

# **IMPEDIMENTS TO THE DONATION OF CONSERVATION EASEMENTS**

Report prepared for the  
Maryland Center for Agro-Ecology, Inc., Queenstown, Maryland

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## **PURPOSE**

The purpose of this report is two-fold. First, it is to ascertain what barriers exist that impede the ability of a landowner to donate a conservation easement in perpetuity to either a land trust or to a State agency. The second purpose is to suggest ways to strengthen the use of donation as a land conservation tool.

This is an important assessment to make because Maryland is in the midst of balancing a significant budget deficit, and dollars may not be as plentiful as in prior years to purchase conservation easements. It is also important to examine this issue because the donation of conservation easements is the most economically efficient technique for permanent preservation of large tracts of land. Figures from the Maryland Environmental Trust have shown that preservation by donation costs under \$150.00 per acre. This figure includes all costs such as the annual stewarding and administering of the easement. It does not include the prosecution of major violations. By contrast, the preservation of land by purchase of easements costs about \$1900 per acre, or 12 times as much. Given the impressive difference in price between the public costs of easement donation and easement purchase, it is in the public interest to identify and to positively deal with existing impediments to donation.

## EXECUTIVE SUMMARY

This report represents a yearlong examination of the conservation easement donation process in Maryland. Impediments to donation were identified and recommendations were made to strengthen donation as a tool for land preservation and management. A literature search, a land trust listserv inquiry, interviews with “hard to convince” landowners, attorneys, accountants and appraisers, State agency program staff, county government planning and zoning offices, and local land trusts, as well as surveys mailed to donors formed the basis for identifying the impediments as well as the recommendations.

From those interviewed and surveyed, the following impediments were identified:

- Tax credits and tax deductions are not particularly useful for the landowner who wishes to donate and is in a lower income bracket (around \$50,000 per year). For landowners with higher income (around \$250,000 or more per year), tax credits and tax deductions were found to be helpful but concern focused on estate taxes when passing the property to their heirs and with being unable to take advantage of the full tax credit legislation over the period of 15 years. Donors at both ends of the financial spectrum suggested that the State look into more flexible fiscal measures tailored to meet their specific situations.
- Land trusts should be more flexible and accept smaller parcels for donation. This comment came from several arenas (donors, landowners holding smaller parcels and desirous of donating) out of concern that land trusts will soon run out of larger parcels to garner and that larger parcels could involve more time to settle than smaller parcels. (NOTE: What may not be known by those identifying this problem is that local land trusts have specific criteria that are used when considering the conservation value of the property for donation purposes. Land trusts do evaluate smaller parcels particularly if there is conservation value and the parcel adds contiguity with lands that have already been donated. Furthermore, land trusts are not staffed with many people and it is considered more efficient to go after larger acreage than smaller).
- Loss of control over the property once it is donated. Some of the concern stemmed from the fact that an easement is in perpetuity. Other concern was based on a sense of confusion over what uses owners would be able to make on their property vis-à-vis rights that would have to extinguish. This is not unusual as those having their rights purchased also have the same concern.
- Property owners who had donated, as well as those considering donation, expressed concern about the costs they had to pay or would have to pay

including legal, accountant, survey and appraisal costs. Many noted that the State should look into some form of assistance to help them with some of the costs.

- There is not enough landowner-friendly information available describing the various programs for easement donation and acquisition such as what the requirements are of each program, the criteria to be met to qualify for consideration, whether programs can be “mixed” and “matched” and how they can be used.
- State programs, local government programs and private organizations are viewed as being less coordinated than they could be. Prospective donors have little understanding about the inter-relationships of the various programs and are not well versed in what is available.
- There appears to be a lack of professional talent available across the State in a consistent way to provide legal, accountant, and appraisal expertise to potential donors. And, if there is a consistent talent pool, access to that “pool” is difficult.
- Newer local land trusts need help across the board with how to get organized, garnering members and with legal and financial advice. Weaknesses in these areas reduce the effectiveness of the trusts.

Recommendations for strengthening the easement process include:

- The Maryland Environmental Trust should examine the need for extending the 15-year time period for deducting the value of easements. The Maryland Environmental Trust along with the Maryland Agricultural Land Preservation Foundation should examine the law in Virginia that allows landowners to sell their unused tax credits to others.
- The State should encourage its Congressional members to support elements of the Charities Aid, Recovery and Empowerment Act of 2003 (S.476). It contains language to allow landowners who donate a permanent conservation easement to a non-profit entity or government agency to deduct the value of the gift over 16 years (as opposed to 6 years). It also contains language that increases the amount that can be deducted in any one year from the current 30% of the donor’s income to 50%. For farmers and ranchers, all of their income under certain circumstances is provided for as well in the proposed Act.
- The Maryland Environmental Trust and the local land trusts should enhance the knowledge of prospective donors as to the criteria that are used to determine the acceptance of a donated parcel, whether large or small (around 50 acres or less), and share with the prospective donor how

his/her piece fits into the approach being taken by the land trust in garnering donations.

- To increase the interest of prospective donors, one-on-one contact by those who have already donated is the most effective approach to take. This provides a personal touch from a knowledgeable person and can assuage confusion and concern over “loss of control”, and “what uses can be retained”.
- As the research indicates that landowners are primarily motivated to donate their land to conserve natural resources and to keep development from occurring on the property, informational meetings, brochures, and other outreach efforts should focus on increasing landowner awareness of the special values of their properties and of conservation options.
- Donation success stories need to appear more frequently in newspapers and magazines and not solely in the local land trust newsletters that prospective donors may not receive on a regular basis.
- A “no interest” revolving loan fund should be established by the Maryland Environmental Trust to reimburse donors with some of their legal and survey costs. The Trust could establish parameters as to who would qualify for this loan.
- The Maryland Environmental Trust should maintain two directories of talent on their website. The first would be a listing of local land trust board members and directors that have specific skills and knowledge on how to organize, how to garner members, and how to work with landowners and address their legal and financial questions. The second directory would geographically list attorneys, accountants, and financial advisors who specialize in the donation and purchase of conservation easements that local land trusts and prospective donors could refer to for assistance.
- The Maryland Environmental Trust and the Maryland Agricultural Land Preservation Foundation should consider making annual presentations in continuing education courses for Maryland attorneys, accountants and realtors to update them on current programs, changes to the programs, application, and criteria for consideration.
- The Secretaries from the Departments of Natural Resources, Agriculture, and Planning should meet periodically with their staffs to strengthen the coordination and application of their respective land acquisition programs and to strengthen their ties with the county and municipal efforts that are taking place.

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## **I. BACKGROUND**

### **A. A THUMBNAIL SKETCH OF MARYLAND LAND ACQUISITION**

Since the 1970's, Maryland has been at the forefront in successfully preserving lands, either by easement acquisition or through donation. It was recognized then as it is now that Maryland's natural resources, working landscapes (farms and forests), open spaces, and cultural and historic resources needed to be preserved to establish permanency for use and enjoyment into the future. While the sense of urgency may not have been as strong as it is today, there were early indicators that the acquisition approach was important. First, the movement of population from older urban/suburban areas to areas outside the newly established beltway system showed that there was a change in land use. Second, the decades of the sixties and seventies showed that Maryland's population was increasing and that forested, agricultural and open space lands were being converted by development to accommodate the shift and growth in population.<sup>1</sup>

The first acquisition cornerstone was the creation of the Maryland Environmental Trust whose purpose in 1967 was and remains today to conserve, improve and perpetuate the scenic, natural, cultural and aesthetic features of Maryland's environment. Lands have been garnered by the Trust mostly through conservation easement donation by landowners who extinguish their development rights in exchange for continued specific property and tax benefits as well as peace of mind in knowing that they have permanently protected their lands' assets and amenities for generations to come.

While the quote "less is more" has been attributed to architect Ludwig Mies Van der Rohe<sup>2</sup> one could attribute "more is more" to the Maryland Environmental Trust. Desiring to increase its effectiveness, and in response to local interest in developing area specific land trusts, the Maryland Environmental Trust created a Local Land Trust Assistance Program in 1989. The purpose of the Program is to help citizens' form and run their own local land trusts and to provide them with training and technical assistance in grant administration, with the easement donation process, and with membership. Under the 1990 Consolidated Land Preservation Act, a revolving loan fund of \$1.5 million was made available for local acquisitions and annual grant awards to help with local land trust operations. There are over 50 local land trusts throughout Maryland, and together with the Maryland Environmental Trust, over 100,000 acres have been garnered via donation at the impressive annual administrative and stewarding cost per acre of \$150.00.

The second acquisition cornerstone was the creation of Program Open Space in 1969 for the purpose of preserving farms, forests, open spaces and lands for recreational use. Funded through a dedicated real estate transfer tax (i.e., ½ of 1% of the purchase price), over 286,000 acres of open space and recreational lands have been preserved.

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<sup>1</sup> Maryland Department of Planning. Maryland's Changing Land: Past, Present and Future. Baltimore, MD. December 2001.

<sup>2</sup> Mies may have borrowed the phrase from Robert Browning's 1855 poem "Adrea del Sarto".



