

All About Conservation Easements

(Courtesy of Piedmont Environmental Council)

What is a Conservation Easement?

A conservation easement is a permanent protection that a landowner places on his or her property to limit future subdivision and development. It is in effect a deed to another party – in Virginia, usually the Virginia Outdoors Foundation (VOF) – of certain rights of ownership to be held in public trust in perpetuity. The easement also may protect specific natural, scenic or historic features of the property. Each easement is unique. The easement terms are negotiated between the landowner and a public agency or a qualified conservation organization. Except for rights explicitly given up in the easement document, the landowner continues to own, use and control the land. The landowner can still decide who may come on the property for what purpose, just as before. An easement is a particularly useful tool for ensuring protection of southwestern Virginia's open spaces because it lasts forever – it binds not only the current landowner, but all subsequent owners of the property.

Why Should I Donate A Conservation Easement? What are the benefits?

An easement will protect the land you love forever, preserving family farms, wildlife habitat, streams, open space, woodlands and scenic vistas. Your donation of an easement can motivate your neighbors to do the same, ultimately leading to the protection of larger landscapes in your community. While most conservation easements are donated because of the owner's love of the land and their desire to see it protected in perpetuity, there are also significant tax advantages associated with an easement donation. An easement may be a critical element of your strategy to keep rural land in the family, as an easement can help prevent forced sale of property to pay estate taxes. The federal estate tax benefits provided by the American Farm and Ranch Protection Act make it possible for families that donate conservation easement to pass their property on to heirs with stronger assurance that it can stay in the family. There are also significant state and federal income tax and property tax savings associated with the donation of easements. In Virginia, there is even a state tax credit that can be sold, allowing partial cash compensation for easement value.

Who do I donate a conservation easement to?

In Virginia, conservation easements can be donated to a number of public or private entities, but most are donated to the Virginia Outdoors Foundation (VOF), a state agency established by the General Assembly to hold easements in public trust. In special cases, the Virginia Department of Historic Resources, the National Park Service or other agencies may accept easements. They can also be held by qualified non-profit conservation organizations, such as WVLT. Though we do hold several easements, we usually urge landowners to donate their easements to VOF, as state-held easements offer greater protection than those held by private organizations. WVLT works closely with landowners in helping them to find appropriate easement holders.

How do I donate a conservation easement?

The first step in donating an easement is to contact WVLT for further information. WVLT has worked with dozens of landowners and the VOF to protect thousands of acres

through the use of conservation easements. We have staff members with years of land conservation experience who will be happy to meet with you and your family to discuss various options. With the future of such a precious asset at stake – your land – we also suggest that prospective easement donors consult their own attorneys and planning professionals.

Cash for Conservation

Virginia tax credit sales offer landowners new options

(Courtesy of Western Virginia Land Trust)

Recent changes to Virginia's tax credit code give landowners powerful new financial incentives for donating conservation easements.

House Bill 1322 made an important revision to the Code of Virginia that allows landowners to capture 50% of a conservation easement value as a transferable tax credit. In other words, landowners can sell tax credits that they can't use, providing cash for conservation.

The difference between what a property would sell for with and without an easement is the easement value, which must be determined by a certified appraiser. If a \$500,000 parcel of land is worth \$300,000 with an easement that limits subdivision, the easement value is \$200,000. This gives the owner a \$100,000 Virginia tax credit, which can be used or sold.

Remember, the easement donor still owns the property, does not have to grant public access, and can continue traditional uses such as agriculture, forestry, recreation, and family residential use. And the state tax credit is only one of the many tax advantages of a conservation easement donation.

Before taking a closer look at Virginia's new tax credit status, let's review the other benefits associated with conservation easements.

The primary reason landowners donate conservation easements is to preserve some natural, scenic, agricultural or historic resource of their land forever. Many want to establish a legacy for their children and grandchildren. Most value the peace of mind from knowing that their land will always be protected from development.

In addition, easements bring significant income tax and estate planning benefits. In some specific situations, the combined tax savings could be equal to or more than the reduction in land value due to an easement. In order to be tax-deductible, the easement:

a) must be given in perpetuity;

b) must be given to a qualified governmental or non-profit organization;
c) must have a qualified appraisal; and d) must be donated exclusively for "conservation purposes" (in other words the property must have some significant natural, scenic, historic, scientific, recreational or open space value).

1. Federal Income Tax Deduction The donation of an easement is treated as a charitable gift and the value of the easement may be deducted from the donor's income for purposes of calculating income taxes.

