



# UPPER PENINSULA LAND CONSERVANCY

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## **Policy 10ABC: Tax Benefits & Appraisals** *Standard 10A, 10B, and 10C, 2017 Land Trust Alliance Standards and Practices;* *2021 Accreditation Requirements Manual*

Board Approved: **March 13, 2018**  
Board Revision Approved: *April 12, 2022*

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### **PURPOSE**

The purpose of this policy is to establish compliance with federal and state law requirements during charitable gift of land or conservation easement. This policy outlines requirements for accompanying procedures, so that they align with Land Trust Alliance *Standard 10A: Landowner Notification, Standard 10B: Legal Requirements: Land Trust Responsibilities,* and *Standard 10C: Avoiding Fraudulent or Abusive Transactions*

### **INTRODUCTION**

Landowners may donate conservation easements to Upper Peninsula Land Conservancy (UPLC) with the primary interest of ensuring permanent protection and good stewardship of the land. The gift may give the landowner the pleasure of contributing to the mission of UPLC and may also provide the donor with potential tax benefits. UPLC's Board of Directors (Board) and Staff should have an understanding of particular tax benefits so they do not mislead the donor and can share potential issues donors may face and need to take into account.

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### **POLICY**

#### ***Summary:***

It is the policy of the UPLC to see that every charitable gift of land or conservation easement meets federal and state tax law requirements, to avoid fraudulent or abusive transactions, and to uphold public confidence in land conservation.

#### **A. Landowner Notification**

1. UPLC shall inform potential land or conservation easement donors who may claim a federal or state income tax deduction (or state tax credit), in writing and early in project discussions, that:



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- a. The project must meet the requirements of IRC §170 and the accompanying Treasury Department regulations and any other federal or state requirements.
  - b. The donor is responsible for any determination of the value of the donation.
  - c. The Treasury Department regulations require the donor to obtain a qualified appraisal prepared by a qualified appraiser for gifts of property valued at more than \$5,000.
  - d. Prior to making the decision to sign IRS Form 8283, UPLC will request a copy of the completed appraisal.
  - e. UPLC is not providing individualized legal or tax advice.
2. UPLC shall not make assurances as to:
- a. Whether a particular land or conservation easement donation will be deductible,
  - b. What monetary value of the gift the IRS and/or state will accept, and
  - c. What the resulting tax benefits of the deduction or credit will be, if any.
3. If UPLC pays for the landowner's appraisal, the payment needs to be acknowledged, even if UPLC uses an appraisal to justify bargain sale purchase, to the landowner, which can be on the IRS Form 8283, in the gift acknowledgement letter, or on other tax forms.

### **B. Legal Requirements: Land Trust Responsibilities**

1. UPLC shall meet the requirements for a qualified organization under IRC §170(h).
2. UPLC shall sign the Form 8283 **only if** the information in Section B, Part I, "Information on Donated Property," is complete and is an accurate representation of the gift. Prior to signing the Form 8283, UPLC must evaluate the form before signing to ensure it includes the following information in order to confirm the form is a complete and accurate representation of the gift and that the land trust meets the requirements of LTA Practices 10C2, 10C3, and 10C4:
  - a. Name of landowner(s) that matches landowner(s) in the title investigation (see Practice 9F: Title Investigation & Recording)
  - b. Detail Description of gift (or supplemental statement)
  - c. Appraised fair market value of the donation that matches the value(s) in the appraisal
  - d. Amount received in a bargain sale, if any
  - e. Donor's cost or adjusted basis



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- f. Date of gift (for conservation easements, the year of the gift must match the year to the year the conservation was recorded).
3. UPLC shall refuse to sign the Form 8283 if it believes no gift has been made or the property has not been accurately described.
  4. UPLC shall file IRS Form 8282 when conveying a donated real property interest within three years of the date it received the property. Here is how the requirement applies:
    - a. Requirement *does not* apply to cash donation of publicly traded securities.
    - b. Requirement *does not* apply to land, conservation easements or securities that are not publicly traded and items of personal property, such as cars and boats
    - c. Requirement applies to conveyances of a portion of, or interest in, the donated property
    - d. Requirement applies only to donated property, including property acquired in a bargain sale. It does not apply to property that the land trust acquired at fair market value.
    - e. If a donation is made up of more than one item, and if collectively all of the items together have a value in excess of \$5,000 (as reported on Form 8283), and if any one of the items is disposed of within three years of the donation, the disposition must be reported
    - f. If Form 8283 reports a donated item with a value of \$500 or less (listed in Section B, Part I, which the donor attests is correct in Section B, Part II), the land trust does not need to report the disposition of this item.

### **C. Avoiding Fraudulent or Abusive Transaction**

1. UPLC shall review, on its own behalf, each transaction for consistency with federal and state income tax deduction or credit requirements. The organization should ask the following question in regards to easement gifts to ensure the conservation easement contributes a meaningful conservation purpose and align with UPLC's mission and goals.
  - a. Are the resources of the property worthy of conserving?
  - b. Are the resources sufficiently protected?
  - c. Are other specific requirements met and required provisions included, such as required for baseline documentation, mineral rights, and subordination?



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2. UPLC shall evaluate the Form 8283 and any appraisal to determine whether the land trust has substantial concerns about the appraised value or the appraisal. Form 8283 must include the following information as mentioned in 10B2. In addition, UPLC needs to evaluate the landowner's qualified appraisal. Qualified appraisal meets the basic Treasury Department regulation and includes a statement from the appraiser stating the appraisal was prepared for income tax purposes. The appraisal must also include the following information:
  - a. Property description for the gift that was donated
  - b. Effective date not more than 60 days before the donation
  - c. Value for the entire contiguous parcel, if there are clearly contiguous parcels (for conservation easements)
  - d. Consideration of enhancement, if enhancement would clearly apply (for conservation easements).
  
3. UPLC shall discuss substantial concerns about the appraisal, the appraised value or other terms of the transaction with legal counsel and take appropriate action, such as:
  - a. Documenting that UPLC has shared those concerns with the donor
  - b. Seeking additional substantiation of value
  - c. Withdrawing from the transaction prior to closing
  - d. Or refusing to sign the Form 8283
    - i. If the landowner refuses to provide a copy of the appraisal, a UPLC should retain a copy of its request for the appraisal and the landowner's refusal, as well as provide documentation showing how UPLC confirmed it did not have concerns with the appraised value. This exception *does not* apply when the transaction triggers the terms of the Tax Shelter Advisory and Practice 10C4.
  
4. When engaging in transactions with pass-through entities of unrelated parties, particularly those offered or assembled by a third party or described as a syndication by the IRS,
  - a. UPLC shall require a copy of the appraisal prior to closing
  - b. UPLC shall decline to participate in the transaction if the appraisal indicates an increase in value of more than 2.5 times the basis in the property within 36 months of the pass-through entity's acquisition of the property, the value of the



donation is \$1 million or greater and the terms of the transaction do not satisfy the [Land Trust Alliance Tax Shelter Advisory](#).

## REVISIONS

This policy should be reviewed by the Finance Committee on an annual basis. Any amendments must be approved by vote of the Board and will require a simple majority to be changed.

This policy may be amended or repealed, and new related policies may be adopted, from time to time by the Board, except that no change in the policies will affect obligations accepted by UPLC for funds or properties donated prior to the change, unless such change is approved in writing by the donor or donors of such properties, interests, or funds.