Furthermore, under the Program, each county and the City of Baltimore receive allocations based on population and other factors. Other programs such as Rural Legacy, the Maryland Agricultural Land Preservation Foundation, Green Prints and the Maryland Historical Trust's Heritage Area Program receive portions from this fund. While some acres have been donated, the predominant approach has been the purchase of land either in fee simple or through easement.

Rural Legacy was created in 1997 by the General Assembly as part of the Governor's Smart Growth Program. Its purpose is to preserve large, contiguous tracts of forest, farmland, open space and cultural sites, as well as rural areas in need of protection. Local governments identify these areas and competitively apply for the funding, which comes from General Obligation Bonds, General Funds, and a portion of the State's Program Open Space dollars.

Another part of the Governor's Smart Growth Program was the creation of Green Prints in 2001. It is a program designed to protect lands critical to the long-term health of the State's ecology, and to make sure that there is enough of a protected green infrastructure to support a diverse animal and plant population and for natural processes (e.g. filtering of water) to take place. Over 2 million acres of these areas exist in Maryland, many of which are already protected through other programs. The limited dollars available through General Funds and Program Open Space enable the acquisition of small acreage pieces that provide connecting points to already existing protected lands.

While Rural Legacy and Green Prints represent most recent examples of land acquisition and comprise the fourth cornerstone, the Maryland Agricultural Land Preservation Foundation exemplifies the third major program, created in 1977, and directed toward the preservation of productive agricultural and forestland. Under this Program, a landowner or a group of neighboring adjacent landowners can form an Agricultural Preservation District. Land within this designation, which must be a minimum of 50 contiguous acres, must be kept in agricultural use for at least five years. Landowners may then sell their development rights to the State and monies available from Program Open Space and from the Agricultural Transfer Tax can be used to purchase those rights. The Maryland Agricultural Land Preservation Foundation is the most successful program of its kind in the nation and has perpetually preserved more farmland than any other state in the union.

Since 1970, 651,000 acres have been purchased with a total appropriation of \$1,073,370,000 utilizing Program Open Space, Rural Legacy, Green Prints and the Maryland Agricultural Land Preservation Foundation (phone conversation with H. Grant Dehart, March 2003). In fact, over the last few years, the preservation of land in Maryland has outflanked the rate of development. This is significant because of two emergent thoughts that have been proven by out-in-the-field observation and interview:

- 1) What happens on the land affects the quality of Maryland's land-based and water-based resources;

- 2) What happens on the land affects the quality of life for Maryland's citizens as well as amenities that the State can offer to investors in its economy now and into the future.

## **B. THE CHALLENGE**

Will land acquisition continue at a level that will be able to keep pace with other demands for its use? That remains to be seen. What is known is that land acquisition programs, along with other State programs, become fair game for budget cuts when the overall State budget is deficient and is likely to require balancing for the next few years. At the time of this report, Program Open Space funds were cut by 22.6 percent, from \$74.6 million in FY 2003 to \$57.75 million in the FY 2004 budget. As a result, Rural Legacy funding was reduced from \$21.3 million in FY 2003 to \$5 million in 2004. Green Prints was reduced from \$16 million in 2003 to \$3 million in 2004. The Maryland Agricultural Land Preservation Foundation lost \$10 million in unspent FY 2002 funds that were made up by bond money in FY 2004.

Given the above, it becomes even more important to look at remaining resources, fiscal or otherwise, to see how to optimize their effectiveness. In times of fiscal constraint, the spotlight shines more brightly on land acquisition by donation.

## II. METHODOLOGY

To find out what the impediments are to donation of conservation easements, and how to optimize and strengthen the use of donation as a tool to acquire conservation easements, a multi-level approach was taken. At the recommendation of the Maryland Environmental Trust and the Eastern Shore Land Conservancy staffs, interviews with county planning and zoning offices were held to ascertain how well county programs were coordinated with state efforts. Counties interviewed consisted of Anne Arundel, Baltimore, Calvert, Caroline, Charles, Dorchester, Kent, Montgomery, Queen Anne's, St. Mary's and Talbot.

From those interviews, as well as through recommendations from the Trust and Conservancy, letters were mailed to attorneys, appraisers and accountants known to have experience with conservation easement acquisition. Questions posed to the experts inquired about their personal experience in dealing with both the process of easement acquisition through donation, as well as the content of the easement document.

In addition, ten potential conservation easement donors were interviewed to find out what factors were keeping them from making a donation commitment, and approximately an equal number of conservation donors were interviewed to find out what they thought was rewarding about the process as well as what they thought could be strengthened to make donation a better option to consider.

From the beginning of the study to its mid-point in September, e-mails were sent to a land trust listserv to see if other local land trusts had surveyed their members as to impediments to donation. Organizations such as the American Farmland Trust, Land Trust Alliance, Lincoln Land Policy Institute, The Trust for Public Land, The Nature Conservancy, The Conservation Fund and the Environmental Law Institute were queried as to their knowledge of studies that might shed light on ways to improve the donation of conservation easements in general. Several studies were received from the American Farmland Trust and the Land Trust Alliance that formed the basis for a literature search.

State land acquisition directors, particularly from Program Open Space, Rural Legacy, Green Prints, the Maryland Agricultural Land Preservation Foundation, the Maryland Environmental Trust and the Forest Legacy Program were interviewed to provide comment from their experiences in administering their programs. Of the 59 local land trusts, 17 were contacted with 15 local land trust directors providing their perspectives on impediments to and ways to strengthen donation of easements. Participating local trusts were: American Chestnut Land Trust, Carroll County Land Trust, Carrollton Manor Land Trust, Cecil County Land Trust, Conservancy for Charles County, Inc., Eastern Shore Land Conservancy, Gunpowder Valley Conservancy, Land Preservation Trust, Long Green Valley Conservancy, Manor Conservancy, Mt. Washington Preservation Trust, Patuxent Tidewater Land Trust, Potomac Conservancy, Prettyboy Mason Dixon Conservancy and the Severn River Land Trust.

To finalize the approach, a survey instrument was sent to members of the local land trusts. Names and addresses of the donors were provided by the Maryland Environmental Trust and the Eastern Shore Land Conservancy. Two hundred nineteen surveys were distributed, with ninety being returned, representing a 41% response rate from conservation easement donors.

### III. RESULTS

#### A. LITERATURE SEARCH

A lengthy literature search revealed that the majority of studies pertaining to landowners and the donation of conservation easements focused primarily on landowner motivations for protecting land and not necessarily on the impediments to donation. Of the applicable studies, the best information for comparison purposes came from sections of studies noting landowner perceptions and experiences with the conservation easement process.

In spring of 2001, a report by Ezra Meyer for the Gathering Waters Conservancy in Wisconsin was completed, the purpose of which was to take a look at the assessment and tax structures in Wisconsin to see whether landowners who had donated conservation easements were recognized in the assessment process. It was found that local assessors tended not to consider conservation easements in their assessment process as required under state law (Wisconsin Statutes Section 70.32). If conservation easements were considered, the result was not lower tax assessments despite the limitations imposed on the potential development of the protected land. In a survey conducted for the Conservancy, one-third of the 53% who responded (109 surveys were mailed, 58 returned) reported that their assessed values decreased following the granting of a conservation easement. While one would think that this would be an impediment, only 21% of those responding noted that the potential for a property tax reduction had a “significant” influence on their decision to grant an easement. Instead, the majority of landowners indicated that they were primarily motivated to protect their property out of love for the land and a desire to see it protected beyond their lifetimes and ownership.<sup>3</sup> Recommendations made in the report focused on ways for the State to strengthen its conservation efforts.

In December 2000, Ellen Rilla and Alvin D. Sokolow, with the assistance of Robin Koyloff and Cathy Lemp, conducted a study of California farmers in three counties. The purpose was to find out what motivated them, as well as what their experiences and perceptions were, in providing conservation easements on their land. The easements were purchased, not donated. The farmland parcels were located in the two North Bay counties of Marin and Sonoma and in Yolo County in the Central Valley. The three counties were selected because they contained the largest share of California farmland protected by conservation easements, expressly for the purpose of allowing continued farming. Forty-six landowners were surveyed by phone and by personal interview.<sup>4</sup>

Overall, the California farmers had positive comments to make with respect to their easement related experiences. A few identified particular problems relating to concerns

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<sup>3</sup> Ezra Meyer. The Impacts of Conservation Easements on Property Taxes in Wisconsin. Master's Candidate Thesis, University of Wisconsin, Department of Urban and Regional Planning. Madison, Wisconsin. A Report for Gathering Waters Conservancy. Spring 2001. p.9.

<sup>4</sup> Ellen Rilla and Alvin D. Sokolow. California Farmers and Conservation Easements: Motivations, Experiences, and Perceptions in Three Counties. University of California Agricultural Issues Center. California Farmland and Open Space Policy Series. Research Paper #4. December 2000. Introduction.

over the annual monitoring of uses on their parcels to ensure compliance with easement terms. For some, this process was viewed as an annoyance or as a serious intrusion on personal property rights. Others lauded the monitoring, viewing the inspections as helping them become better land stewards. Length of process, price received for the easement and lack of available information were also commented upon, but none of these factors were viewed as impediments to the process. Rather they were noted in order to help improve the process.

