



## General Appraisal Information for Landowners and their Attorneys and Tax Advisors

### Get Acquainted First

Thank you for donating or conserving your land! [Land trusts come in many varieties](#). You may find it helpful for you, your attorney and/or tax advisor to meet with land trust personnel early in the conservation planning process to visit your land, to review your ownership plans and to discuss expectations on donation value. If you plan to seek a tax deduction for your donation, the Internal Revenue Service will require you to file several documents with your tax return. The land trust can help by providing you with general information on substantiating federal income tax donations.

### General Information, but Not Advice or Assurances

The Land Trust Alliance offers general information about the federal income tax deduction for gifts of land and conservation easements and general information on avoiding trouble with the IRS. Neither the [Land Trust Alliance](#) nor the land trust can provide legal or tax advice; therefore, you must retain your own independent legal counsel and tax specialist to advise you. Most land trusts will draft documents, prepare baseline documentation reports and discuss conservation options with you, but *you and your advisors are solely responsible for the decisions you make, the actions you take and the results you get*. Real estate transactions are often complex, and tax-driven transactions even more so. Legal assistance is critical for completing due diligence, as well as correcting any problems discovered during the process.

### Commonsense Reaction to Value

The Land Trust Alliance publishes the land trust community's collective best practices, called [Land Trust Standards and Practices](#). All Alliance-member land trusts must adopt the Standards. Standard 10, Tax Benefits and Appraisals, requires land trusts to "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." Practice 10C2 asks a land trust to "evaluate the Form 8283 and any appraisal to determine whether the land trust has substantial concerns about the appraised value or the appraisal." This does not mean the land trust must determine or concur with the value of your donation, but it does require land trust personnel to use their general knowledge and common sense to make a *general* assessment about whether the appraised value is credible. Therefore, you should expect that the land trust will ask for a copy of your full appraisal *prior to signing* Form 8283.

### Form 8283 and the Appraisal Are the Donor's Responsibility

You as the landowner are *solely responsible* for meeting *all* IRS substantiation and legal requirements. While the land trust's signature on Form 8283 does not represent agreement with your claimed value, land trusts have an ethical responsibility to avoid participating in abuses of the tax policies that have so effectively led to the voluntary protection of millions of acres of land in America. Understanding your history with the land and your value expectations are ways for the land trust to help you, and the land trust, avoid IRS trouble.

## **Donations Have Been Disallowed in Full for Incomplete Gift Substantiation**

The IRS has denied in full dozens of charitable conservation contributions, and the courts have assessed and sustained up to 40 percent penalties for technical failures in the appraisal and substantiation documents. Don't become a statistic. Be sure you and your legal and tax advisors review and understand the requirements of IRC §170 and the accompanying Treasury Department regulations.

## **An Appraisal Report Should Be Understandable to You**

Appraisals that diverge from local real estate values are a potential warning sign for landowner and land trust alike. Here are some questions the landowner or the land trust might ask:

- a. Is the appraisal generally in line with your and the land trust's sense of local real estate values?
- b. Is the appraisal aggressive in its conclusion of value based on an informed experience of land values in the area? This does not require a detailed appraisal review, merely a general knowledge assessment. You can also obtain a desk review by another appraiser as a precaution to avoid potential problems and penalties.
- c. Is the appraisal's value conclusion egregiously high, in the top range, in light of *the landowner's and land trust's general knowledge* of local land values? Or was no gift made (for example, the easement was granted to satisfy a governmental regulation)? Or is the gift described in the appraisal different from the gift received?

The following checklist may help you and your tax advisor and attorney identify potential problems with your appraisal.

- The appraisal must reflect the value of the donation as of the "valuation effective date," rather than the contribution date, and must be completed no earlier than 60 days prior to the date of contribution and no later than the due date for the tax return on which the deduction is first claimed.
- The appraisal must include the qualifications of the appraiser and should contain a recitation of the appraiser's experience, specifically as it relates to appraising conservation properties and conservation easements.
- The appraisal must contain the name, address and taxpayer ID of every appraiser who participated in the appraisal. If the appraisal states that more than one appraiser reviewed the property or contributed in any way, all must sign the appraisal and Form 8283.
- The appraisal must include a statement that it was prepared for federal income tax purposes and should also include a statement that it was prepared in accordance with USPAP (Uniform Standards of Professional Appraisal Practice). This means, at minimum, that appraisals acquired for grant or other funding purposes must be retitled and dated appropriately.
- The appraisal reflects an accurate assessment of the physical characteristics of the land that reflect its value (for example, wetlands, ledge, road frontage, developable and undevelopable areas, views and other value enhancements, neighborhood location and so forth) and contains a good description of the property, its physical attributes and its location.
- The appraisal analysis reflects an understanding of the local land use regulatory framework.
- The recorded deed or conservation easement is attached to the appraisal (or the final pre-recorded deed, if the appraisal is prepared prior to recording).

- The appraisal demonstrates that the appraiser clearly understood the specific restrictions on the use of the property, if any, and took into account the permitted rights.
- For conservation easements, the appraisal uses the before and after methodology where there is no substantial record of sales of comparable conservation easements to document the deduction value. It should also state that no such comparable sales were found.
- For conservation easements, if the donor or a family member owns contiguous property, the appraisal addresses the entire contiguous property.
- For conservation easements, if the donor or a related person owns any property nearby or contiguous, the appraisal addresses the impact of the easement on the value of the other property (enhancement).
- The appraiser identifies each and every assumption with verifiable supporting data and facts.
- The appraisal is prepared, signed and dated by a qualified appraiser, an individual who declares on the appraisal summary that they:
  - Hold themselves out to the public as an appraiser or perform appraisals regularly
  - Are qualified to make appraisals of the type of property being valued because of their background, experience, education and membership in professional associations and other qualifications *described in the appraisal*
  - Understand that a substantial or gross valuation misstatement resulting from an appraisal value that they know, or reasonably should have known, would be used in connection with a tax return may subject the appraiser to a civil penalty under IRC §6695A
  - Are not an excluded individual, which generally includes the taxpayer or a party to the transaction, someone employed by the foregoing or a related person
  - Understand that an intentionally false overstatement of the value of the property may subject them to the penalty for aiding and abetting an understatement of tax liability

### **Risk Balancing**

Get expert advisers to assist you. Land trusts must look at the entire conservation transaction and exercise their own independent judgment. If the transaction confers more benefit on private individuals than on the public or if it is not easily understood by ordinary people as broadly beneficial, then you may need to restructure the transaction.

### **RESOURCES**

- *Charitable Contributions: Substantiation and Disclosure Requirements*. IRS Publication 1771. [www.irs.gov/pub/irs-pdf/p1771.pdf](http://www.irs.gov/pub/irs-pdf/p1771.pdf).
- *Land Trust Alliance webpage on [tax shelters](#)*.

### **GENERAL INFORMATION ONLY**

The Land Trust Alliance furnishes materials as tools to help land trusts and landowners with the understanding that the Land Trust Alliance is not rendering legal, accounting or other professional counsel. If a land trust or landowner requires legal advice or other expert assistance, seek the services of competent professionals. The Land Trust Alliance is solely responsible for this content.