- Deduction is limited to 30% of the landowner's adjusted gross income in the year the donation is given (the unused portion of the gift may be carried forward to be used as a deduction for an additional five years, subject to the 30% limit each year).
- Alternatively, the landowner may elect to reduce the amount of the deduction to the basis of the property. Then the value of the gift (as reduced to basis) will be deductible up to 50% of the landowner's adjusted gross income (for one plus five years). This election may be advantageous to the landowner if the donation of an easement is made shortly after acquiring the property.

2. Estate Tax Reduction Estate taxes can be as high as 55% of the value of the donor's estate. In many cases, a landowner's heirs must sell the property just to pay estate taxes. By donating an easement, landowners can reduce these taxes in two ways:

- First, the estate will have been reduced by the value of the easement (smaller estate value means less—or perhaps no—estate tax due).
- Secondly, the American Farm and Ranch Protection Act of 1997 allows heirs to exclude up to an additional 40% of the remaining value of their land from estate taxes.

3. Reduced Real Estate Taxes In counties where "use value" taxation is in place, land subject to an easement is automatically entitled to taxation at use value rates. In localities that do not have use value taxation, land under easement is assessed without regard to the development value that has been extinguished by the easement.

4. State Tax Credit Since 1999, Virginia has offered easement donors a tax credit for 50% of their easement value. This credit can be applied against state income tax for up to six years. In effect, most easement donors don't have to pay state income tax for six years. However, even after eliminating state taxes for six years, many easement donors would have to leave significant tax credit value unused. Starting this year, the unused tax credit can be sold.

While some details of the tax credit transfers are still being fine-tuned and interpreted by state agencies, the basic provisions of the law are clear. Any Virginia taxpayer who

donates land or an easement for conservation purposes is entitled to a tax credit worth 50% of their gift. Any portion of the tax credit may be sold or given to other Virginia taxpayers, with a cap of \$100,000 per taxpayer per year (for up to 6 years).

Several brokers have already established guidelines for tax credit exchanges and WVLT staff has been in consultation with local professionals who may be able to provide tax credit buyers in our service area.

Some in the conservation community speculate that, due to state budget woes, the General Assembly may revise or even eliminate the new tax credit provisions next year. However, once a taxpayer is granted tax credits under current law, he or she has them to use as current law permits.

For further information, please contact the Western Virginia Land Trust. As always, WVLT strongly urges prospective easement donors to consult their own financial and legal advisors as well.

Conservation Easement Donor Testimonials

“I was born on this land and I’ve lived here all my life, off and on. I didn’t want it cut up into subdivisions. I’d like all of my neighbors to donate conservation easements, because it’s the only way to preserve this part of the country.”

- Barbara Hatcher of Bedford County preserved her 158 acres near Peaks of Otter by donating a conservation easement to WVLT and the Peaks of Otter Soil and Water Conservation District.

“Conservation easements are a valuable tool for balancing private property rights with land conservation. I sell land for a living, and I advocate conservation easements as a voluntary way to preserve land and to help landowners with tax deductions and credits.”

- Jim Woltz, WVLT trustee, realtor and auctioneer and a donor of over 1,700 acres in conservation easements, much of it in Roanoke County.

“A conservation easement allowed us to preserve our land for future generations and to honor our forefathers who labored so hard to preserve it for us... With the tax advantages from our easement donation, I feel like we sold part of our land and got to keep it all. The easement doesn’t restrict any of the plans we had for the land and it protects it from the things that we’d hate to see happen.”

- Arnold Hurt donated a 175-acre easement in Franklin County to WVLT and the Virginia Outdoors Foundation.

“This is the only open land left in town. I could not see having it developed, for sentimental reasons. I read somewhere that 10 percent of the land in the nation is in asphalt...I just could not see it here.”

- Eliza Thomas preserved 45 acres - the largest remaining tract of open space in Bedford City – through an easement with the Virginia Outdoors Foundation.

My land is special to me – I hunt on it, watch wildlife, and manage timber. I enjoy its beauty and wanted to make sure that it’ll be here for future generations. Since it borders the Blue Ridge Parkway and Smartview Recreation Area, I’m also aware of how my decisions could affect a valuable public resource.”

- Jim Wilson, a WVLT trustee, and his wife Esta preserved 122 acres of Franklin County land along the Blue Ridge Parkway.

[Western Virginia Land Trust Special Landowner Newsletter \(Adobe Acrobat PDF Format\)](#)

For more information about Conservation Easements please visit the Western Virginia Land Trust website at westernvirginialandtrust.org