In 1997, Paul Elconin and Valerie Luzadis of the State University of New York, College of Environmental Science and Forestry produced Evaluating Landowner Satisfaction with Conservation Restrictions in cooperation with the Vermont Land Trust. Three hundred forty-nine useable questionnaires (i.e., the result of subtracting the undeliverable ones and the unusable ones) were returned, reflecting a 62% response rate. A portrait of how landowners (original grantors as well as successive owners) perceived the restrictions on their lands was developed to inform four non-profits and one state agency as to which attributes of easements yielded the lowest and highest levels of satisfaction. It was hoped that the results would be used to strengthen the easement programs and to strengthen the relationship between grantors and grantees. Some salient findings were:

- Original grantors were motivated by personal attachments to the land and a commitment to the stewardship of their lands. They were concerned about the fate of their properties more so than with the effect their uses had on the larger ecological community. Social pressures or tax benefits did not motivate them.<sup>5</sup>
- Some of the lowest levels of satisfaction were observed in the tax and financial arena. The report recommended that grantees emphasize to their grantors that certain tax benefits are not guaranteed and depend on a variety of factors including surrounding real estate values, local development pressures and an inherently un-standardized and somewhat subjective nature of property appraisals.<sup>6</sup>
- Both original grantors as well as successive landowners noted that they would amend their easements if given the opportunity, with additional building and subdivision lots being the most noted change that would be made. According to the authors, dissatisfaction with constraints on building and subdivision could be an indication that the restrictions were doing their job. Then again, the authors noted that the easement drafting could be too restrictive. The report recommended that flexibility be incorporated into the easement agreement to preserve the essential character of the property without severely constraining the landowner or compromising the easement.<sup>7</sup>

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<sup>5</sup> Paul Elconin and Valerie Luzadis. Evaluating Landowner Satisfaction with Conservation Restrictions. State University of New York, College of Environmental Science & Forestry. Syracuse, New York and the Vermont Land Trust. 1997. p. 15

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

The final study to mention and upon which preceding studies made note was one conducted from 1995-96 by James A. Ochterski for the Michigan Land Conservancy, while he was associated with the University of Michigan School of Natural Resources and Environment. The goal of the study was to determine the incentives and motivations underlying real estate interest donations to non-profit land conservancies. A survey was distributed to individuals who had donated real estate interests to seven Michigan land conservancies. One hundred twenty-six surveys (63%) were returned from the 200 that were mailed. The focal conclusion was that: “A deep and personal commitment to the future of the land is the strongest motivation for donating real estate interests to a conservancy followed by ecological stewardship and economic concerns”.<sup>8</sup> Donor responses suggested that commitment to the land superceded the tax advantages associated with the donation, and that certain physical and social features influenced and strengthened the desire to donate such as residence history, gender, parcel size and presence of lakeshore. Although impediments to donation were not specifically mentioned, some points are worth sharing from the report:

- Because the donation of conservation easements plucks at the landowner’s heartstring of “internal motivation” (i.e., connection to the land and commitment to the future of the land) tools such as Purchase of Development Rights ought to be considered as secondary in importance when compared to the easement donation.
- The desire to donate comes from within for most donors. Land conservancy publications should be written to engage that sense of commitment and environmental stewardship as the more influential motivation. Recognizing the importance of environmental concern can stimulate interest in future commitment to the land.<sup>9</sup>

## **B. LANDTRUST LISTSERVE RESULTS**

In July 2002, several questions were posed on a national land trust listserv maintained by Indiana University. They were:

- a. Have any of you conducted a survey that measures the willingness of landowners to donate easements? If so, what were the impediments to donation? Can you share your study or any other documents with us?
- b. Are any of you familiar with any studies or surveys done elsewhere that identify why donation of easements has been successful or unsuccessful in a particular area?
- c. If you have not done any studies, your insights and thoughts are welcome.

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<sup>8</sup> James A. Ochterski. Why is Land Protected? Motivations Underlying Real Estate Donations to Land Conservancies. A Summary Report of the 1995-1996 Michigan Land Conservancy Research Project. University of Michigan. School of Natural Resources and Environment. Ann Arbor, Michigan. 1996 p.v.

<sup>9</sup> Ibid., p. 18.

Responses came from an individual associated with the Finger Lakes Land Trust in Ithaca, New York, from the former Director of the Lancaster County Farmland Trust in Pennsylvania, from a participant with the easement process of the Virginia Outdoors Foundation, from a person involved with the Land Trust of Napa Valley, California, from a member of the Little Traverse Conservancy of Michigan, from an individual in Greenfield Massachusetts, from a property owner in central South Carolina, and from a member of the Valley Land Fund in Western Massachusetts. Responses from the listserv inquiry yielded the following:

- No one was aware of a study conducted by his or her respective land trust or other group assessing the impediments to the donation of conservation easements.
- Several respondents noted that most people who consider donation find that the federal income tax deduction is not advantageous because they are in the position of being land rich, but cash poor. One person observed that it would be a big help if the deductions could be spread over a longer number of years, as some donors end up running out of years before the deductions are used up.
- Some respondents noted that states that have both purchase and donation of conservation easement programs in place could unintentionally create a demand for purchase as opposed to donation and that these competing programs may hinder the consideration of donation.

In Maryland that dichotomy does exist. Rural Legacy and the Maryland Agricultural Land Preservation Foundation have provided money to landowners, and landowners overall have preferred the cash. However, it can also be pointed out that even with purchase programs in place, the Maryland Environmental Trust's annual donated easement totals have remained at a high level.

In Lancaster County, the bargain sale form of easement acquisition has helped level that dichotomy through negotiations completed by the Lancaster Farmland Trust and in at least one instance negotiations have yielded 20% cash-80% donation arrangements.

- One person noted that corporations and partnerships could have problems creating conservation easements because the equity owners could object to the entity giving away the assets. Trusts (other than revocable or living trusts) cannot give conservation easements at all, or cannot give them and pass the deductions through to the beneficiaries, depending on the circumstances. This barrier can impact surviving spouses who become trustees of their deceased spouse's marital trust, and these surviving spouses are the ones who are usually wealthy land owning individuals



who are best situated and likely to be motivated to donate a conservation easement.

- One person specifically noted that his experience with donation suggested that the people with whom he had talked were more concerned about their personal position and internal politics within the organization than they were in protecting land from development. (Adcock, D., e-mail, May 2002).

### **C. COMMENTS FROM ONE-ON-ONE LANDOWNER INTERVIEWS**

Select individual landowners were also interviewed. They were chosen because they had either taken a long time to decide to donate, or had not yet donated for whatever reason. Their comments consisted of the following, based on their experience and opinions:

- There are two big impediments, a reluctance to “tie the hands” of future owners (e.g. the heirs), and not wanting to lower the value of property.
- If the land is in the family, the perceived need to achieve unanimity could be a problem. Parents or grandparents want to protect the land and also want to avoid controversy within the family. Land trust relationships with family members and open communications with them can help in these cases, as can assisting the reluctant family members to understand the estate tax benefits and the fact that the conservation easement may be the only economic way to keep the land in the family. The land trust can also help by offering suggestions about including permissive language in a Will so that if the parent/grandparent dies owning the land, there will be no question about the ability of the executor to grant the conservation easement in a short time after death. To quote one respondent: “To do nothing often ties the kid’s hands in the worst possible way by virtually guaranteeing that the land will be sold off, split up and built up”.
- Some land trusts, perhaps newer ones anxious to complete their initial goals, and some land trust staff, likely to be the new ones who feel a need to prove their worth, scare off some prospects by pushing too hard. More can be attained if the trust/staff person is helpful, informative, friendly and non-aggressive. A key quality that landowners look for in a trust/staff person is someone oriented towards “what the landowner wants to accomplish” and not someone with the approach of “you hold the last piece of land that will complete the protection of “x”.
- Of equal importance is not appearing to give priority to “threatened” properties over those that appear to be in “safe” ownership. Pursuit of the threatened properties could take a long time to garner as compared to the time it could take to negotiate the “safe” piece. Each landowner should be

made to feel that his/her land is important and that the decision to acquire or not acquire should not diminish the importance.

- Several comments addressed the philosophical objection that some landowners have toward another entity controlling what can or cannot be done on “private property”. The individual noted that some lawyers share this philosophy and talk their clients out of donating, but not those clients who really want to do it.

#### **D. COMMENTS FROM THE PROFESSIONS: ACCOUNTANTS, ATTORNEYS AND APPRAISERS**

In every instance involving the donation and/or purchase of conservation easements, the professional grouping of lawyers, appraisers and accountants is relied upon by the landowner in order for a deal to be made. The depth of knowledge, cost of the service, and availability of the advisor(s) become paramount as the landowner moves through the process.

Letters were sent to all three professional groups with a 31% response from the lawyers, a 10% response from the appraisers, and a .05% response from the accountants. Comments made by all three professional groups were similar and complimented one another. The following reflects their collective perspective:

- Whether a landowner chooses to donate an easement or have an easement purchased, it all comes down to money. The availability of money programs from state, local and non-profit entities can undercut the program that depends on donation.

