

CONSERVATION EASEMENT POLICIES OF THE MARYLAND ENVIRONMENTAL TRUST

Adopted by Board of Trustees on
September 12, 2016

PURPOSE

The purpose of this document is to record the policies of the Maryland Environmental Trust (“MET”) for its Conservation Easement Program. This statement of policies is intended to establish a set of guidelines for the staff and the Board of Trustees. It is intended to guide rather than limit the actions of MET. Conservation easement donations offered to MET will continue to be evaluated on a case-by-case basis. This statement of policies should be used in conjunction with information on the website which outlines the specific provisions of the typical conservation easement in greater detail. Visit MET's website at <http://www.dnr.state.md.us/met/>.

Capitalized terms are as defined in MET’s model easement. This statement of policies replaces and supersedes all previous policy statements.

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POLICY

A. The Role of MET

MET has a dual role in promoting the use of conservation easements in Maryland.

First, it refers potential donors to appropriate recipients, including other conservation organizations and units of government, where the best interests of the environment so require. Second, MET accepts conservation easements in both rural settings and urban settings and will continue to do so subject to the policies enunciated below.

B. Cooperation with Other Organizations

Because the principal goal of the Conservation Easement Program of MET is to preserve open space, it is MET's policy to cooperate in every possible way with other organizations whose purposes and goals are similar. Conservation easement information in MET files is available to other conservation groups, and MET, within its capabilities, will lend assistance to these groups upon request. MET will refer potential donors to other conservation groups or government agencies as requested. MET will publicize its program.

MET staff will be informed about land protection and land acquisition programs of government agencies, private conservation groups, and other conservation easement-holding organizations such as the Maryland Department of Natural Resources/Program Open Space/Rural Legacy and Conservation Reserve Enhancement Program, Maryland Agricultural Land Preservation Foundation, Maryland Historical Trust, and private land trusts. MET accepts most of its conservation easements by gift. As much as possible, MET's Conservation Easement Program will complement other land protection programs.

C. Legal Authority

The Maryland Annotated Code (Section 2-118, Real Property) permits the use of conservation easements for conservation purposes, and the Natural Resources Article of the Code (Sections 3-203 and 3-203.1) authorizes MET to accept gifts of real property, including conservation easements. The Tax - Property Article of the Code (Section 9-107) authorizes a 100% property tax credit for fifteen years for owners of unimproved property on which a conservation easement has been accepted by MET. Maryland State Income Tax Credit for Preservation and Conservation Easements, authorized by Annotated Code of Maryland, Tax-General Md. Code Ann., Tax-Gen. §10-723 (2001), provides for an income tax credit for donated conservation easements and bargain sale conservation easements.

D. Method of Acquisition

Acceptance of a conservation easement by MET must be preceded by thorough staff work and investigation. A conservation easement is legally accepted by the Board of Trustees in the name of MET. The Maryland Board of Public Works ratifies MET's acceptance of a conservation easement if required. The

conservation easement is then recorded with the clerk of the Circuit Court in the local jurisdiction where the property is located. MET also accepts conservation easements jointly with other agencies or land trusts as co-grantees.

E. Responsibilities of MET as Grantee

In acceptance of conservation easement, MET does not undertake any affirmative management duties other than the monitoring and enforcement of the terms, conditions and restrictions of the conservation easement as grantee. MET assumes no legal liability or responsibility for management or maintenance of the property including any discharge of hazardous materials affecting the property.

MET will, after notifying the owners of properties subject to accepted conservation easements, annually monitor those properties in order to guarantee adherence to the conservation easement's terms.

Although the monitoring of the terms of the conservation easement is the ultimate responsibility of MET, MET reserves the right to delegate this task to appropriate individuals, co-grantees, or other organizations. In each case, MET must be satisfied that it can monitor and, if necessary, enforce compliance with the conservation easement terms. Factors relevant to this determination include the location and accessibility of the land, the size of the tract, the type of land, and the availability of monitoring assistance from co-grantees or government agencies.

Whether serving as co-grantee or sole grantee, MET will have the right and obligation to independently enforce all terms of the conservation easement agreement.

F. Obligations of the Grantor

The grantor of the conservation easement, or his or her successors in interest, retain all affirmative management responsibilities including maintenance, the construction of improvements if permitted by the terms of the conservation easement, the payment of real estate taxes (except when a property tax credit is applied for and granted, as provided above), and other legal responsibilities of property ownership. For example, all normal functions and obligations of property ownership continue to be performed by the property owner, such as the pruning of trees, the removal of illegally dumped trash and the carrying of liability insurance. In addition, the property owner must abide by the specific terms of the conservation easement, and allow periodic access to the property, after prior notice, by MET representatives for monitoring purposes.

Except where a conservation easement deed affirmatively provides to the contrary, or interiors of historic Structures are protected by the conservation easement, the right of public access to the property remains the option of the owner.

In the event the owner requires public access as a provision of the conservation easement, the conservation easement deed must indemnify and hold MET and the State of Maryland harmless from any legal liability related to public access.

G. Duration of the Conservation Easement

MET only accepts perpetual conservation easements, except in unusual circumstances. Perpetual conservation easements afford greater protection to the land than those that expire after a period of years. MET will accept a term conservation easement only where significant Conservation Attributes of a property may be threatened only during the limited term of the conservation easement, or where the property owner is unable or unwilling to donate a perpetual conservation easement to protect these Conservation Attributes.

H. Lands That May be the Subject of a Conservation Easement

State and federal laws generally limit the types of land that meet the conservation purposes of MET's Conservation Easement Program and the types of land for which conservation easement donations will qualify for various tax incentives. MET will evaluate each offer of a conservation easement donation individually to ensure that the conservation easement will serve a valid public purpose.

