

Agricultural Land Easements (ALE)

- Natural Resource Conservation Service (NRCS) program
- Designed to protect conservation-rich farmland
- Competitive program, but historically under utilized in VA
- Purchased conservation easement @ 50 to 75% of value
- NRCS funds 50%
- State and/or private sources fund remaining portion
- NRCS retains third party right of enforcement

ALE Budgets

| | |
|-------------------------|------------|
| • NRCS | 50% |
| • Match (VLCF or other) | 25% |
| • Donated Value | <u>25%</u> |
| | 100% |

Example ALE Budget

| | |
|-------------------------|-------------------|
| • NRCS | \$1,000,000 |
| • Match (VLCF or other) | \$ 500,000 |
| • Donated Value | <u>\$ 500,000</u> |
| | \$2,000,000 |

ALE Partners

Landowners



Natural Resource Conservation Service



VIRGINIA LAND CONSERVATION FOUNDATION



CONSERVATION DISTRICT



Virginia Department of Conservation & Recreation



Volgenau

ALE Budgets

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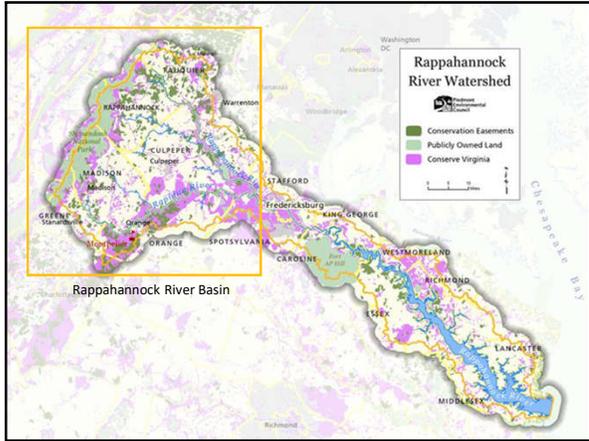
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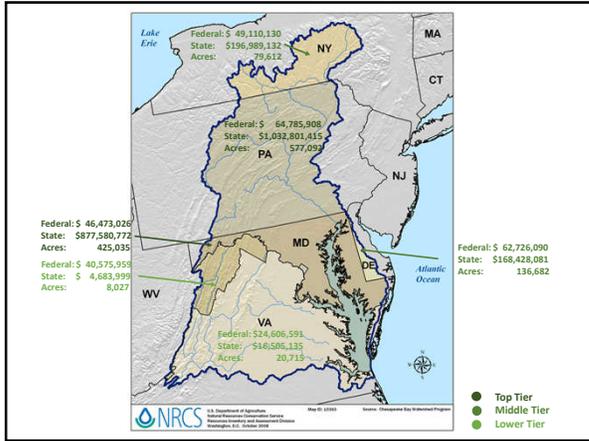
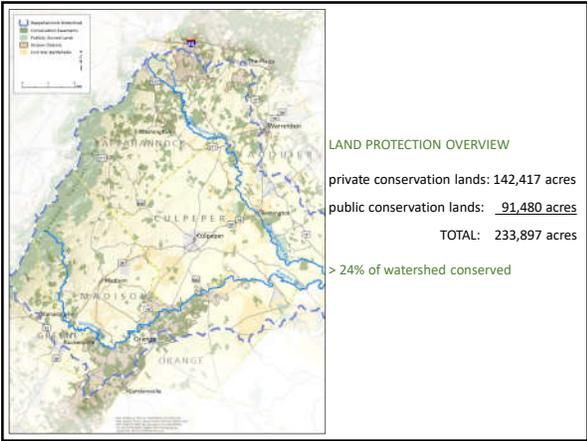
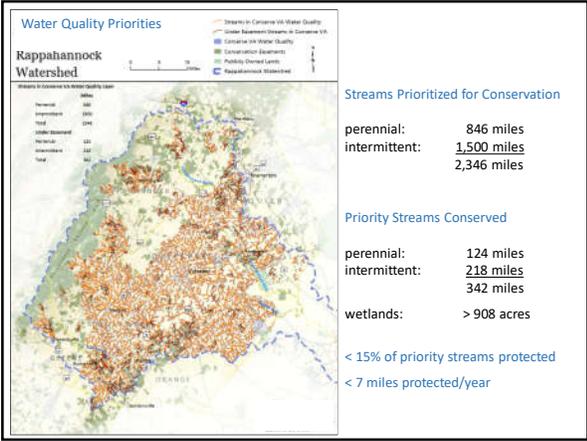
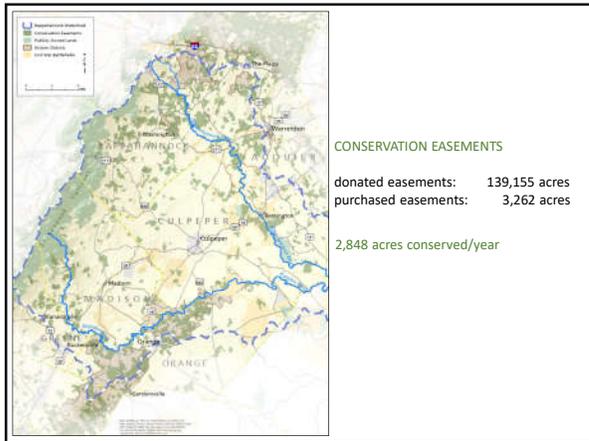
Bargain Sale = 75% or \$1,500,000