Money is also a determinant depending on the value of the landowner’s property coupled with the landowner’s income. In most cases, where land value is high along with annual income (over \$150,000), gift easements usually prevail. With ordinary farmland, easements are usually sold, and most of them are sold through the Maryland Agricultural Land Preservation Foundation with an aim of not seeking a tax break, but usually as a means of paying off a mortgage. In other words, the tax breaks and applicability of different approaches is more apparent for those in higher economic brackets than for those with a median income. Ways to “level the playing field” ought to be considered.

- Conservation groups and potential donors need to better understand the demands that are placed on appraisers when the landowner decides to donate an easement. Donations require an appraisal that determines both the “before” value and “after” value affected by the easement based on comparable values in the market. The “before” appraisal requires all property rights be clearly identified. The “after” appraisal requires careful analysis of which rights are “stripped away” by the easement. Easements

acquired by The Maryland Agricultural Land Preservation Foundation require only an appraisal of the “before” value, since the “after” easement value is determined by an “agricultural” value formula adopted by the State. Higher fees are usually charged for donated easement appraisals. (NOTE: The State, not the landowner, pays for Maryland Agricultural Land Preservation Foundation appraisals.)

Other aspects of the appraisal process about which landowners should become informed pertain to timber rights. Timber rights cannot be included in an appraisal without addressing their impact on “development rights”. This requires additional analysis and increases the cost. Finally, an appraisal report “as of” date fixes a point in time. A landowner may request a report before the conservation easement is finalized only to change the terms in the final version a year later. Such a request requires a new “as of” date along with updated research and analysis.

Cost and lengthy process are viewed as impediments by the landowners who initially chose to give their land. Donation would be greatly enhanced if all involved, particularly the donor, could better understand the workload and responsibilities of the appraiser and “tighten up” the process.

- The success of the donation process depends on the extent to which the donor has full information about the “pluses” and “minuses” of each program and how well everyone makes those options and opportunities clear to the donor or seller. In other words landowners have to be shown the benefits of donation as compared to purchase.
- Local land trusts might skew the information provided to the donor towards the purchase option, thereby undercutting the value of donation. Oftentimes land trusts feel obligated to get money “out the door” to improve their track records with the State, and donations are perceived as a harder sell and more complicated to explain.
- State, local governments, local land trusts and other non-profit entity programs need to be better coordinated. The local governments should target the areas that they want to preserve, come to agreement on those areas with the State, and then together focus all donation/purchase program efforts on these areas. The same State agency staffs should be equally knowledgeable and adept at explaining purchased easements and donated easements to landowners to facilitate progress.
- There needs to be the presence of a “sales force” and a marketing program to expedite the donation effort. Regions need to be targeted and a “team” of individuals from the Department of Natural Resources and from the Maryland Environmental Trust and the Maryland Agricultural Land

Preservation Foundation should work together in that region to facilitate donation for agricultural, forest and open space land preservation in that region.

- The Attorney General's office is not as flexible as it could be. Landowners have often been tempted to "toss in the towel" as negotiations are prolonged by legal review. Some believed that the easement document was an influence in prolonging the negotiations by not being clear as to definition or as to future changes requiring accommodation in the future.

#### **E. COMMENTS FROM STATE AGENCY PROGRAM STAFF**

Maryland began the land acquisition/donation process in the late 1960's, developing a number of programs over time to enhance the process. Staff noted that while landowners have many options from which to choose, it is not very clear to the landowner what the various programs offer in comparison to one another, and which ones can be used to make either donation or purchase viable to the owner. According to the State professionals interviewed, most believed that publications containing easy to understand comparisons needed to be produced. They also stated that their knowledge of the various programs, other than the ones they administered, was not up to date. They suggested cross training or information sharing among them to better direct and connect the landowner to the best applicable program(s).

State staffs were aware of landowner workshops conducted by groups such as The Nature Conservancy and The Trust for Public Land as they were often asked to participate and present. All noted the importance of educating the landowner about their programs and about the benefits of estate planning. All noted that not enough was being done.

All acknowledged that it would be of benefit to work together to establish priorities and to see how each program could best be used to move forward with the acquisition of land, especially in times of budget difficulties.

All acknowledged that there are important goals to be met under the 2000 Chesapeake Bay Agreement and under Senate Joint Resolution 10 respectively: 1) to strengthen programs for land acquisition and preservation that will permanently preserve 20% of the land area from development in the watershed by 2010, and 2) to garner a 3-fold increase of lands to be preserved for agriculture by the year 2022.

Coordination of State and local government efforts will be the key to meeting these goals.

## **F. COMMENTS FROM LOCAL GOVERNMENT OFFICES OF PLANNING AND ZONING**

Eleven county planning and zoning directors and their staffs were interviewed to ascertain whether they had established their own programs for land acquisition and how their programs were coordinated with the State, other private non-profits and land trusts. Staff interviewed either by phone or in person included the counties of Anne Arundel, Baltimore, Calvert, Caroline, Cecil, Charles, Dorchester, Kent, Queen Anne's, St. Mary's and Talbot.

Counties vary with their capabilities to administer and/or fund land acquisition programs. Only four administer programs for the purchase of easements and allocate monies on an annual basis for that purpose. More rural counties place stronger reliance upon the Maryland Agricultural Farmland Preservation Foundation to purchase easements to preserve farmland. The less rural counties rely upon a combination of Rural Legacy with the Maryland Agricultural Farmland Preservation Fund. In every County one or more local land trusts and the Maryland Environmental Trust play a role in the preservation of land. Table I titled "County Programs for Land Acquisition" shows the comparison.

Overall, there is not much coordination between local County efforts, the land trusts and State funded efforts. As State funds become less available, coordination among all of the land acquisition programs and players must increase.

Table I. County Programs for Land Acquisition

Counties	(1) Does County have local acquisition programs?	(2) For purchase or donation?	(3) Are they funded?	How Much?	Are other programs relied upon for Land Acquisition?	Which ones?	Is there coordination among State & Local programs on acquisition?	Further comment
<b>Anne Arundel</b>	Yes	Installment purchases	Yes	2-4 Million per year for each 3-4 years	Yes	Program Open Space, Rural Legacy and MET <sup>e</sup> w/ Local Land Trusts	Somewhat. The County tries to couple acquisition to compliment the Local Land Trust areas and to preserve resources (e.g. Severn River, Magothy, South County Land Trusts)	Agricultural and woodland easements are targeted to the Rural Agricultural zone. The County also has active local land trusts that assist in the process.
<b>Baltimore County</b>	Yes	Purchase & donation	Yes	Varies with budget	Yes	MALPF <sup>d</sup> , MET <sup>e</sup> , Rural Legacy, Local Land Trusts, CREP <sup>a</sup> , Wetland Reserve, CRP <sup>b</sup> , Environmental Quality Incentive Program, Maryland Agricultural Water Quality Cost Share Program, Forest Stewardship, Wildlife Habitat Incentive Program	Yes	The local land trusts and the County government work closely together to protect key valleys and watersheds in the County as well as important agricultural lands. Programs are optimized as much as possible.
<b>Calvert</b>	Yes	Purchase	Yes	\$2 Million per year	Yes	Maryland Agricultural Land Preservation, Rural Legacy, American Chestnut Land Trust	Yes. The effort is focused on Farm community and the Resource Preservation Districts.	
<b>Caroline</b>	No	N/A	N/A	N/A	Yes	Maryland Agricultural Land Preservation Foundation and Eastern Shore Land Conservancy	Yes and no. To keep the easement programs simple there is minimal prioritization. The aim is to preserve farmland and the mode is through the purchase of conservation easements.	Farmers are not at the tax level to donate.

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<b>Cecil</b>	Yes	Purchase	Not usually but County committed monies for 2002 & 2003	\$50,000 2002 & 2003	Yes	Maryland Agricultural land Preservation Fund, Green Print, MET <sup>e</sup> , ESLC <sup>c</sup> , and Rural Legacy	Yes. The aim is to preserve 30,000 acres of Resource Protection District (South) and 25,000 acres of the Rural Conservation District (North) by 2025.	The County has 2 Rural Legacy area designations. Those areas coupled with MALPF <sup>d</sup> are the driving programs to meet the goals which the County Commissioners identified.
<b>Charles</b>	No	N/A	N/A	N/A	Yes	Maryland Agricultural Land Preservation Fund, Conservancy for Charles County, Inc., MET <sup>e</sup>	Somewhat. Most of the MALPF <sup>d</sup> effort is focused on the Southern part of the County. The Nanjemoy and Zekiah areas are being focused upon for resource protection via Local Land Trusts.	Most easement progress has occurred in the last 3 years.
<b>Dorchester</b>	No	N/A	N/A	N/A	Yes	Maryland Agricultural Land Preservation Fund, The Nature Conservancy, The Conservation Fund, Eastern Shore Land Conservancy, MET <sup>e</sup> on the Marshyhope, Rural Legacy for Nanticoke and Vienna	There is not a close mesh between the application of easement programs and land to be preserved. There probably should be more of a tie-in. Basically if a farm is in a growth area, it can get an easement	Areas to the North of Route 50 are farmed areas and the MALPF <sup>d</sup> is relied upon. The areas South of Route 50 avail themselves more toward easement donation or purchase because the acreage is somewhat larger and the aim is to preserve lands for resource value or as hunting preserves
<b>Kent</b>	No, but County did identify prime agricultural lands	N/A	N/A	N/A	Yes	Eastern Shore Land Conservancy, Rural Legacy, MET <sup>e</sup> , MALPF <sup>d</sup>	There could be more coordination. The ESLC <sup>c</sup> has concentrated on the Chester River. The Agricultural Security Corridor is part of the Rural Legacy Program.	MALPF dollars have gone primarily to the "farming" farmer. The gentleman farmer is usually the recipient of MET <sup>e</sup> dollars and those available through the ESLC <sup>c</sup>