1. General Categories of Land which Meet Conservation Purposes of the Conservation Easement Program

Conservation easements will generally be considered on lands on which conservation easements will yield a significant public benefit. MET would expect generally that proposals meet at least one or more of the following conservation purposes (as described in detail in 26 CFR Ch. I § 1.170A-14):

- a. The protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem; or
- b. The preservation of certain open space (including farmland and forest land) that is pursuant to a clearly delineated Federal, state, or local governmental conservation policy and will yield a significant public benefit, or that is for the scenic enjoyment of the general public and will yield a significant public benefit; or
- c. The preservation of a historically important land area or a certified historic structure; or
- d. The preservation of land areas for outdoor recreation by, or the education of, the general public.

2. Incorporation of "Visions" Under the Economic Growth, Resource Protection and Planning Act of 1992 as revised in 2009 in Chapter 176 (Senate Bill 273) 2009 Smart, Green, and Growing – Local Government Planning – Planning Visions.

MET is committed to promoting protection of large contiguous or linked areas, clusters or corridors of protected open space, and promoting compact patterns of growth.

The "Visions" set forth in the Economic Growth, Resource and Planning Act of 1992 and its revision in 2009, addressing growth management and sensitive area protection, will be applied in evaluating conservation easements being considered by MET. The relevant "Visions" are:

- a. Growth areas: growth is concentrated in existing population and business centers, growth areas adjacent to these centers, or strategically selected new centers;
- b. Environmental protection: land and water resources, including the Chesapeake and coastal bays, are carefully managed to restore and maintain healthy air and water, natural systems, and living resources;
- c. Resource conservation: waterways, forests, agricultural areas, open space, natural systems, and scenic areas are conserved;
- d. Stewardship: government, business entities, and residents are responsible for the creation of sustainable communities by collaborating to balance efficient growth with resource protection; and
- e. Implementation: strategies, policies, programs, and funding for growth and development, resource conservation, infrastructure, and transportation are integrated across the local, regional, state, and interstate levels to achieve these visions.

3. Conservation Easement Lands Preferred by MET

Within the general categories of land which will be considered for conservation easement donations above, as to lands located in rural settings, MET will give preference to conservation easement donations offered on lands identified by the following characteristics:

- a. Lands that are currently or potentially productive farmland, significant woodlands (especially large unfragmented forest), wetlands or wildlife habitat, Bay or tributary buffer lands rich in biological diversity, functioning ecosystems, or other environmentally, scenically or historically significant properties;
- b. Lands contiguous to other open space property protected, either by fee ownership or conservation easement, by a federal, state or local government body or land conservation, agricultural protection or historic preservation organization; or

c. Lands, the protection of which would discourage sprawling development and contribute to regional greenways, farmland or other open space corridors or clusters, or ecosystem linkages.

4. Examples of Specialized Categories of Land in Rural Settings for Which MET Currently Accepts Conservation Easements:

a. Lands designated along the Chesapeake Bay or its tributaries as Resource Conservation Areas, buffer areas, wetlands, reforestation or afforestation areas, wildlife habitat or corridors, or otherwise designated for conservation pursuant to the Maryland Critical Area Criteria or a Local Critical Area Program.

b. Significant or highly significant lands along rivers identified in the Maryland Rivers Study, of February 1987, (in either Category I, II or III levels of significance or Tributaries of the Chesapeake Bay), by the National Park Service and the Maryland Department of Natural Resources.

c. Lands along officially designated components of the State Scenic and Wild Rivers System.

d. Lands adjacent to or within the viewshed of local, state or federal designated scenic roads or highways.

e. Lands in or adjacent to Natural Heritage Areas identified by the Maryland Natural Heritage Program of the Department of Natural Resources.

f. Lands adjacent to or occupied by endangered, threatened or rare species or their habitat identified by the Maryland Natural Heritage Program or the Non-game and Endangered Species Program of the Department of Natural Resources.

g. Lands adjacent to existing conservation easements held by MET, the Maryland Historical Trust, the Maryland Agricultural Land Preservation Foundation, DNR or other qualified conservation organizations; adjacent to public parklands or natural area preserves; or within National Register Historic Districts.

h. Important historical or archeological sites, in addition to those listed on the National Register of Historic Places.

i. Lands in the path of development sought by public agencies for future open space, natural area protection or enhancement, or other valid public conservation purposes, but for which public acquisition funds and procedures have not been available or completed.

j. Land that has been identified as a "critical area" by either the Department of State Planning or the political subdivisions pursuant to Chapter 291 of the Laws of Maryland of 1974, as amended.

I. Size of Conservation Easement Properties

Except for conservation easements in urban settings (see section V.), in order to maximize its staff resources in conservation easement negotiation and conservation easement stewardship, MET will give strong preference to acceptance of conservation easements in rural settings on larger parcels of land over those on smaller parcels. MET has established different required minimum sizes of a conservation easement property for properties located in a rural landscape and properties located in an urban landscape.

As a rule, in rural landscapes, MET will accept donations of conservation easements only on parcels of 25 acres or more. MET *may* consider accepting a conservation easement smaller than 25 acres if two of the following criteria are met:

1. The property is contiguous to existing properties protected by their fee or conservation easement ownership, or closely clustered with other protected parcels that make up a larger preservation area.
2. The conservation easement would protect extraordinary resources, such as endangered or threatened species habitat, historic or archeological resources, wetlands, riparian buffers, agricultural and woodland areas that are at least fifty (50) percent Prime Farmland soils (USDA Soil Classifications I and II).
3. There is substantial support for the proposed conservation easement donation from local or state officials, environmental groups, legislators or citizens; or the proposed conservation easement forms part of a major State conservation initiative such as the Rural Legacy or Greenprint programs.
4. The property forms part of a group of contiguous conservation easement offers which will protect a significant, relatively pristine, and coherent historical or natural area.
5. The conservation easement would provide public access.
6. The grantors are willing to accept size limitations on existing Dwelling Units and no reservation of additional Dwelling Units.

