...”).

The Forest Society can provide a **list of appraisers** whom it believes to be competent in preparing CE appraisals for IRS deduction purposes. As good appraisers are often busy, the landowner may wish to contact an appraiser early in the process to ensure that the appraisal can be completed on time. For an appraisal done *before* closing, it’s important for the landowner and the Forest Society’s land agent to have agreed on key CE terms before the appraiser proceeds. The Forest Society’s staff can assist the landowner in contacting an appraiser and providing maps, a draft of the CE, and other information that the appraiser may need.

The relatively complex process for appraising a CE may help explain the relatively high cost for such an appraisal compared to the cost for an appraisal of just land alone. Relatedly, some CE Donors don’t bother claiming a deduction because they anticipate that the cost of getting the IRS appraisal would exceed the income tax savings they could realize from their CE gift. Some landowners find they can claim a deduction for their appraisal cost as a “Miscellaneous Deduction” on IRS Form 1040, Schedule A, “Itemized Deductions.”

If the CE Donor does not intend to claim a tax deduction for the CE gift, the Donor doesn’t need to have the property appraised.

If the Forest Society has significant concerns about the tax deduction that the landowner intends to claim, including possible deficiency of the appraisal, the Forest Society will not knowingly participate in the project.

SEE ATTACHMENT A FOR IMPORTANT ADDITIONAL DETAILS ON GETTING AN APPRAISAL MEETING IRS DEDUCTION REQUIREMENTS.

Acknowledgment of Contribution (“Substantiation”)

The IRS requires that the donor of any charitable contribution, including a CE, worth \$250 or more obtain certain documentation of the gift,⁵ including a contemporaneous written acknowledgment (“substantiation”) from the donee. The Forest Society routinely provides a letter to the Donor accomplishing this shortly after receiving the CE gift.

IRS Form 8283, “Noncash Charitable Contributions”

To claim a charitable deduction for the gift of a CE, the Donor must file IRS Form 8283 “Noncash Charitable Contributions”⁶ with his/her income tax return for the year of the gift. This Form must be signed by both the Donor’s appraiser and the Forest Society, which will review the Form for completeness and accuracy prior to signing. Whoever prepares the Donor’s tax return should pay close attention to the IRS’ detailed instructions for Form 8283, including the

⁵ Contained in Internal Revenue Code Sect. 170(f)(8). See: <http://www.law.cornell.edu/uscode/text/26/170>

⁶ See: <https://www.irs.gov/pub/irs-pdf/f8283.pdf>

required “Supplemental Statement” described in the instructions, as mistakes on this Form are common and can delay the tax filing process. The Forest Society staff will be happy to review any preliminary draft of this Form at the landowner’s request. For all of the above reasons, it’s important for the CE Donor to initiate the completion of Form 8283 in a timely way after making the CE gift and securing the IRS appraisal.

If the Forest Society has significant concerns about the accuracy or completeness of Form 8283, the Forest Society may decline to sign it.

SEE ATTACHMENT B FOR IMPORTANT ADDITIONAL DETAILS ON COMPLETING AND FILING IRS FORM 8283.

Landowner Acknowledgement

I/We received this information entitled “**Claiming an Income Tax Deduction for Your Full or Partial Gift of Conservation Easement**” (including Attachments A and B) on _____, 20____, from _____, of the Society for the Protection of New Hampshire Forests.

Landowner signature(s)

PLEASE COMPLETE AND RETURN THIS FORM TO THE RELEVANT LAND AGENT AT: SPNHF, 54 PORTSMOUTH ST., CONCORD, NH 03301

Attachment A—Additional Information about Appraisal Requirements

The IRS requires the landowner to use a “**qualified appraiser**” for preparing a “**qualified appraisal**” in accordance with the **Uniform Standards of Professional Appraisal Practice (USPAP)**, in order for the landowner to claim a charitable income tax deduction for the gift of a CE. Not all appraisers meet these requirements, nor do any real estate brokers who might offer to prepare a “letter opinion of value.”

Generally, the appraiser uses the “**Before and After Method**” for deriving the fair market value of the CE⁷. Specifically, the value of the CE is calculated as the difference between the value of the property before the CE is put in place, and the lower value of the property after encumbrance by the CE. To value the easement gift, the appraiser will conduct a detailed examination of the characteristics of the land, including the size and topography of the parcel, access, local land use regulations and market conditions, as well as the restrictions and limitations imposed by the easement, and what rights the landowner has retained. The appraiser must include in the “before” and “after” analyses any property that’s contiguous to the CE area and owned by either the Donor or the “Donor’s family.”⁸ The most common instance of this would be the Donor’s residence and few acres immediately adjacent to and excluded from the CE area.