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<b>Queen Anne's</b>	No	N/A	N/A	N/A	Yes	Program Open Space, Rural Legacy, MET <sup>e</sup> , ESLC <sup>c</sup>	Coordination could be stronger. Conservation easements are viewed as an individual's choice and are voluntary	
<b>St. Mary's</b>	Yes	Purchase	Yes	\$250,000 each of the last 2 years	Yes	Local Land Trusts, (Potomac, Patuxent Tidewater), Rural Legacy	Not very much coordination, except for land acquisitions along the Patuxent River as part of Rural Legacy. There is a sense of a dying land ethic in the County.	
<b>Talbot</b>	No. Though County has a draft Green Plan, which prioritizes land to connect open space and parks.	N/A	N/A	N/A	Yes	MALPF <sup>d</sup> , Rural Legacy, MET <sup>e</sup> , Conservation Fund, ESLC <sup>c</sup>	Yes. The East side of the County is viable farming area so Rural Legacy and MALPF <sup>d</sup> are focused there. The West side is more affluent and tax breaks are more readily garnered thru easement donation or purchase by MET <sup>e</sup> and ESLC <sup>c</sup>	

<sup>a</sup> CREP = Conservation Reserve Enhancement Program  
<sup>b</sup> CRP = Conservation Reserve Program  
<sup>c</sup> ESLC = Eastern Shore Land Conservancy  
<sup>d</sup> MALPF= Maryland Agricultural Land Preservation Foundation  
<sup>e</sup> MET = Maryland Environmental Trust  
<sup>f</sup> POS = Program Open Space

Full text of questions: (1) Does the County Administer its own land acquisition programs outside of local POS<sup>f</sup> & MALPF<sup>d</sup>?  
(2) Is it for purchase or donation?  
(3) Does the County have money for the program?



## **G. PERSPECTIVES FROM THE LOCAL LAND TRUSTS**

There are over 50 local land trusts and conservancies that influence the location of and donation process for land acquisition in Maryland. Interviews were held with the directors, staff, and members of 15 of the trusts. Those interviewed were: American Chestnut Land Trust, Carroll County Land Trust, Carrollton Manor Land Trust, Cecil Land Trust, Conservancy for Charles County, Inc., Eastern Shore Land Conservancy, Gunpowder Valley Conservancy, Land Preservation Trust, Long Green Valley Conservancy, Manor Conservancy, Mt. Washington Preservation Trust, Patuxent Tidewater Land Trust, Potomac Conservancy, and Prettyboy Mason Dixon Conservancy. The Severn River Land Trust referred me to its website as the source to address any questions.

Interviews were quite interesting as each land trust representative had a particular story to tell as to the origin and history of their trust, how they cultivated their membership, and what had been accomplished with the donation and purchase of easements with regard to total acres, successes, needs and recommendations. Some trusts were well staffed, having been financed by grants specifically for that purpose (e.g. Potomac Conservancy). Other trusts (e.g. Long Green Valley Conservancy) relied on their boards to get the work done, as few staff were available to help with the process. A number of land trusts were tapping into the Rural Legacy Program, viewing the inception of that program as being a financial boost to their goals and objectives of land preservation.

Some trusts were just beginning their work (Carrollton Manor Land Trust), others were well established with knowledgeable boards (Manor Conservancy, Carroll County Land Trust), and a few land trust board members from established trusts such as the Land Preservation Trust were providing advice to newer trusts as well as to potential donors. While a very interesting book could be written about the trusts, the remaining portion of this section focuses on what was said with respect to impediments to the donation process. All comments were treated equally and were not weighted, as responses were usually made more than once during the interview process. The comments were:

- There is a problem in getting everybody on board throughout the easement process (i.e., the donor, the donor's attorney, the Assistant Attorney General for the State). Every situation is different and every owner wants to accomplish a particular vision for his/her land. The standard boilerplate agreement does not always accommodate the landowner's desires. The attorney representing the State should try to accommodate what the landowner and the family attorney are trying to do and give serious weight to it. The process to accommodate should be less cumbersome and lengthy and the wording of the agreement should be less "one-sided" toward the State.
- Nowhere in the landowner agreement with the State is there a good definition of farming or agriculture that enables adjustments in permitted uses to coincide with conservation. This often delays the donation process.

- The tax incentives are not that attractive. For smaller acreages and families with median incomes (as someone said incomes without 6 figures to the left of the decimal), full value should be given for the land, not partial value. Parcels are getting smaller; there should be specific ways to appeal tax-wise to those who want to give but whose property is not extensive.
- Information is needed on accounting and estate planning. If Steven Small's book<sup>10</sup> was made available to prospective donors, that would go a long way towards educating the public.
- If a county has a strong preservation ethic then people are more likely to move forward with donation or purchase of their easements. If a county does not have a strong ethic, that becomes an impediment to giving. Land trusts need to influence counties toward embracing that ethic.
- Newer land trusts are having difficulty with the information they receive from the various land preservation programs. Oftentimes the information is overwhelming and confusing. What is needed is information (e.g. eligibility requirements) that helps distinguish one program from another to help the land trust personnel guide the landowner to the program(s) that best fit(s) the vision of the landowner.
- More frequent training is needed for the land trusts, not just once or twice a year in Annapolis or D.C., but at regionally accessible locations. Workshops should be held consecutively and not concurrently, as it is hard to pick and choose. A survey as to the most needed topics would be good to conduct prior to holding a training session in the area.
- More publicity is needed about easements. Efforts should be intensified. How about Julius Westheimer covering the importance of easements during one of the phone call sessions on television? How about using Outdoors Maryland or another public television venue to cover easements and their importance?
- The Maryland Environmental Trust along with key individuals should be a regularly scheduled presenter in the continuing education courses for attorneys, accountants, appraisers, and realtors to inform those groups about land preservation in Maryland, what the various programs are that could be used, and legislative updates at the Federal and State level.
- Not much attention is paid to or information provided on programs that are viewed as less mainstream such as the Conservation Reserve Enhancement Program, the Forest Legacy Program, or with a series of wildlife and forestry tax credit programs. Can these be integrated in some form to help the landowner maintain his/her stewardship on the land once a donation is given? Landowners

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<sup>10</sup> Stephen J. Small, Esquire. Preserving Family Lands: Book 1: Essential Tax Strategies for the Landowner. Land Planning Center. Boston, Massachusetts. 1998.

need to be informed about their rights as to the resources on their property and what are the permitted uses.

- If it were possible, create a small “match-based” dedicated fund to help newer local land trusts get started with a staff person, which would be of tremendous help.
- There needs to be more of an exchange among local land trusts as to “who has been successful at doing X”, or “what did a particular land trust do when faced with X problem”.
- A turnkey fund is needed for acquisition purposes in emergencies for key pieces of land to be acquired.
- The tax credit is only for the Maryland Environmental Trust. Why can’t the more established land trusts, or county governments that hold easements be able to use this as well?
- County councils and commissioners along with county economic development agencies are often forgotten in the education briefing process of land preservation through the use of conservation easements. There needs to be stronger coordination among local land trusts, the county governments and State programs as to what each can do to make sure that what happens with the land reflects what is valuable on the land. A visioning process for the green infrastructure is needed on the part of each county so that all types and levels of resources can be brought to bear. No vision, coupled with a plethora of programs, is an impediment to the whole donation/purchase process.
- People are eager to donate but many cannot nor do they want to pay up front costs (i.e., survey fees, legal fees). Can help be provided to pay for some of the fees, perhaps as a match to the landowner money?