No additional Dwelling Units will be allowed on parcels smaller than 25 acres accepted by MET. The Board may waive density guidelines for existing Dwelling Units if their expansion is limited by size restrictions. In the case of a group offer, the withdrawal of one or more parcels shall be cause for re-evaluation of the entire remaining group, and acceptance of the group offer may be contingent on MET's receiving assistance in processing the conservation easements from a local land trust.

J. Density of Development on Conservation easement Property

It is MET policy to accept only conservation easements which remove substantially all of the future development rights or potential from the land. However, in certain cases additional Dwelling Units may be permitted on a property, where the Conservation

Attributes of the property would not be adversely affected and the economic viability of the restricted property would be enhanced. In the event of a conflict between economic viability and the Conservation Attributes of a property, regarding an issue of permitted density, MET will give primary consideration to the documented Conservation Attributes.

Additional development will be considered only when it does not compromise any of the Conservation Attributes of the property. MET will regard proposed density of Dwelling Units, appurtenant Structures, and other uses on a proposed conservation easement property in light of the effect of density on the conservation purposes of the conservation easement and the Conservation Attributes described in the Exhibit B to the conservation easement. In general, MET prefers to maintain density of existing and proposed Structures on conservation easement property substantially below that allowed for similar property under existing local comprehensive plans or zoning ordinances. MET will consider the following factors in making determinations of allowable density on a proposed conservation easement property include:

1. Density allowed by the local comprehensive plan and zoning ordinance, and existing density of the surrounding area;
2. Rate of land conversion in the area from conservation or open space uses to residential or commercial uses (i.e. degree and timing of threat);
3. Number, size and location of existing Structures on the property, and how these Structures contribute to the conservation purposes of the conservation easement (e.g. historic character, agricultural production);
4. Topography and visual features of the property and the compatibility of proposed new Structures with these features;
5. Potential impacts of proposed new Structures on vegetation, water quality, wildlife habitat, and other Conservation Attributes of the property;
6. Plans for clustering or grouping of existing and additional Structures to minimize impacts on the Conservation Attributes;
7. Effect of additional Structures or uses on the long term economic viability of the property under the restrictions of the perpetual conservation easement; and
8. Whether the overall density of dwelling units permitted on the property is made up of dwelling units existing prior to the date of the conservation easement, in proposed conversions of existing non-residential Buildings to residential use (e.g. "mother-in-law" apartments), or in reserved new construction.

In general, MET will seek to restrict additional Dwelling Units, subdivisions of the property, and the lot size of new subdivisions (when permitted) to require clustering

of additional Dwelling Units near existing Dwelling Units, the size of existing and additional accessory Dwelling Units, and encourage a maximum amount of undeveloped, undivided land. MET shall either require its prior written approval for the location of additional Dwelling Units or limit the location of the Dwelling Units to sites or areas specified in the conservation easement deed, and for any off-conveyances of subdivided lots.

K. Subdivision of Primary Dwelling Units Limited to Minimum Lot Size to Promote Clustering; Subdivision of Non-Density Parcels

As a standard approach, when a conservation easement property contains, or the landowner reserves, more than one Dwelling Unit intended by the donors to be a primary Dwelling Unit, the second primary Dwelling Unit (or each additional primary Dwelling Unit) must be subdivided to the minimum lot size allowed by zoning at the time of the subdivision. Other subdivision will be prohibited. MET may, however, approve further divisions of the property for reasons which MET determines, in its sole discretion, are sufficiently extraordinary to justify an exception to the prohibition. Other approaches will be considered when property configuration, topography condition, or circumstances on adjacent properties warrant.

As a standard approach, MET must seek to limit the subdivision of non-density parcels and the number of entities to which such non-density parcels may be conveyed.

L. Subdivision Prohibition and Size Restriction of Accessory Dwelling Units

As a standard approach, when one or more accessory Dwelling Units exist on a conservation easement property at the time of the conservation easement donation, or one or more reserved accessory Dwelling Units are permitted under the conservation easement, these accessory Dwelling Units must not be subdivided from the primary Dwelling Unit to which it is appurtenant, may not be expanded, must be size-limited as defined in the conservation easement, and may be replaced only with another accessory Dwelling Unit. Appurtenant Structures associated with accessory Dwelling Units are prohibited.

M. Conservation Easements on Land Protected by Other Conservation Easements or Deed Restrictions.

MET will consider accepting conservation easements on land subject to existing conservation easements held by the Maryland Agricultural Land Preservation Foundation, Maryland Historical Trust, DNR, local government or private land trusts only in limited circumstances where the Conservation Attributes of the property are significantly better protected with an overlay conservation easement. Examples of such circumstances may include the extinguishment of residential lots, limits on the size and location of permitted agricultural Structures that could harm the Conservation Attributes of the property, additional conservation measures for historic or archeological sites, or additional protection for endangered or threatened species, mature or maturing trees, or stream vegetative buffers. MET prefers to combine its conservation easement protection with the protection offered by other conservation easement programs on separate or

adjacent parts of the property, rather than on top of the property protected by existing conservation easements. MET staff will not actively solicit conservation easements on property already protected by existing conservation easements. MET will give weight to comments from local government officials regarding any additional loss of property taxes that might result from an overlay conservation easement offered to MET.

N. Conservation Easements Offered to Protect Environmental Mitigation Sites.

MET will cooperate with federal, state and local agencies seeking to enhance and permanently protect environmentally sensitive areas (e.g. wetlands, reforestation, afforestation, wildlife corridors, etc.) as mitigation for the loss of environmental areas caused by development. MET will review an offer of a conservation easement for mitigation purposes if the conservation easement meets MET's usual criteria, also taking into account the following:

1. Whether the mitigation fully meets the requirements of federal and state laws and policies for successful mitigation;
2. Whether the regulatory agency, property owner or private land manager has the capability to effectively monitor the mitigation site and ensure the maintenance of Conservation Attributes;
3. Whether sufficient financial support is provided to MET and other monitoring officials to carry out monitoring responsibilities,
4. Whether alternatives to the environmental impacts that are to be mitigated have been sufficiently explored; and
5. Whether MET's acceptance of the conservation easement on the proposed mitigation site will enable undesirable development projects to be approved that would not otherwise be permitted.