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LAND + WATER = FARMLAND



Water Quality Incentives



ALE (federal)

- Farm management plan (highly erodible soils)
- Related state / federal policy
- Farm size → more streams + wetlands

VLFC (state)

- Farm management plan (BMPs)
- *Conserve Virginia*
- Buffers > 35 feet width



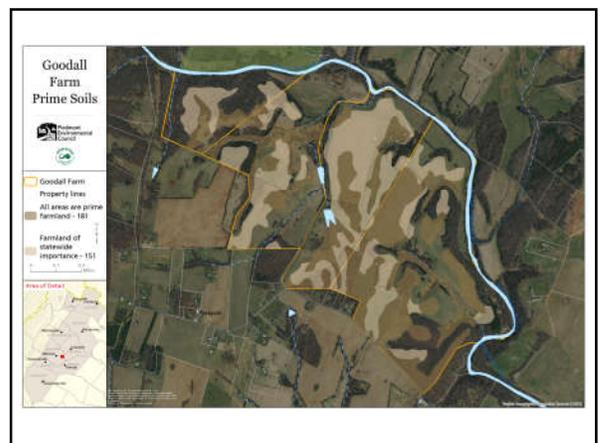
Planting Trees

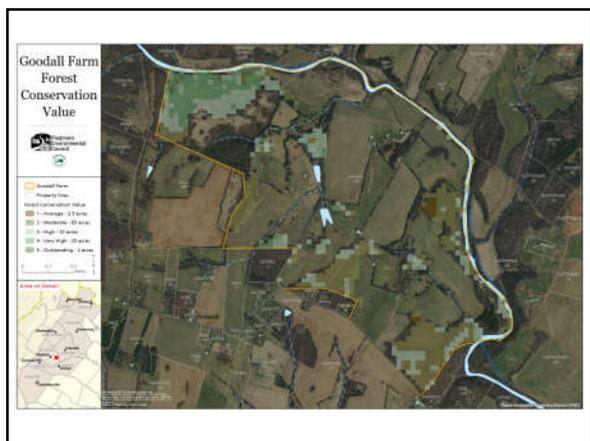
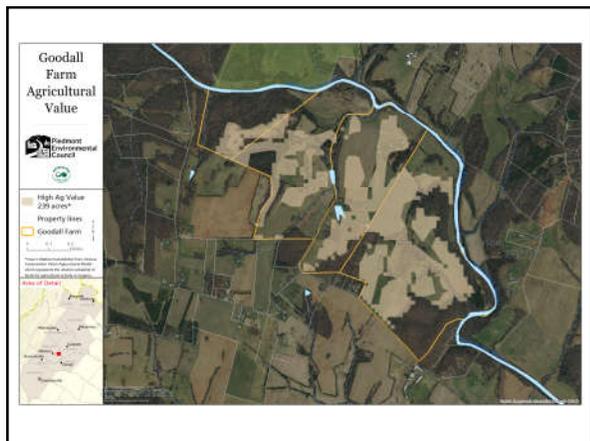
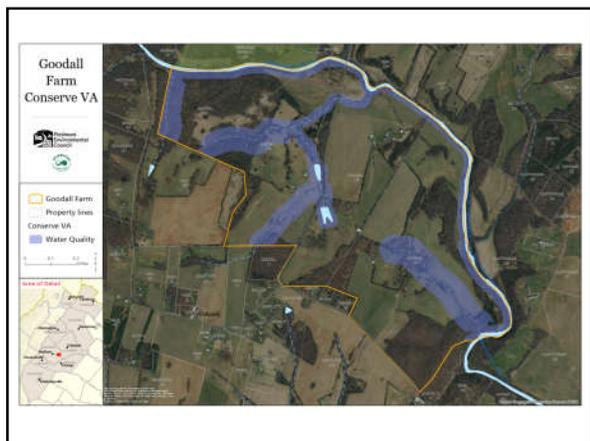
Headwaters Stream Initiative