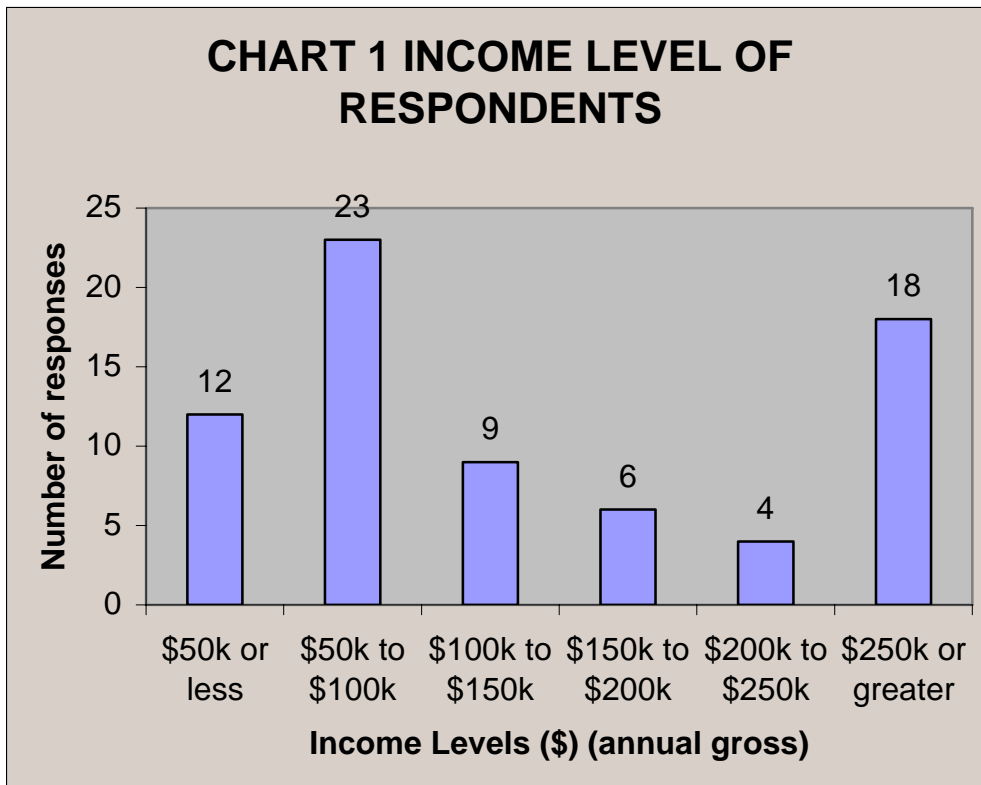
## H. SURVEY RESULTS

Two hundred nineteen surveys were mailed to those who donated easements from 1975 to the present, and whose lands were located in the counties comprising the study area. Ninety surveys were returned yielding a 41% response rate.

Of the 90 responses received, 94% took the time to fill out personal information such as age, income, education and whether they planned on their children inheriting the land.

### Personal Information

- Forty donors indicated that their children would inherit the property. Nineteen donors hoped that their children would want to inherit the land. The remainder indicated that their children would not inherit or that the question did not pertain to them. To summarize, a solid 67% of the respondents gave every indication that they would pass their property to the next generation to enjoy and to preserve.
- Income earning and timing as to when one decided to donate land is also of interest. One might assume that the higher income earners would be those who donated the majority of the lands. Such was not always the case as indicated in the following chart.



As can be seen, the concentration of donors came from the more moderate-income level, with another upsurge at the highest income bracket sampled.

- It was also found that the 50's, 60's and 70's were the most active age brackets for donation. Twenty-five donors were in their 50's, eighteen were in their 60's, with twenty-two coming from the 70's age bracket. Eight respondents donated in their 40's or at a younger age. Eleven donated when they were in their 80's.

### Notification and Availability of Information

There are myriad ways to inform landowners about conservation easement programs, but which measures are the most effective? Of the 90 responses, thirty-three stated that contact by a personal acquaintance or with another grantor was the way in which they were informed. Continuing with the contact approach, 12 noted that a land trust representative had provided the information. Two indicated that a local government representative had contacted them and one indicated contact by an agricultural extension agent.

The remaining number of respondents noted that they had been made aware of the conservation easement program through other means and the results are as follows:

Personal contact with easement grantor or acquaintance	33
Newspaper and magazine articles	14
Contact with land trust representative	12
Personal knowledge	6
Land preservation purpose meetings	4
Property purchased with easement in place	4
Respondent called a specific group	3
Family member (parent, brother, sister)	3
Own research	3
Group brochure (MET, The Nature Conservancy)	2
Local government representative	2
Estate planning with attorney	1
Real estate agent	1

(Two people did not respond)

Most respondents preferred personal contact, either through an acquaintance or with another grantor. People preferred this approach because they felt they could find out the details of donating from someone who had gone through the experience or was going through it.

The respondents also noted that while the “personal touch” is important, it is also important to educate the public and to “get the word out.” A majority of the respondents

believed that more needed to be done to inform and to educate the public and several mentioned that professional advisors, such as attorneys, accountants, appraisers and realtors needed to become more involved.

The survey also asked if enough information was provided about the many available programs when the property owner was made aware of the conservation easement tool. Twenty-six noted that they were made aware of several land preservation programs at the federal, state and local levels of government. Thirty said they only were informed about one program. One noted that he was poorly informed about programs that were available and thirty-three did not address the question.

The various programs noted by the respondents were: The Conservation Reserve Enhancement Program, the Conservation Reserve Program, the Maryland Environmental Trust, tax programs, the Eastern Shore Land Conservancy, the Severn River Land Trust, The Nature Conservancy, forest conservation, Rural Legacy, the Manor Conservancy, Maryland Farmland Preservation, Ag. Trust, Ducks Unlimited, Baltimore County Ag. Land Preservation. Either this question was poorly designed to evoke a response, or there is much confusion as to what is meant by a program and the purpose and applicability of that program.

Influential Factors for Donation

Individuals and families decide to donate land for a number of reasons. The reasons usually group around two areas: financial (i.e., tax reduction, estate reduction, tax credit) and personal value (i.e., the desire to conserve the land and to preserve the resources on the land as well as protect the property from development).

Table II presents the results from the survey.

**TABLE II. FACTORS INFLUENCING THE DONATION OF CONSERVATION EASEMENTS AND THEIR IMPORTANCE**

Importance	Federal Income Tax	State Income Tax Credit	Reduction in Property Tax	Protection of Property From Development	Conservation of Natural Resources
Very Important	33	22	27	74	71
Important	30	30	31	9	9
Not Important	16	21	20	0	1
No Response	10	16	11	6	8

An overwhelming number of responses placed protection of property from development as well as conservation of natural resources as very important factors affecting their decision to donate. Less favored, although still important, were the financial factors.

In comparing the income level noted in each survey response with what was said about tax credits and deductions, a pattern emerges as to why the income tax credit and property tax reduction factors did not rate as strongly as one would suppose. The donors with the lower income level noted that they were not able to take advantage of the tax tools. The highest income donors viewed the tools as not being that effective. They noted that under the Federal Income Tax factor, they understood this to be estate tax reduction, or the reduction in capital gains and hence of some importance particularly since they wanted their children to inherit the land.

### The Easement

When asked the question about whether their easement prevented them from using their property as they had envisioned under their agreement, 73 answered no, with the remaining 17 answering yes. Of those who answered affirmatively, the majority said that the easement prevented development, which they recognized was the intent in the first place. Others noted that they had wanted to subdivide 1-2 lots for family and were prevented by the agreement. Several said they had wanted to sell gravel or sell timber in case of an economic emergency; others wanted a horse farm but were prevented in their agreement. Twenty respondents answered that they would want to change their easement agreement for example, to allow for family houses, to add a “no hunt” clause, to subdivide, or to preserve one extra lot. Sixty-five answered that they would not change their easement. Five did not respond to the question.

With regard to the perception of value and marketability of the property, the answers were interesting. Seventeen respondents believed there was an economic increase in the value of the property because the land had been preserved. Twenty-five answered that they believed there was “no change” in value based on their assessments. Forty respondents noted a decrease because development rights were removed. Eight did not answer the question.

Thirty respondents felt that the marketability of the property was thwarted because of the easement. Of the 30, 18 said that it did not matter. Thirty said they did not know, and 14 said marketability was enhanced. Sixteen did not address the question.

### The Easement Process

When asked which factors were of concern to them during the donation process the responses were as follows:

Tax deductions - were they attractive enough	50
Losing control over the land	28
Availability of professional advice (e.g. attorney, appraiser, accountant)	26
Personal costs incurred (legal, survey, appraisal)	22

Losing the right to subdivide	17
Lack of comprehensive information (pro and con) available on programs	14
Enforcement of the easement when ownership changes	12
Time too long for processing easement	12
Tax credits not attractive	7
Hard to get family to agree	7

When donors were asked what they had heard were the concerns of others desirous of donating, the responses were as follows:

Losing the right to subdivide	25
Lack of comprehensive information (pro and con) available on programs	19
Losing control over the land	18
Availability of professional advice (e.g. attorney, appraiser, accountant)	15
Personal costs incurred (legal, survey, appraisal)	15
Enforcement of easement when ownership changes	8
Tax deductions attractive	8
Hard to get family to agree	8
Time too long for processing easement	6
Tax credits not attractive	4

Written comments were also provided that added further substance:

- Just make more people aware of the concept.
- Easement is permanent, so should be the tax benefits, more tax relief for those earning \$50,000.00 or less. (NOTE: This comment can also pertain to those earning \$100,000 or more.)
- Easement solicitors need to be highly skilled sales people. Only by selling can you inspire a landowner who tells you “no” or “maybe”.
- More public education and better staffed and financed local land trusts.
- Better press/media coverage.
- Personal contact is important with easement owner. Always present a multitude of options without pushing one.
- More publicity.
- Communicate!! Hold town meetings.
- More local meetings about easements.
- Too few professionals available for advice. Maryland Environmental Trust is controlled by a close circle of folks.
- Better dissemination of information and smaller acreage should be considered.
- Enhance state tax credits.
- Public awareness.
- Very poor information flow on advantages of an easement. If those who have donated are better informed we might be able to influence others to consider easements.
- Program education.