O. Regulatory Conservation Easements

MET generally will not accept "regulatory conservation easements" or "developer conservation easements," conservation easements pursuant to cluster ordinances or other regulations or statutes where the conservation easement is granted as a quid pro quo for accompanying development, except under extraordinary circumstances. MET may accept such conservation easements, if they meet MET's usual policies, only in special cases over properties of unusual significance.

MET supports the use of such conservation easements by other organizations as a tool for effective growth management, protection of linked clusters and corridors of sensitive areas, and providing for compact rather than sprawling development. MET actively will assist in training interested local land trusts, counties and other organizations in encouraging conservation easements for such purposes.

In those special cases where MET accepts regulatory conservation easements, MET generally will not consider or process offers of conservation easement donations on properties subject to plans for development until all government approvals necessary to carry out such plans are approved and until all litigation over such approvals has been concluded. Prospective donors of conservation easements for such properties are not authorized to promise the donation of conservation easements to MET as a means of obtaining approval for development projects, and are requested to refrain from making any representations of MET interest in such donations. Any representations of MET interest in properties made by applicants that do not follow this policy will jeopardize MET's consideration or acceptance of any conservation easements on the properties.

In those special cases where MET considers regulatory conservation easements and a public agency is seeking MET's assistance in providing permanent protection for open spaces or natural areas as part of planned development proposals, MET will work with the agencies and project sponsors to establish the maximum practicable amount of permanent environmental protection with the use of MET's Conservation Easement Program, consistent with these policies. Negotiations for such conservation easements must be initiated by the government agency, and must not be used to provide a rationale or basis for development project approval where such approval would not otherwise be granted.

P. Processing of Conservation Easement Grants

The steps taken by MET's staff and Board of Trustees and the Maryland Board of Public Works to consider and accept a conservation easement are described in MET's other publications. Generally, three or more months are required for processing conservation easement offers from the time of first contact with MET's offices. When circumstances require shorter periods of time for processing, MET will attempt to accommodate the needs of the conservation easement grantor.

Q. Amendment Policies and Procedures¹

1. General Amendment Policies

MET acquires and holds conservation easements on properties in order to protect, in perpetuity, the Conservation Attributes of the properties for the benefit of present and future generations. MET is committed to ensuring the perpetuity of the conservation easements it holds.

MET will hold and enforce its conservation easements as written. To the extent that a particular conservation easement is treated as a restricted charitable gift or charitable trust under state law, some courts have construed certain conservation easements in accordance with charitable trust principles. Amendments to conservation easements shall be authorized only in limited situations and under specifically described situations. Even if a conservation easement contains an amendment provision, it can only be amended in

¹ Amendment Policies and Procedures originally approved by the Board of Trustees on November 2, 2009.

accordance with the conservation purpose. Any proposed amendment that is contrary to the stated² conservation purpose must take place via a *cy pres* or other equitable proceeding. No amendment may be considered which could cause the conservation easement to not be in compliance with applicable federal, state or local laws, regulations or ordinances.

MET will not consider any requests for amendments to conservation easements that create impermissible private benefit and/or private inurement under the Internal Revenue Code.

Before a conservation easement amendment can be approved, any conflicts of interest or potential conflicts of interest must be resolved in accordance with MET's Conflicts of Interest Policy, if any. MET must also resolve any conflicts of interest that are not covered in the Conflict of Interest Policy, if any.

The requestor of the amendment will pay any and all costs associated with the amendment, including an administrative fee if applicable, whether or not the amendment is granted, and of implementation of the amendment if approved. MET may require as a prior condition of approval that the requestor cover the cost of a qualified appraisal of the value of the requested amendment in order to assess whether the amendment shall result in any private inurement or shall confer any private benefit. At MET's sole discretion, MET may waive the foregoing requirement that the requester of the amendment pay all or some of the costs of amendment appraisal or implementation.

Any request to MET to remove or extinguish reserved subdivision, residential development or other rights provided in a conservation easement must be accomplished via amendment to the conservation easement. Overlay conservation easements granted to any other authority are not subject to these amendment policies.

Nothing in these amendment policies shall be interpreted to require MET to grant a conservation easement amendment request, even if the following criteria are met. MET has discretion to grant or to deny each amendment request and shall evaluate each request on a case-by-case basis.

Requests to amend conservation easements by MET's Board of Trustees may be subject to approval by the Maryland Board of Public Works.

Each request for an amendment that is approved by the Board of Trustees and the Board of Public Works must take the form of an Amendment to Deed of Conservation Easement and must be recorded in the land records of the local jurisdiction(s) in which the affected property is located.

² Formerly "existing," but this was a scrivener's error. AWG approved change without board approval March 2016.

2. Conditions and Circumstances Under Which Amendment Requests May Be Considered

a. Amendments to a conservation easement held by MET shall be considered only if the request meets the following conditions:

- (i) Has a significant positive impact on the Conservation Attributes on the property and attributes of the conservation easement (for example, by extinguishing reserved development and/or subdivision rights);
- (ii) Upholds the intent of the original grantor, MET's mission, and the fiduciary obligation of MET to protect the property in perpetuity for the benefit of the public; and
- (iii) Upholds any contractual obligations from any funding source for the conservation easement.

b. No amendment will be granted under any circumstances if MET determines, in its sole discretion, that the amendment would affect the conservation easement's perpetual duration, would afford in any manner less protection to the Conservation Attributes protected by the conservation easement, or would result in impermissible private benefit and/or private inurement. The Board of Trustees may consider an amendment request that does not meet the conditions above in the following cases:

- (i) **Prior Agreement.** A conservation easement may have a specific provision allowing modification of the conservation easement at a future date under specified circumstances. Such a modification agreement must have been set forth in the conservation easement document at the time the document was executed. The amendment must be consistent with the terms and conservation intent of the conservation easement.
- (ii) **Correction of Oversight or Error, or clarification of ambiguity.** MET may authorize an amendment or confirmatory deed of conservation easement to correct an error or oversight made at the time the conservation easement was executed. Such errors or oversights may include, but shall not be limited to, correction of a legal description, inclusion of standard language that was unintentionally omitted, or clarification of ambiguities. Any amendment authorized to clarify a conservation easement ambiguity shall be supported by written statements between MET and the conservation easement grantor that the intention of the amendment is to clarify and implement the parties' original intentions when MET first acquired the conservation easement from the grantor.
- (iii) **Settlement of Condemnation Proceedings.** In limited circumstances, conservation easements held by MET are subject to condemnation. Where it appears that condemnation power will be

properly exercised to terminate a conservation easement, MET may enter into a settlement agreement with the condemning authority and landowner in order to avoid the expense of litigation. The agreement may entail an amendment to the conservation easement. In reaching such an agreement, MET must attempt to preserve the intent of the original conservation easement to the greatest extent possible.

(iv) Amendment as Part of Settlement of Litigation. Notwithstanding other provisions of these amendment policies, the Board of Trustees reserves the right, in its sole discretion, to enter into an amendment of a conservation easement as part of a settlement of pending litigation if it determines that doing so would be in the best interest of MET, considering the Conservation Attributes as set forth in the conservation easement and is approved by the court.

3. Request to Amend a Conservation Easement

A request to amend a conservation easement must be made in writing by the grantor, heir(s), successor(s) and assign(s) of a conservation easement to the grantee. The request shall demonstrate how the proposed amendment meets the qualifying conditions.

MET will notify the requestor in writing of any action taken by MET Staff, the Board of Trustees or the Maryland Board of Public Works to approve, reject, or modify the proposed amendment.

Any request for amendment must require subordination of any pre-existing liens before final approval.

R. Expenses of the Conservation easement Conveyance

MET will pay all local charges for recordation of a deed of conservation easement. In limited cases MET may reimburse the conservation easement donor for a portion of certain other costs.

S. Ecosystem Services Marketing and Mitigation and Conservation Banking³

1. General Policy

Ecosystems services are the conditions and processes through which natural ecosystems and the species thereof sustain and fulfill healthy human and natural systems. Natural and semi-natural land cover types (e.g. forests, wetlands, grasslands, endangered species habitat) provide services which may include air and water purification, flood control, carbon and nutrient scrubbing, soil formation, decomposition and filtration of waste, pollination of crops, provision of habitat, etc. (“Ecosystems Services”). A large body of scientific research substantiates nature’s provision of Ecosystems Services. Ecosystems

³ Policy adopted September 10, 2012 supersedes policy “Forest Mitigation and Banking” adopted May 5, 2008.

Services markets exist since people are willing to sell, trade, exchange or pay to establish or enhance a particular natural function or Ecosystem Service (“Ecosystem Services Marketing,” or “ESM”). Markets for the sale, exchange or trade of Ecosystems Services are present in the United States and internationally. As in all markets, there are measurements of how much is bought and sold – for example, number of trees planted, acreage of restored wetlands, tons of carbon prevented from release into the atmosphere. Landowners may generate innovative income streams from their properties by allowing activities such as forest and wetland mitigation and conservation banking and then selling credits via an ESM. Some individuals and companies restore properties for the express purpose of generating credits for ESM. MET finds that these efforts too have great potential to enhance the quality of ecological resources, including water quality, air quality and wildlife habitat. Previously, MET policy has allowed for the establishment of a narrow segment of ESM (forest mitigation and banking) and only on properties that are not yet under conservation easement with MET. After careful review, MET hereby adopts this replacement policy:

- a. To construe a landowner’s sale of credits via ESM to be a permitted commercial activity on an MET conservation easement property;
- b. To expand the kinds of activities related to ESM that are permissible on an MET conservation easement property; and
- c. To broaden eligibility for ESM to the universe of MET conservation easement properties that:
 - (i) Are five (5) acres or greater in size (the minimum accepted size of federal and state forestry and agricultural incentives programs); and
 - (ii) Do not otherwise specifically prohibit⁴ ESM.

This policy is designed to ensure that when MET allows ESM, it will be a legitimate means to further MET’s interests in resource protection. Landowners who wish to pursue ESM on MET conservation easement properties are required to follow the process and meet the conditions set forth below.

2. Process

A landowner submits for MET review a proposal. MET staff will focus review on evaluation of plans that would impact the physical environment to ensure they are consistent with the conservation values/attributes of the property as they are identified in the conservation easement, and will not require submission or review of documents reflecting financial arrangements between the landowner and a purchaser/trader of ESM. Staff will review plans with the Stewardship Committee. The Stewardship Committee will refer for Board of Trustees review and approval any plan for which ecological and conservation enhancement attributes are not clear and any proposal in which MET is asked to subordinate its conservation easement to an overlay conservation easement. All other proposals may be approved at the Stewardship Committee level.

⁴ Beginning with conservation easements that are executed on or after the date of this policy, MET will incorporate language in its model conservation easement to allow for ESM so that it offers this language to landowners. For this reason, item (3)(b) is likely to be most relevant to MET conservation easements that were executed before the date of this policy.