Case Study

Goodall Farm





ACEP-ALE OVERVIEW FOR LANDOWNERS



PHOTO COURTESY OF USDA

WHAT IS ACEP-ALE?

The **Agricultural Conservation Easement Program (ACEP)** is a voluntary conservation program that protects agricultural land from conversion to non-farm uses and conserves and restores wetlands. **Agricultural Land Easements (ALE)** are a program enrollment option that keep working lands available for agriculture by protecting the farming uses or protecting grazing uses of grasslands and related conservation values. ACEP-ALE is administered by the Natural Resources Conservation Service (NRCS), a federal agency within the United States Department of Agriculture (USDA) working with farmers and landowners to improve and protect their soil, water, and other natural resources.

ACEP-ALE provides matching funds to eligible entity partners to purchase **agricultural land easements**. An ALE is a permanent easement that is recorded on your deed and stays in effect even if ownership changes. It contains provisions that protect agricultural use by limiting non-farm development. NRCS may contribute up to 50 percent of the fair market value of the agricultural land easement as determined by appraisals. If you are protecting grasslands of special

environmental significance, NRCS can contribute more—up to 75 percent of the fair market value of the agricultural land easement.

HOW THE PROGRAM WORKS

You will work with a partner (officially called an eligible entity) to participate in the program. The partner has to meet certain requirements to be an eligible entity.

Your partner can be a state or local government body, a non-profit organization like a land trust that protects farmland and ranchland, or an Indian tribe. Refer to "[ACEP-ALE Overview for Entities](#)" for information on who can be an eligible partner.

1. You will work with your partner to determine if you and your land meet eligibility requirements. If so, your partner will discuss the conservation deed terms and answer your questions.
2. If you and your partner are interested in moving forward, your partner will work with you to fill out the application forms and supply supporting materials.

Once the application has been submitted, NRCS staff in each state rank applications using criteria posted on the state's website.

3. If your application is chosen for funding, your partner will coordinate with NRCS and manage the acquisition process through the completion of the real estate transaction. This takes one to two years once your partner signs an agreement with NRCS, depending on your commitment to working with your partner to satisfy program requirements.
4. After the transaction is complete, the agricultural land easement will be managed by your partner. Your partner will visit with you on-site each year to make sure you are following the terms set forth in the agricultural land easement document.



PHOTO COURTESY OF ALLEN BIRNBACH

LANDOWNER ELIGIBILITY

To be eligible for funding, you must meet certain USDA criteria. Answer the questions below to determine if you could qualify. If you answered no or if you don't know the answers, that's okay. Make an appointment with your local USDA Service Center for assistance in determining your eligibility and to complete USDA eligibility forms. To find a Service Center, visit <https://offices.sc.egov.usda.gov/locator/app>

Are you an individual, legal entity, or Indian tribe that owns land or has an agreement to purchase land?

Your partner will need a copy of the property deed or current written purchase agreement.

Do you have farm records established with the USDA-Farm Service Agency (FSA)?

If you have participated in USDA programs in the past, you likely do have records that identify the parcels you own and/or farm, cropping history, and other farm information.

If you are a legal entity or considered a joint operation, have you identified all the members of the legal entity or joint operation at the FSA office?

Member names, tax identification numbers, and ownership percentage, as well as other information may be required for each member.

