

Conservation Easement Resources for Essex County Landowners

Easement Holders

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Virginia Conservation Credit Exchange

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Recommended Reading List:

- *Conservation Options: A Landowner's Guide*
- *Preserving Family Lands I and II*, by Stephen J. Small Esq.
- *The Federal Tax Law of Conservation Easements*, by Steven J. Small, Esq., with second and third supplements
- *Appraising Easements: Guidelines for Valuation*

All are available from the Land Trust Alliance, tel. 202-638-4730 or
www.landtrustalliance.org

Steps for Landowners in Donating a Conservation Easement

Please plan ahead! It can take five months or more to complete the necessary steps to donate a conservation easement.

- Read the background materials provided by the Essex County Countryside Alliance.
- Contact your preferred easement holder, such as the Virginia Outdoors Foundation, to set up an appointment to meet on your property. If available, provide the easement holder with copies of a survey of your property and aerial photos, forestry plans, articles on its history or any other background.
- After the meeting, the conservation easement holder will draft your conservation easement. Share the draft with your attorney and family members. Work with the easement holder to ensure that the easement language is agreeable to all parties.
- Draft a personal letter to the easement holder stating your wish to grant a permanent easement on your property and describing your interest in conserving the property. This letter serves as a record of your conservation intent.
- Review the material concerning the tax benefits of conservation easements. Consult with your attorney, tax planning professional or accountant to determine how the easement will affect your particular financial and estate-planning situation. ECCA and the easement holder cannot provide tax or legal advice.
- If you are planning to take an income tax deduction for your easement or to sell Virginia land preservation tax credits generated by it, arrange for a property appraisal by an appraiser experienced in this work. This can take five months to complete.
- Ask your attorney to prepare a legal description of the property and a letter certifying you have clear title to the property. You will probably need a title search for this.
- If there is a mortgage on your property, contact your mortgage loan officer to request that the mortgage be subordinated to the conservation easement. This requires that the mortgage holder or any subsequent owner of the property adhere to the terms of the easement.
- Sign the easement holder's consent form regarding legal advice.
- Close to the time to record your easement, the easement holder will complete a baseline documentation report on your property. This report will describe the conservation values on the land. You must review and sign the document, which becomes the basis for monitoring the easement in the future. The baseline documentation report *is required by the IRS* if you wish to take an income tax deduction for your easement donation.
- In most cases, the easement holder board of directors must vote to accept your conservation easement and the easement must be signed by an officer of the organization. Finally, you must sign the easement. All signatures must be witnessed by a notary public.

- Once these steps are complete, the easement holder will record the complete conservation easement in your county Court House. For tax purposes, the date the easement is recorded is considered the date of your charitable gift.
- Within 60 days, you will need to register the Virginia Land Preservation Tax Credits generated by your conservation easement with the state Department of Taxation. Your accountant or attorney can help you complete the forms, which require a copy of IRS Form 8283 signed by the easement holder and your appraiser, and a copy of the appraisal.
- If your easement generates \$1 million or more in state land preservation tax credits, it must be reviewed by the state Department of Conservation & Recreation as well as the state Department of Taxation.
- You also will need to document your easement value on your federal tax return for the year it was donated, with IRS Form 8283 and a copy of your appraisal.
- Once each year thereafter, your easement holder will contact you to schedule a convenient time for an annual monitoring visit to make sure the terms of the easement are upheld over time.
- Donating an easement can sometimes seem overwhelming. If you don't like dealing with lots of details, you might want to consider engaging a conservation easement consultant to manage many of the steps for you. ECCA lists three such consultants on our page of resources for landowners.

Tax Benefits of a Conservation Easement

The primary reason a landowner donates a conservation easement is to preserve the natural, scenic and historic integrity of their land, forever. Many want to establish a legacy for their children and grandchildren. Most value the peace of mind of knowing that their land will be always protected from development.

In addition, there are significant income tax and estate planning benefits.

How Does A Conservation Easement Qualify for a Tax Deduction?

In order to be tax-deductible, the conservation easement must meet several tests:

- It must be granted in perpetuity.
- It must be donated to a qualified governmental or non-profit organization, such as the Virginia Outdoors Foundation or The Nature Conservancy.
- It must have a qualified property appraisal, which establishes the size of the charitable gift eligible for a tax deduction.
- It must be donated exclusively for “conservation purposes,” meaning the property must have some significant natural, scenic, historic, scientific, recreational or open space value that will be protected forever.

Federal Income Tax Deduction

The donation of a conservation easement is treated as a charitable gift. The value of the property pre-easement, minus the value of the property post-easement, equals the value of the charitable gift. This gift, or easement value, may be deducted from the donor’s income in calculating federal income taxes.

Currently, the federal income tax deduction is limited to 50 percent of the landowner’s adjusted gross income in the year the donation is given. The unused portion of the gift may be carried forward and used as a deduction for an additional 15 years, subject to the 50 percent income limit each year.

Qualified farmers and ranchers may deduct up to 100 percent of their adjusted gross income in the year the donation is given and carry forward the unused portion of the gift for an additional 15 years.

Please note: The federal tax benefits of conservation easements may be subject to changes January 1, 2008.

Estate Tax Deduction

Estate taxes can be as high as 55 percent of the value of an individual’s estate. In many cases, a landowner’s heirs must sell the property just to pay estate taxes. By donating a conservation easement, landowners can reduce these taxes in up to two ways:

- First, the total 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 allow heirs to exclude up to 40 percent of the remaining value of their land (with a maximum exclusion of \$600,000) from estate taxes if the easement qualifies for the program.

Check with your attorney or tax professional to see if your conservation easement would qualify for the American Farm and Ranch Protection Act deduction.

Virginia State Income Tax Credit

The Commonwealth allows a conservation easement donor to claim a credit against their Virginia income tax liability for up to 40 percent of the fair market value of the donated easement (compared to 100 percent of the value of the easement that can be deducted under federal income tax rules).

These Virginia Land Preservation Tax Credits can be used on a \$1 for \$ basis against a maximum of \$100,000 per year in Virginia income tax liability, for a total of 11 years.

Any unused state income tax credit may be donated or sold for use by another taxpayer. Conservation Partners LLC of Lexington reports that its landowners received 70 cents on the dollar on land preservation tax credit sales in 2006.

Please note: Starting January 1, 2007, the following changes will go into effect:

- The land preservation tax credit program will be capped at \$100 million per year. It pays to complete your conservation easement *early in the year*.
- Conservation easements that result in registrations of *more than \$1million* of tax credits must have the conservation values reviewed and accepted by the Department of Conservation and Recreation before being accepted by the Department of Taxation.
- Registration of conservation easements of *less than \$1million* of tax credits will require a form that includes:
 - i) A description of the conservation purpose or purposes;
 - ii) The fair market value of the land without restrictions;
 - iii) The public benefit derived from the donation;
 - iv) The extent to which best management practices will be implemented on the property; and
 - v) Whether the property is fully or partially forested and a forest management plan is included in the terms of the donation.
- Any property that serves as the basis for a land preservation tax credit can not also serve as the basis for a historic rehabilitation tax credit within the same five year period of time and visa versa.
- Any transfer of registered tax credits triggers a 2% or \$10,000 fee (whichever is less) on the amount of the donated interest. The exact implementation and interpretation of this legislative change is still unclear.

Please note: this memo is not meant to serve a tax or legal advice. Please check with your accountant and attorney for details on the specific tax benefits of your conservation easement.