Before MET approves a proposal, it must find that the proposal meets the following conditions, at a minimum:

- a. All applicable federal, state and local review agencies (for example, Army Corps of Engineers, U.S. Fish and Wildlife Service, Maryland Department of Environment, and local planning and zoning, permits and/or Soil Conservation District offices) must approve plans;
- b. Where applicable, the local Soil Conservation District office must determine that proposed conservation and/or restoration practices and plans are appropriate agricultural Best Management Practices, consistent with the Natural Resources Conservation Service Field Office Technical Guide;
- c. Proposed conservation and/or restoration practices must be consistent with the conservation values/attributes of the property as they are identified in the conservation easement and may only consist of (i) vegetative treatments; and (ii) excavation, filling and grading activities associated with forest or grassland establishment, erosion control measures, streambed or streambank restoration, habitat restoration or wetland creation or restoration, provided that such activities receive technical approval from the local Soil Conservation District as set forth in (a) above;
- d. Practices and plans may include the establishment of new Structures, e.g. dams, weirs, water flow control gates, etc., but must not result in the construction of new Buildings (as those terms are defined in MET's model conservation easement that is in use on the date of the evaluation);
- e. Plans must be consistent with local comprehensive plans and state and local objectives for land protection including Maryland Agricultural Land Preservation Foundation, the Rural Legacy Program and local land trust partners;
- f. MET will permit overlay conservation easements required for local, state or federal approval that further resource protection, but will not subordinate an MET conservation easement to a newer overlay conservation easement without the review and approval of the Board of Trustees;
- g. The landowner agrees to provide MET with copies of all final approvals, final plans, and any executed banking agreements, overlay conservation easements or deed restrictions and covenants required as a condition of county, state and/or federal approval.

As stated in the Purpose section of this document, this statement of policies is intended to guide rather than limit the actions of MET. Even if a proposal appears to meet all aspects of this statement of policies, the Board may determine that the overall conservation and/or restoration program would be inconsistent with MET goals and/or compromise the Conservation Attributes which were the basis of the MET conservation easement. For example, a landowner may propose forest mitigation to replace Class I agricultural soils, thus taking that land out of production. Depending on the facts of the proposal, this plan may or may not be prudent. MET may also want the ability to influence the conservation and/or restoration plans and have input into where these activities occur on a property. MET will evaluate proposals on a case-by-case basis and will exercise its judgment in deciding which proposals it will accept.

T. Appraisal Policies and Procedures⁵

In order for MET to sign Form 8283, the information in Section B, Part 1, “Information on Donated Property,” and Part 3, “Declaration of Appraiser,” must be complete.

MET will require a full appraisal by a qualified appraiser for review in all cases. For donations in excess of \$500,000, a full appraisal must accompany the taxpayer’s return (IRC §170(f)(11)(D)).

Staff appraisal review 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.

As stated on Form 8283, “This acknowledgement (the donee’s) does not represent agreement with the claimed fair market value.” MET will rely on the qualified professional appraisers to establish value.

If MET believes that no gift has been made or the property has not been accurately described, it may refuse to sign the form. If MET has significant reservations about the value of the gift, particularly as it may impact the credibility of MET, it may seek additional substantiation of value or may disclose its reservations to the donor. Further, MET staff may refuse to sign an 8283 in cases where the conservation easement conveyance is not a gift, e.g., a regulatory requirement, a condition of a contract, a developer conservation easement or other quid pro quo conservation easements. MET staff will make every effort to identify any such potential conservation easements early in the process and educate the parties involved that such conservation easements lacking donative intent would not be tax deductible.

Other factors that could provide the basis for MET to refuse to sign the Form 8283 include: factual errors or inaccurate representations of conservation easement restrictions, no appraisal report is provided to MET, or the enhancement value to a landowner of property adjacent to the conservation easement land is not addressed.

The conservation easement donor, and not MET, is responsible for obtaining the services of an IRS qualified appraiser. Appraisers must have all the necessary Maryland licenses and certifications and follow the Uniform Standards of Professional Appraisal Practice (USPAP). Additionally, appraisers must meet the requirements of a “qualified appraiser,” as defined in IRS Notice 2006-96, titled “Guidance Regarding Appraisal Requirements for Noncash Charitable Contributions,” and all subsequent refinements of the definition of “qualified appraiser.”

⁵ Originally approved April 7, 2008

U. Policy For Temporary Commercial Events And Activities On Properties Currently Protected By MET Conservation Easements⁶

The land trust community has observed increased interest by the property owners of conservation easements on agricultural lands in alternative sources of income. These include hosting festivals and concerts, serving as venues for weddings, retreats, conferences and family reunions, as well as conducting recreational, educational, and tourism activities that depend on and promote the heritage and open space settings of these agricultural and forested properties. Many of these are now common agritourism activities and events, while others are part of a new trend in agriculture-based activity (e.g. “green weddings”) observed throughout the Mid-Atlantic and Northeast. At the time most MET conservation easements were written, none of these alternatives was envisioned, and thus most conservation easements prohibit all but a few commercial activities involving the sale of goods grown and processed on the conservation easement property, or those that can be accomplished completely within an existing Structure without changing its external appearance for the purpose of promoting the commercial activity.

Recognizing increased landowner interest in and societal trends embracing on-farm activities and events, MET seeks to provide guidance on which temporary commercial activities and events it will consider for approval on properties on which it holds conservation easements. Flea markets, gun and automotive shows, or motorized recreation events are specifically excluded from consideration, due to limited association with agriculture or rural heritage, the likelihood they will cause environmental degradation, or both.

Increasing commercial activity, even if temporary, has the potential to change the character of conservation easement properties, and potentially diminish landowner incentives to conduct traditional agricultural activities, including forestry. Thus, the frequency, length and scope of proposed temporary commercial activities and events will be considered so as to avert the possibility of negatively impacting the scenic and rural character of properties, providing disincentive to, or reducing area or productivity of, traditional agricultural and forestry activities.

No temporary commercial activity or event on conservation easement property will be approved that is likely to cause a permanent negative impact on the Conservation Attributes of the property or breach the intent of the original grantor, MET’s mission, or the fiduciary obligation of MET to protect the property for the benefit of the public in perpetuity. The size, location and frequency of any commercial activity or event must be shown to have *de minimis* effect on identified Conservation Attributes such as water bodies or sensitive species.