As part of the IRS’ so-called “enhancement rule,” the appraiser must also determine how much certain other properties in the vicinity might increase in value as a result of creation of the CE. Any enhancement value must then be *subtracted* from the value calculated in accordance with the preceding paragraph to arrive at the amount of the deduction that the landowner can claim on Form 8283. Although the IRS doesn’t explain how far away “in the vicinity” might be, the IRS is clear that this could include property that’s beyond adjacency to the CE area and that’s owned by either the Donor, the “Donor’s family,” or certain other “related persons” with financial ties to the Donor through a trust, partnership, corporation, or estate.⁹ The Donor should consult his/her counsel and appraiser to confirm what ownerships will require the appraiser’s consideration.

The IRS requires that the “qualified appraisal” be prepared within a specific *timeframe*. Specifically, the valuation date of the appraisal (also known as the “as of” or “effective” date) must be no sooner than 60 days *before* the date of the CE contribution, and no later than the date by which the Donor’s tax return must be filed (including extensions) for the year of the gift. If the appraisal is prepared *after* the date of the gift, the appraisal must retroactively determine the CE’s value as of the date of the CE gift. Finally, the IRS considers the official date of the CE gift to be the date that the Forest Society records the CE at the county Registry of Deeds, not a potentially earlier date when the landowner might have delivered the CE to the Forest Society or when a Forest Society official signed the CE. For a CE gift made at year’s end, careful coordination of closing logistics may be important for ensuring that the official CE gift date

⁷ Refer to Treasury Regulation 1.170A-14(h), per link in footnote #2.

⁸ See IRS Code Sect. 267(c)(4) defining “donor’s family”: “The family of an individual shall include only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.”

⁹ For definition of “related persons,” see IRS Code Sect. 267(b), which includes the “donor’s family” plus others with defined ties to a trust, estate, or corporation, and Sect. 707(b), re others with defined ties to a partnership.

remains within the tax year about to end.

In addition, the IRS requires a qualified appraisal to contain all of the following items summarized as follows:

- Description of the donated CE;
- Date the contribution was made (or is expected to be made);
- Any agreement, understanding, or restriction about the use, sale, or disposition of the CE;
- Name, address, and identifying number of qualified appraiser;
- Appraiser's qualifications;
- Statement that the appraisal was prepared for income tax purposes;
- Date on which the property was appraised;
- Appraised fair market value of the CE on the date of gift or expected date of gift;
- Method of valuation, e.g. income, market data, or replacement cost approach; and
- Specific basis for the valuation, e.g. comparable sales transaction.

If the Forest Society already obtained an appraisal prior to the Donor getting his/her IRS appraisal, the Donor may find it efficient to hire that same appraiser to prepare the Donor's "qualified appraisal". The Forest Society, as the earlier client of the appraiser, would need to consent to the appraiser also working for the Donor.

If the Donor gets the IRS appraisal done prior to closing, the Forest Society asks to receive a copy at least one week prior to closing, to give staff adequate time to review it. If the IRS appraisal is completed after closing, the landowner should provide a copy to the Forest Society before asking the organization to sign the Form 8283.

Attachment B—Additional Information About IRS Form 8283, “Noncash Charitable Contributions”

Section A of Form 8283¹⁰ applies to charitable deductions not exceeding \$5,000. Section B is more commonly used for CE gifts, and is for deductions greater than \$5,000.

The Donor should complete his/her portion (Section B., Parts I and II) of the Form first. Checking off the box (Section B. Part I, Item 4.b.) for “Qualified Conservation Contribution” will apply to most eligible CE’s. Item 5.a., immediately following, asks for a specific description of the donated interest, an appropriate place to enter such information as this being a CE on __ acres of land identified as Tax Map __, Lot __, located on __ Rd., in the town of __. Other parts of Item 5 ask for financial data including the appraised fair market value of the CE, and the cost basis of the CE.

The Donor must include with Form 8283 a “Supplemental Statement” addressing four specific items, as explained in the IRS Form 8283 instructions.¹¹ Some landowners choose to include additional attachments, such as a copy of the recorded CE Deed, the qualified appraisal, and/or the cover report of the Baseline Documentation Report, even though not required to do so. Filing a copy of the appraisal is required if the Donor is claiming a deduction larger than \$500,000.