- More information to landowners.
- More publicity and explanation of easement.
- Need public information meetings and school presentations.
- More free expert advice on the process. We paid dearly for legal advice, appraisal and plats. These should be given to donors free or at nominal cost.
- Advice and process initially hard to understand.
- You should get the word out more. Advertise on T.V.
- Extend period of time to use up tax deductions. I feel that when the value amount of the easement is arrived at you should be able to deduct the applicable amount each year on Federal taxes until the value of the gift has been used. Donating a large gift and only being able to use a fraction of it in the 5 years allowed is discouraging and a property owner may take another route.
- Conservation easements for smaller parcels such as mine would be granted with greater frequency and number if the effort, time and expense could be reduced. One simple telephone call to a person who could shepherd a naive landowner like me through the process would be a much more successful process. I found the process to be intimidating, confusing and I nearly gave up several times.
- Public awareness needed.
- Tax credit is only for 10 years. Easement is in perpetuity. This is not fair. Tax credit should be for duration of easement. [NOTE: The property tax credit available to donors of easements to the Maryland Environmental Trust is 15 years].
- Continue to fund easement purchase program.
- More State financial support.
- Need more money.
- Tax credits are not attractive enough.
- Better tax deductions. Enforceable easements.
- More communications to prospective donors with information on benefits of donation.
- Make landowners aware of the programs and benefits.
- Had I known more, I might have given land in parcels over time but was not advised.
- Public awareness of donation is needed.
- Government pays so much per acre, please allow tax write off.
- More publicity.
- Owners have to have a high income to take advantage of tax breaks.
- Word of mouth is best advertisement.
- Higher tax incentives for owners without high income.
- Insure timber management.
- Discuss the “pros” of donation with neighbors.
- Programs need to be sold to the counties more.
- People with large holdings considering donation need to be handled with respect for the donation. There needs to be some flexibility especially when a mistake is made and the (owner) requests a revision.

- Make the deed and its application more friendly and less authoritarian. Sending people around to check to see if you are living up to the terms and restrictions is a poor way to run a program.
- More help is needed with valuations.
- Maryland Environmental Trust needs to communicate more and allow for the donation of smaller acreage.
- Local land trusts are essential in encouraging easements.
- More flexible easements and a “kick out” clause.
- Increased promotion of tax benefits.
- Continue to explain advantages of donation.
- Allow some flexibility for building lots for immediate family.

After reading these remarks, one might think that donors were re-examining their decisions. Such is not the case. In fact, 75 said they would donate again if they could. Six people said no, 5 said maybe and 4 did not respond. That is an impressive result given that the majority who responded donated easements on 100% of their land.

## CHAPTER IV. SYNOPSIS OF COMMON THEMES

Recommendations for strengthening the donation of conservation easements are as follows:

- The Maryland Environmental Trust in consort with the local land trusts needs to develop publications that provide potential donors with the “pros” and “cons” of donating an easement vis-à-vis purchase. All applicable programs and their eligibility requirements need to be covered. The publication needs to reflect and emphasize a landowners desire to protect his/her land and its “specialness” for future generations.
- Land trusts should rely upon and create opportunities for existing donor members to meet and talk personally with other landowners who might also consider donation. This approach is preferred over any other method, and coupled with easy to understand information suggested in #1 would strengthen the overall process. Those who have gone through the donation process are viewed as being able to provide the best advice to those who are interested.
- Along with #1 and #2, land trusts should be more aggressive in featuring donation success stories in local newspapers and magazines. While local land trusts feature stories in their own publications for their membership, this approach does not always reach the widest reading audience. Unless local land trust bulletins are distributed to all members of the community, the bulletins are not as effective as they might be.
- A “no interest” revolving loan fund, similar to the Shore Erosion Control Loan Fund, or a cost-share (50/50) fund should be established through legislation by the Maryland Environmental Trust to reimburse easement donors with the legal and survey costs incurred, and the Trust should establish the parameters for making these monies available. Such a fund would help local land trusts better market the value of donating and might encourage lower income landowners and/or smaller acreage landowners to donate.
- Local land trusts are at various stages in the formation and operation process in Maryland. Some have just begun to organize and work with property owners, while others have been in practice for a longer period of time, with staffs in place and board talent well established. The Maryland Environmental Trust holds periodic training and education seminars for local land trusts to help them keep pace with current laws, requirements, record-keeping, member solicitation, etc. These sessions also provide local trust members with an opportunity to exchange information with other trusts and to establish contacts. For the time between the seminars and conferences, the Maryland Environmental Trust should consider maintaining a directory of talent on their web-site for local land trusts to use. If an established trust has

one or two board members or a director experienced in a particular area, whether it be the legal environment, helping a new trust through its organization process, etc., the Maryland Environmental Trust should maintain this list so that advice and counseling can continue outside the formal meetings.

- The Maryland Environmental Trust, along with select members of its talented Board, should be a regular presenter at the continuing education courses for attorneys (MICPEL), for realtor's certification, and for accountants and appraisers. All of these professions influence and can play a greater role in the donation process.
- Most local land trusts work closely with their local jurisdiction (planning & zoning, commissioners, and councils) as they identify eligible lands for donation or purchase of conservation easements. This coordination becomes even more important when funding is reduced. Local land trusts and counties/municipalities should strengthen their ties so that limited State funds, local dollars from the county or municipality, along with donation, can be leveraged to the maximum. These ties should also be expanded to the economic development agency at the local government level because there is value in preserving working landscapes and open space and additional dollars may be available for operational costs.
- To strengthen the attractiveness of donation, there are several opportunities on the horizon. The first is at the Federal level, with the second being a suggestion for the State.

The Charities Aid, Recovery and Empowerment Act of 2003, known as the CARE Act (S.476), passed the Senate in April, recently passed the House and is currently under review for compromise by a Joint Committee of House and Senate members. At risk are the four tax breaks for land protection efforts, two of which pertain to conservation easements. Section 106 allows landowners who donate a permanent conservation easement to a nonprofit organization or government agency to deduct the value of the gift over 16 years rather than the 6 years as previously permitted. The bill also increases the amount that can be deducted in any one year from the current 30 percent of the donor's income to 50 percent, with provisions allowing farmers and ranchers to deduct all of their income under certain circumstances, with the deduction not to exceed the gift's appraised value. Section 107 of the Bill cuts the capital gains tax by 25 percent on sales of land or of conservation easements to a conservation charity or government agency.

These proposed changes, among others at the Federal level, would give lower income donors a greater incentive to give, addressing the problem of amount of deduction as well as time frames.

The House of Representatives should be heavily lobbied by the land trusts, the Maryland Association of Counties and others to make sure that these provisions remain intact. Once passed, there should be a thorough or full-scale education effort on the part of the trusts.

In 2001, the Maryland General Assembly provided a State income tax credit for donations of conservation easements to the Maryland Environmental Trust and to the Maryland Agricultural Land Preservation Foundation. The maximum credit per year is \$5,000.00, the remainder of which, based on the appraised value of the easement, can be carried forward for up to 15 years, not to exceed the value of the easement. This was an excellent first step to take and local land trusts need to tout the provisions in this law. However, in a number of cases, the value of the easement cannot be extinguished over this period of time.

The Maryland Environmental Trust, together with the Maryland Agricultural Land Preservation Foundation, should look into the promotion and passage of a law similar to Virginia's law of 2002, allowing landowners the ability to sell their unused tax credits to other landowners.

- As has been noted in this report, conservation easements, whether donated or purchased, are in perpetuity. This can be an unsettling thought to donors, and prospective donors alike, as well as to those who inherit the property. Easement agreements are very specific as to what can and cannot be done with one's property. Land trusts should make every effort to maintain flexibility for landowners in the easement itself, consistent with Internal Revenue Service requirements and the land trust's conservation concerns. And, property owners should be briefed on what provisions in the Easement are binding, and which provisions allow the landowner to use management tools to protect and conserve the resources on the property, such as being able to develop and change Forest Management Plans.

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## **APPENDIX A. QUESTIONS POSED TO THE COUNTY PLANNING AND ZONING OFFICES**

1. Does the county involve itself in the donation and/or purchase of easements? If so, how and with whom?
2. What are the predominant programs relied upon for these purposes?
3. What areas have been the focal points for easement application in your county?
4. Whom should I contact to find out more, particularly on a case specific basis; a) landowner, b) local land trust, c) others at the county level who administer other programs
5. Who in the county provides conservation easement advice to landowners (e.g. financial advisors, attorneys, etc.) with whom I might speak?
6. Has the county performed assessments of its own as to the motivation of property owners to donate or to take advantage of purchase?
7. How closely coordinated are the county programs with the State programs and non-profits with respect to garnering lands for protection?