Temporary commercial events or activities such as those described above or requested by

⁶ Originally approved by the Board of Trustees on October 5, 2009.

a landowner (including those events or activities benefiting non-profit entities) will be permitted by MET on conservation easement properties only under the following circumstances:

1. Events or activities will not permanently diminish the potential of the property to be used for its traditional agricultural or forestry uses, i.e. will not remove land from production, permanently compact soils, or add to impervious surfaces.
2. Any impact on vegetation or soil (e.g. clearing, rutting or erosion) will be temporary, and restoration to prior conditions must be initiated within two weeks following any approved event or activity.
3. No permanent commercial signage or lighting will be installed to promote the new use.
4. No permanent Structures will be constructed to promote or to contain facilities primarily devoted to the temporary commercial event or activity. Thus, the majority of floor space in any new Structure must be devoted to traditional agricultural, forestry, or residential uses. Single story Structures without plumbing or walls (e.g. shelters, gazeboes, or boardwalks) less than 400 square feet in area may be considered.
5. Events or activities will be centered on the already developed areas (farmyard and/or dwelling unit) and will minimize impact on Conservation Attributes such as scenic views of the property from public trails, roadways, parks and navigable waterways or adjacent historic or cultural areas.
6. Events or activities will be limited in scope, not affecting more than 40 percent or 15 acres whichever is less (including parking), on properties under 50 acres, and no more than 20 acres on properties greater than 50 acres.
7. Unless otherwise approved, each event or activity involving more than 150 attendees must receive approval from the Board of Trustees.
8. Unless otherwise approved by MET to be permissible as ongoing, an event or activity will be limited in length to three consecutive days, and in frequency (e.g. seasonally, quarterly or monthly) as determined by MET.
9. Sales of goods not grown or processed on the property may only be food, arts, crafts, potted plants or Christmas trees, or related to preparation and consumption of food, and may only be conducted in conjunction with the approved event or activity.
10. Requests must be made in writing at least 60 days prior to the planned event or activity, including a sketch or annotated photograph of the proposed location and extent of the activity or event, and must be signed by the current owner of the conservation easement property or the landowner's legal representative. MET's approval (including conditions) or rejection will be communicated to the landowner in writing.

11. Landowners will be responsible for meeting all permitting requirements prior to hosting the activity or event, and will take precautions to control crowds, traffic, trash, dust, etc.
12. The landowner must allow MET staff to conduct prior and post-event or periodic inspections with reasonable prior notice in order to verify that all conditions are met.
13. The Board may delegate to the Director discretion to approve:
 - a. new events or activities involving fewer than 450 attendees over three or fewer days;
 - b. event and activity requests substantially similar to past approved requests on the same property by the same owner; and
 - c. requests for recurring activities involving less than 150 attendees and occurring fewer than ten (10) times per year (ex. series of concerts).

Landowners are encouraged to mention the preserved nature of property in any publicity for approved events or activities, and are requested to assist MET with outreach for additional land preservation.

V. Conservation Easements in Urban Settings⁷

Historically, MET has focused its efforts on obtaining conservation easements on large properties located in rural settings. This section sets forth MET's policy on obtaining conservation easements on properties of any size located in urban settings.

1. General Policy

An urban setting is typically characterized by one or more of the following: served by public water and sewer; within the boundary of a local government (including small municipalities and villages that are located in an area that is otherwise generally rural); within the boundary of a larger, incorporated area; inside an urban-rural demarcation line; in a Priority Funding Area; in an area of high population density; in an area dominated by man-made as opposed to natural features; or in an urbanized area.

MET will consider a conservation easement on a property in an urban setting if MET can cohold the conservation easement with a local coholder with which MET has a Cooperative Agreement. The Deed of Conservation Easement will allocate to the local coholder the primary duty to monitor the property. MET cannot entirely delegate its monitoring and enforcement obligations to a local coholder, but, subject to the provisions of this section V., MET will enter into a conservation easement in an urban setting if it and the local coholder agree that MET will look to the local coholder as the primary monitor and for initial enforcement of conservation easement violations.

MET will accept a conservation easement for a property in an urban setting if the

⁷ Originally adopted by the Board of Trustees on June 4, 2012.

property possesses the conservation and public benefit values set forth below and MET determines the property to be significant within the local urban setting. In evaluating significance, MET will consider whether there is substantial support for the proposed conservation easement from local or state officials, legislators, environmental groups, citizens, the local coholder (including whether the property is referenced in its adopted strategic conservation plan) or, to the contrary, whether there is substantial support from such groups and individuals to have the property available for uses not compatible with the proposed conservation easement. In making a determination of support for the conservation easement, MET will consider whether there is a state or local conservation policy intended to protect this kind of property.

Ordinarily, the Deed of Conservation Easement for a property in an urban setting should not allow additional dwelling units, beyond those that are existing at the time of the conservation easement. The Deed of Conservation Easement should prohibit subdivision and require common ownership. MET recognizes that in urban renewal/smart growth projects this policy is subject to modification.

In all cases, MET will consider whether a conservation easement is the appropriate tool to achieve the desired land protection goal(s) or whether another tool such as transfer of the fee interest is more appropriate. If a conservation easement is determined to be appropriate, MET will also consider whether the conservation easement should be perpetual or for a term of years.

As stated in the Purpose section of this document, the statement of policies of section V. is intended to guide rather than limit the actions of MET. Even if a proposed conservation easement appears to meet all aspects of the policies contained in this document, MET will continue to evaluate conservation easement offers on a case-by-case basis and will exercise its judgment in deciding which conservation easements it will accept.

2. Conservation Purposes of Conservation Easements in Urban Settings

MET will consider a conservation easement on any property in an urban setting that provides at least one⁸ of the conservation purposes set forth in section H.1 of this document. In order for MET to accept a conservation easement, the conservation easement must at a minimum satisfy the criteria set forth in Md. Ann. Code Real Property § 2-118. If a conservation easement grantor expects to seek a federal tax deduction, the deed of conservation easement will have to meet the criteria set forth in the Internal Revenue Code and Code of Federal Regulations⁹ MET realizes, however, that although some public benefits bestowed by grants of conservation easements on properties in

⁸ Due to pressures on property in urban settings, MET may in some circumstances want at least two conservation values. For example, if the sole conservation value is for a trail leading to a public park, and the park is later converted to another use that is not open to the public, the conservation easement itself could be subject to challenge if the conservation purpose is no longer feasible.