The Donor then forwards the completed Form to the appraiser, who should complete and sign Part III and then forward the Form with all attachment(s) to the Forest Society. The Donor should ensure the Forest Society’s receipt of a copy of the appraisal by this same time, and should allow at least one week for review. Once an authorized agent for the Forest Society fills out and signs Part IV of the Form, staff will then return the completed Form 8283 to the Donor or his/her advisor as instructed, for filing with the Donor’s tax return. To reiterate from above, **the Donor should start to complete Form 8283 well before the Donor’s tax filing deadline, and pay close attention to the Instructions for Form 8283.** The Forest Society’s staff is happy to review a first draft of Form 8283, if helpful.

4839-8904-4576, v. 1

¹⁰ See: <https://www.irs.gov/pub/irs-pdf/f8283.pdf>

¹¹ See: <https://www.irs.gov/pub/irs-pdf/i8283.pdf>

STANDARD 10

Tax Benefits and Appraisals

Land trusts work diligently to see that every charitable gift of land or conservation easement meets federal and state tax law requirements, to avoid fraudulent or abusive transactions and to uphold public confidence in land conservation.

PRACTICES

A. Landowner Notification

- 1. Inform potential land or conservation easement donors who may claim a federal or state income tax deduction (or state tax credit), in writing and early in project discussions, that:
 - a. The project must meet the requirements of IRC §170 and the accompanying Treasury Department regulations and any other federal or state requirements
 - b. The donor is responsible for any determination of the value of the donation
 - c. The Treasury Department regulations require the donor to obtain a qualified appraisal prepared by a qualified appraiser for gifts of property valued at more than \$5,000
 - d. Prior to making the decision to sign IRS Form 8283, the land trust will request a copy of the completed appraisal
 - e. The land trust is not providing individualized legal or tax advice
2. Do not make assurances as to:
 - a. Whether a particular land or conservation easement donation will be deductible
 - b. What monetary value of the gift the IRS and/or state will accept
 - c. What the resulting tax benefits of the deduction or credit will be, if any

B. Legal Requirements: Land Trust Responsibilities

1. If the land trust holds federally tax-deductible conservation easements, it meets the requirements for a qualified organization under IRC §170(h)
- 2. Sign the Form 8283 only if the information in Section B, Part I, "Information on Donated Property," is complete and is an accurate representation of the gift
 - a. Refuse to sign the Form 8283 if the land trust believes no gift has been made or the property has not been accurately described
3. File IRS Form 8282 when conveying a donated real property interest within three years of the date the land trust received the property

C. Avoiding Fraudulent or Abusive Transactions

1. Review, on the land trust's own behalf, each transaction for consistency with federal and state income tax deduction or credit requirements
- 2. Evaluate the Form 8283 and any appraisal to determine whether the land trust has substantial concerns about the appraised value or the appraisal
- 3. Discuss substantial concerns about the appraisal, the appraised value or other terms of the transaction with legal counsel and take appropriate action, such as:
 - a. Documenting that the land trust has shared those concerns with the donor
 - b. Seeking additional substantiation of value
 - c. Withdrawing from the transaction prior to closing
 - d. Or refusing to sign the Form 8283
- 4. When engaging in transactions with pass-through entities of unrelated parties, particularly those offered or assembled by a third party or described as a syndication by the IRS,
 - a. Require a copy of the appraisal prior to closing
 - b. Decline to participate in the transaction if the appraisal indicates an increase in value of more than 2.5 times the basis in the property within 36 months of the pass-through entity's acquisition of the property, the value of the donation is \$1 million or greater and the terms of the transaction do not satisfy the Land Trust Alliance Tax Shelter Advisory

(Excerpt from U.S. Treasury Regulations 1.170A-13(c)(3), “Qualified Appraisal”)

(ii) Information included in qualified appraisal. A qualified appraisal shall include the following information:

- (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.

Noncash Charitable Contributions

OMB No. 1545-0908

▶ **Attach to your tax return if you claimed a total deduction of over \$500 for all contributed property.**

Attachment Sequence No. **155**

▶ **Information about Form 8283 and its separate instructions is at www.irs.gov/form8283.**

Name(s) shown on your income tax return

Identifying number

Note. Figure the amount of your contribution deduction before completing this form. See your tax return instructions.

Section A. Donated Property of \$5,000 or Less and Publicly Traded Securities—List in this section **only** items (or groups of similar items) for which you claimed a deduction of \$5,000 or less. Also list publicly traded securities even if the deduction is more than \$5,000 (see instructions).

Part I Information on Donated Property—If you need more space, attach a statement.