## **APPENDIX B: QUESTIONS POSED TO THE STATE PROGRAM OFFICIALS**

1. What are the concerns that you have with respect to your Program?
2. How well are the various State programs coordinated one with another?
3. How well are the various State programs coordinated with the local program?
4. With whom should I speak to find out more with respect to donation (e.g. groups, landowners, professionals, reluctant landowners)?



## APPENDIX C: QUESTIONS POSED TO LOCAL LAND TRUSTS

1. How long has the \_\_\_\_\_(trust, conservancy) been in existence?  
What has made it effective?
2. What has been accomplished (e.g. acres garnered, office established, etc.)?
3. How do the members of \_\_\_\_\_go about garnering donations (meetings, exhibits, one-on-one)?
4. What materials does the \_\_\_\_\_use?
5. What do you, in your experience, view as being impediments to the donation of conservation easements (e.g. legal, regulatory, financial, etc.)
6. What could be done to make easement donation a more effective tool?
7. Could changes be made to existing land preservation programs at the State level that would be more helpful to the local land trusts?
8. Could changes be made at the local government level to strength the use of donation? Are there steps that could be taken and if so, what?
9. Who are the best people with whom to speak concerning donations (i.e. landowners with experience, tax experts etc)?
10. Anything further that you would like to add and for which I did not pose a question?

**APPENDIX D: SAMPLE LETTER SENT TO ATTORNEYS, ACCOUNTANTS AND APPRAISERS**



August 30, 2002

**Board of Directors**

**President**

*Hon. Harry R. Hughes*

**Vice President**

*Stephen L. Weber*

**Vice President**

*John R. Griffin*

**Secretary**

*Gerald B. Truitt, Jr.*

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*Royce Hanson*

*Hon. John A. Hurson*

*Robert M. Hutchison*

*Calvin D. Lubben*

*Wayne McGinnis*

*Meredith A. Norman*

*W. Michael Phipps*

*Roger Lee Richardson*

*John S. Toll*

Dear:

Since mid-April, I have been working on a project funded by the Maryland Center for Agro-Ecology, Inc., of the University of Maryland in Queenstown. The purpose of the Center is to involve local governments, educational organizations, environmental groups, businesses and special interests in policy development, research and educational projects to retain and protect Maryland's working landscapes (agriculture and forest land) and open space. A brochure is enclosed.

One of the projects with which I am working on with The Maryland Environmental Trust is looking into the impediments of donating conservation easements. From information you provide to this letter, to information received from landowners and local land trusts, I hope to be able to make recommendations in report form to strengthen "donation" as a viable tool for land preservation.

Your name was referred to me by The Maryland Environmental Trust because you are very active in working with landowners who have either made decisions to donate easements on their property, or have had their easements purchased. I am sure that with your experience you have noted procedural, legal, regulatory, personal lack of information, and/or financial reasons as to why a negotiation does not go through, or takes a long time to complete. To expand my understanding, I would appreciate hearing from you, either via a phone call, or in writing, providing me with your thoughts, observations and perspectives as to what could be improved with the process in garnering easement donations. This information will certainly remain confidential.

Given the tight budget constraints in Maryland and pressure to sustain our working landscapes and open space, discovering ways to strengthen the donation tool becomes important. Should you wish to respond by calling, my phone number is 410-827-8056 ext. 125. I would also be most pleased to meet with you as well.

Thank you for your consideration of this request.

Sincerely,

Sarah Taylor Rogers, Ph.D.  
Research Associate

## APPENDIX E: SURVEY INSTRUMENT SENT TO LANDOWNERS

### About The Easement

1. How did you become aware of the easement program? (Circle letter response and fill in spaces as appropriate)

- a. contact by or/personal acquaintance with other grantor(s)
- b. contact by land trust representative
- c. contact by state agency. Which one? \_\_\_\_\_
- d. contact by local government. Which one? \_\_\_\_\_
- e. contact by agricultural extension
- f. other \_\_\_\_\_

2. What is the acreage amount of the easement? \_\_\_\_\_ Does it cover 100% of the property or a portion? (Circle letter answer)

- a) 100%    b) portion    What portion \_\_\_\_\_%

3. How important to your decision to donate an easement was: (please circle response)

- |    |  |           |           |           |
|----|--|-----------|-----------|-----------|
| a) | Federal Income Tax Deduction                   | Very      | Very      | Not       |
|    |  | Important | Important | Important |
| b) | State Income Tax Credits                       | Very      | Very      | Not       |
|    |  | Important | Important | Important |
| c) | Reduction In Property Taxes                    | Very      | Very      | Not       |
|    |  | Important | Important | Important |
| d) | Protection of Property from Future Development | Very      | Very      | Not       |
|    |  | Important | Important | Important |
| e) | Conservation of the Property Natural Features  | Very      | Very      | Not       |
|    |  | Important | Important | Important |
|    | Other: _____                                   | Very      | Very      | Not       |
|    |  | Important | Important | Important |

4. When you agreed to donate, were you made aware of the benefits of several programs or were you only informed about a particular program (Circle appropriate letter)

- a) Several. Which ones? \_\_\_\_\_
- b) A particular program. Which one? \_\_\_\_\_

5. In what year was the easement granted \_\_\_\_\_? By whom is it held?

- a) Maryland Environmental Trust (MET)
- b) MET with local land trust
- c) Local land trust solely
- d) Maryland Agricultural Land Preservation Foundation
- e) Other \_\_\_\_\_

6. Did it make a difference to you whether a state entity or private entity held the easement?

a) yes    b) no    why or why not \_\_\_\_\_?

7. When you donated your easement, were there already other conservation easements on: (Circle appropriate letter)

- a) Land adjoining your land?
- b) Land nearby in the surrounding area or vicinity?
- c) Your property that you or a previous owner had provided?

8. If there were other easements, was your decision to donate influenced by the decision of neighbors/acquaintances/others?

- a) yes    b) no

9. If you were the first to donate an easement in the vicinity, did you encourage any of your neighbors to donate easements?

- a) yes    b) no

10. Were you part of a group of landowners that joined together in granting easements at approximately the same time?

- a) yes    b) no

11. What activities are allowed on the easement property? (Circle applicable letters)

- a) recreation (hiking, biking, etc.)
- b) hunting
- c) habitat improvement (buffers, ponds etc)
- d) farming
- e) timber harvesting
- f) subdivision \_\_\_\_\_ #lots
- f) other \_\_\_\_\_

12. Does the easement prevent you from engaging in any activities that you would do if the property were not under easement?

- a) no    b) yes    If yes how? \_\_\_\_\_

13. Would you change the easement in anyway if given the opportunity?

- a) no    b) yes    If yes how? \_\_\_\_\_

14. Do you feel that the value of your property has increased or decreased because of the easement?

- a) increased    b) decreased    c) no change

Basis for your decision \_\_\_\_\_

15. Do you think marketability of your property has increased or decreased because of the easement?

a)enhanced b)thwarted c)don't know d)doesn't matter

16. Which of the following was of concern to you during the process of donating a conservation easement or have been mentioned by others as a concern to them in their consideration of donating an easement? (Circle the lettered number as appropriate)

- |   |          |        |
|---|----------|--------|
|   | Yourself | Others |
| a) lack of comprehensive "pro/con" information on various programs & their application  | a1       | a2     |
| b) losing the right to subdivide the property   | b1       | b2     |
| c) losing control over use of the land once easement in given   | c1       | c2     |
| d) availability of professional advisor knowledgeable about easements (e.g. attorney, accountant, appraiser)                          | d1       | d2     |
| e) lack of confidence that when ownership changes, the intentions as embodied by the easements (e.g. attorney, accountant, appraiser) | e1       | e2     |
| f) personal costs incurred to donate an easement (legal, surveys, appraisals)   | f1       | f2     |
| g) tax deductions attractive  | g1       | g2     |
| h) tax credits not attractive   | h1       | h2     |
| i) the time for processing the easement takes too long  | i1       | i2     |
| j) hard to get family to agree  | j1       | j2     |
| k) others not captured by above   | k1       | k2     |

Add explanation here for any answer if desired

17. From your own experience, what can be done to encourage more donations of conservation easements?

ABOUT THE LANDOWNER (Information will be kept confidential)

18. Your age\_\_\_\_\_.

19. If you have children, will any of them become the primary landowners in the future? (Please circle appropriate letter)

a) not applicable b) no c) yes d) hope so

20. Your primary occupation\_\_\_\_\_. (Can include retired as an answer if desired.)

21. Highest level of schooling completed. (Please circle appropriate letter)

- a) elementary
- b) junior high
- c) high school
- d) college
- e) graduate school
- f) post graduate

22. In which category would you place your total 2001 household income before taxes?

- a) up to \$50,000.00
- b) \$50,000.00-\$100,000.00
- c) \$100,000.00-\$150,000.00
- d) \$150,000.00-\$200,000.00
- e) \$200,000.00-\$250,000.00
- f) \$250,000.00 or greater

23. If you could choose to provide an easement all over again, would you?

a) yes b) no why or why not?\_\_\_\_\_

24. Do you know of anyone else who should be contacted for donating an easement? If so, please provide information.\_\_\_\_\_