⁹ See 26 U.S.C 170(h), 26 CFR 1.170A-14.

rural and urban settings, such as protection of water quality, are similar, the public benefits associated with conservation easements in urban settings may differ from the public benefits associated with conservation easements in a rural setting. Accordingly, in determining the conservation values of a property in an urban setting, MET will treat as an important consideration whether the terms of the conservation easement will allow the general public to access the property. In addition, MET will consider the following factors (corresponding conservation purposes set forth in section H.1 of this document are shown in brackets):

- a. Outdoor recreation or education of the general public [cross reference section H.1.d]:

Would protection of the property allow substantial and regular outdoor recreation or education of the general public? Would protection of the property create a new opportunity for such public recreation and education in an area not currently served with such use? Recreation and education may include boating, fishing or other water-based activities; nature or hiking trail use; neighborhood, family, school or other associational gatherings or events; education programs and museums using environmental and maritime resources as living learning laboratories or offering hands-on experience; other outdoor pursuits such as teaching, gardening/agriculture/urban agricultural enterprises, landscaping, reading, picnicking and games not involving hardened surfaces or permanent fixtures; and opportunity to experience solitude or separation from surrounding or adjacent urban activities. Outdoor recreational and educational opportunities may be especially important if the property is adjacent to dense housing.

- b. Open space (scenic and public policy considerations) [cross reference section H.1.b.]:

- (i) Scenic: Does the property possess scenic qualities of its own within the character of the local urban setting? Does the property provide scenic enjoyment to the general public? Would a conservation easement enhance or ensure the scenic character of the local urban setting or preserve a scenic panorama that can be enjoyed from a park, nature preserve, road, waterbody, trail, historic structure or land area that is used by the public? MET will consider the openness of the land (especially important in a densely populated setting); relief from the sense of closure by urban development, facilities or infrastructure; and the degree to which the land use maintains the scale and character of the urban setting to preserve open space, visual enjoyment and sunlight for the surrounding area. MET will also recognize that variations in topography, geology, biology and cultural and economic conditions require flexibility in applying this factor and will consider all pertinent facts and circumstances germane to the matter.

- (ii) Public Policy: Is there a federal, state or local governmental public policy that would support preservation of the property by a conservation easement? If so, MET will consider whether a conservation easement would provide protection and/or benefits beyond the protection and/or benefits which applicable laws already require and whether there is any

reason to believe that the protection and/or benefits provided by law might be removed in the foreseeable future. For example, MET may be asked to hold a conservation easement on a stream channel in an urban setting to help control flooding. If local steep slope ordinances already protect the property from development, MET will consider whether the additional protections and/or benefits its conservation easement would afford, such as buffers and/or public access, are needed.

c. Historic Preservation [cross reference section H.1.c]:

Does the property contain a structure that is listed on the National Register of Historic Places or (if located in a registered historic district) is certified as being of historic significance to the district? Is the property part of a historically important land area, that is, land area within a registered historic district including any Buildings that can reasonably be considered as contributing to the significance of the district; land area adjacent to a property listed individually on the National Register of Historic Places if the features of the land area contribute to the historical or cultural integrity of the National Register property?

d. Natural Habitat [cross reference section H.1.a.]:

Does the property provide a relatively natural habitat for fish, wildlife or plants, or similar ecosystems, especially endangered, threatened or rare species? Is the property a natural area which is adjacent to or contributes to the ecological viability of a local, state or national park, nature preserve, wildlife refuge or management area or other similar conservation area? Does the property have potential to be a migration corridor or greenway between natural areas?

W. Policy on Acceptance of Existing Easement from Another Easement Holder¹⁰

From time to time, a holder of a conservation easement approaches Maryland Environmental Trust with a proposal to assign¹¹ such conservation easement to MET. MET welcomes the opportunity to expand its portfolio by accepting assignment of easements that satisfy the criteria set forth below and that are approved by the Board of Trustees. This Assignment Policy covers all potential assignments of a conservation easement.

Policy

Acceptance of assignment of a conservation easement imposes a stewardship burden and associated cost that MET will bear in perpetuity. MET reserves the right to evaluate proposed assignments on a case-by-case basis taking into consideration the reason for requesting MET to accept the proposed assignment, the potential burden the assignment will place on MET and the adequacy of its resources for handling that burden, and whether the assignment is in the public interest. MET further reserves the right, in its sole and absolute discretion, to accept only those assignments which meet its criteria. MET must affirmatively accept an assignment, need not accept assignments granted to it without its knowledge, and as a general rule will not accept assignments of easements granted to it without its knowledge.¹²

General

This policy is intended to supplement and not replace any applicable State and federal laws. In the event of any conflict between this policy and any applicable State or federal law, such State or federal law shall control. Pursuant to the Maryland Public Information Act, MET will provide a copy of this policy to any person requesting it.

MET will provide each Trustee, Area Representative and employee with a copy of this policy at the time they join the organization and will discuss this policy at orientation.

10 This policy, adopted by the Board of Trustees on September 12, 2016, supersedes all prior MET policies on acceptance of existing conservation easements to be transferred from another easement holder.

11 MET has the authority to “acquire and hold real...property, or any interest therein, of aesthetic, scenic, or cultural significance, or of significance to the health and welfare of the public, by lease, gift, purchase, devise, bequest, or by any other means...”. Md. Ann. Code Natural Resources 3-203.

12 But see Md. Ann. Code Real Property 2-118(e). If an easement grantor fails to specify a grantee or specifies a grantee that is not legally capable of holding the easement interest, a court in equity may assign it to MET.