1	(a) Name and address of the donee organization	(b) If donated property is a vehicle (see instructions), check the box. Also enter the vehicle identification number (unless Form 1098-C is attached).	(c) Description of donated property (For a vehicle, enter the year, make, model, and mileage. For securities, enter the company name and the number of shares.)
A		<input type="checkbox"/>	
B		<input type="checkbox"/>	
C		<input type="checkbox"/>	
D		<input type="checkbox"/>	
E		<input type="checkbox"/>	

Note. If the amount you claimed as a deduction for an item is \$500 or less, you do not have to complete columns (e), (f), and (g).

	(d) Date of the contribution	(e) Date acquired by donor (mo., yr.)	(f) How acquired by donor	(g) Donor's cost or adjusted basis	(h) Fair market value (see instructions)	(i) Method used to determine the fair market value
A						
B						
C						
D						
E						

Part II Partial Interests and Restricted Use Property—Complete lines 2a through 2e if you gave less than an entire interest in a property listed in Part I. Complete lines 3a through 3c if conditions were placed on a contribution listed in Part I; also attach the required statement (see instructions).

2a Enter the letter from Part I that identifies the property for which you gave less than an entire interest ▶ _____
 If Part II applies to more than one property, attach a separate statement.

b Total amount claimed as a deduction for the property listed in Part I: **(1)** For this tax year ▶ _____
(2) For any prior tax years ▶ _____

c Name and address of each organization to which any such contribution was made in a prior year (complete only if different from the donee organization above):
 Name of charitable organization (donee) _____

Address (number, street, and room or suite no.) _____

City or town, state, and ZIP code _____

d For tangible property, enter the place where the property is located or kept ▶ _____

e Name of any person, other than the donee organization, having actual possession of the property ▶ _____

	Yes	No
3a Is there a restriction, either temporary or permanent, on the donee's right to use or dispose of the donated property?		
b Did you give to anyone (other than the donee organization or another organization participating with the donee organization in cooperative fundraising) the right to the income from the donated 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?		
c Is there a restriction limiting the donated property for a particular use?		

Name(s) shown on your income tax return	Identifying number
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Section B. Donated Property Over \$5,000 (Except Publicly Traded Securities)—Complete this section for one item (or one group of similar items) for which you claimed a deduction of more than \$5,000 per item or group (except contributions of publicly traded securities reported in Section A). Provide a separate form for each property donated unless it is part of a group of similar items. 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:
- | | | | |
|---|---|---|---|
| a <input type="checkbox"/> Art* (contribution of \$20,000 or more) | d <input type="checkbox"/> Art* (contribution of less than \$20,000) | g <input type="checkbox"/> Collectibles** | j <input type="checkbox"/> Other |
| b <input type="checkbox"/> Qualified Conservation Contribution | e <input type="checkbox"/> Other Real Estate | h <input type="checkbox"/> Intellectual Property | |
| c <input type="checkbox"/> Equipment | f <input type="checkbox"/> Securities | i <input type="checkbox"/> Vehicles | |

*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.

	(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 overall 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 (mo., 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) Date of contribution
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 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 I may be subject to a penalty under section 6695A if I know, or reasonably should know, that my appraisal is to be used in connection with a return or claim for refund and a substantial or gross valuation misstatement results from my appraisal. 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
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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

(Sample Acknowledgement Letter For Full or Partial Gift of CE)

date

name
address
address

Dear :

On behalf of the staff and Board of Trustees of the Society for the Protection of New Hampshire Forests, I want to thank you for your [partial] donation of a conservation easement protecting __(#) acres in ____ (town). For the record, we received your easement on _____ [add date of delivery/transfer] and recorded the deed for it on _____ [some later recording date], the latter being what the IRS treats as the donation date. [When the dates of delivery/transfer and recording are *the same*, use the following instead: “For the record, we received your easement and recorded the deed for it on _____.”] [When there’s a bargain purchase and the dates of delivery/transfer and recording are (typically) the same, use the following instead: “For the record, we paid \$_____ to you for this easement, which we acquired and for which we recorded the deed on _____.”]

[It was a particular pleasure to receive your easement in person, and to hear more about your motivation for making this contribution and your history with the land.] Your actions are a great example of how landowners can protect important natural resources while further enhancing good stewardship of their land. By receiving this conservation easement, we are honored to join you in continuing your tradition of fine stewardship.

This land has real conservation importance, in terms of [scenic, wildlife, agricultural, forestry, and water supply] values.

As a token of our appreciation, I have asked that a Life Membership to the Forest Society be entered in your name. I also hope you will enjoy the enclosed item for your wall.

Many thanks for helping to protect the land which makes New Hampshire special!

Sincerely,

Jane A. Difley
President/Forester

P.S. For federal income tax purposes, please be advised that the Forest Society did not provide you with any valuable goods or services in exchange for your gift.