Do you meet the requirements for highly erodible land and wetland compliance on all the land you own and/or farm?

These provisions aim to reduce soil loss on erosion-prone lands and to protect wetlands for the multiple benefits they provide. If you are not sure about this, FSA staff will help determine this. If you are a legal entity or considered a joint operation, all members will also have to answer this question.

Do you have an average adjusted gross income (AGI) of less than \$900,000 annually for the three preceding tax years?

If you are unsure, please check your tax returns. If you are a legal entity or considered a joint operation, all members will also have to answer this question. If one member of your legal entity has an AGI exceeding the limit, there may be a reduction in the amount the federal government contributes toward the project.

LAND ELIGIBILITY

The proposed easement area (which may be your entire property or a portion) must also be eligible. Answer the questions below to determine if your land, assumed to be the easement area, could qualify. If you answered no or if you don't know the answers, that's fine. Your partner can help make that determination. If ACEP-ALE is not a good fit, your partner may also be able to direct you to an alternate program or approach for protecting your land.

Is your land privately owned or Tribal land?

Does your land meet at least one of the following criteria?

- Comprised of at least 50% prime or important soils as determined by a soils map provided by your partner or NRCS Web Soil Survey. These are NRCS recognized soils that are designated as productive for agriculture.
- Contains historical or archaeological resources.
- Protects grazing uses and related conservation values.
- Furthers a state or local government policy consistent with the purposes of the ALE program.

Your farmland protection partner can contact the state NRCS office to learn about state-specific qualifications.

Is your land made up of cropland, rangeland, pastureland, and/or shrubland for which grazing is the predominant use?

Forest land is okay too as long as it doesn't exceed two-thirds of the easement area and contributes to the economic viability of the parcel or serves as a buffer to protect the land from development.

Is your land free from other easement or deed restrictions which provide similar protection as ALE?

If you are unsure, review your property deed. If you do not have access to your deed, you can get a copy at the property records office where the land is located. Property records are often managed by the county or city clerk.

Is your land free from title issues, hazardous materials, or adverse land uses on-site or nearby?

The presence of rights of way, infrastructure development, or mineral development on your land should be identified. Not all of these conditions make land ineligible, but you should identify them early and discuss them with your partner to determine whether they will have an impact on your eligibility.

Is your land accessible from a public road? If not, do you have an insurable, unconditional, and transferable legal right of recorded access?

BENEFITS OF ACEP-ALE

The program can help you keep threatened farmland and rangeland available for agriculture. The program would compensate you for choosing to permanently protect your land from development. In addition, the program can help you:

- Improve the viability of your farm. Proceeds from the sale of agricultural conservation easements can be invested in your operation. Farmers and ranchers have used this money to construct, expand or repair agricultural buildings or structures; buy equipment for farming, processing or marketing agricultural products; or buy additional land.
- Transfer agricultural land to the next generation. Permanently protected land is usually more affordable to farmers and ranchers because the agricultural conservation easement limits future non-farm development, which may lower fair market value.
- Implement or expand sound farming practices. The program ensures that your highly erodible land is subject to a management plan. It also involves farmland protection partners to help you learn about conservation practices and gives you capital to implement them.

TAKE THE NEXT STEP

If ACEP-ALE can help you achieve your land conservation and financial goals, a next step is to find an eligible farmland protection partner. Your partner will apply to the program with you and will ultimately hold and manage an agricultural conservation easement on your land. That partner will manage the ACEP-ALE application and can help guide you through the process.

Land Trusts

Land trusts are non-profit conservation organizations that protect natural resources by acquiring or helping other entities acquire land or conservation easements. Some focus on protecting agricultural land for continued agricultural use.

Public Programs

State and local purchase of agricultural conservation easement (PACE) programs: PACE programs compensate property owners for keeping their land available for agriculture. PACE programs are administered by state or local governments.

- ➔ Find a land trust or PACE program near you using American Farmland Trust (AFT)'s farmland protection directory. American Farmland Trust is a national nonprofit organization founded in 1980 to save America's farms and ranches. <https://farmlandinfo.org/farmland-protection-directory/>
- ➔ Use Land Trust Alliance's land trust database. Land Trust Alliance is a national land conservation organization that

represents more than 1,000 member land trusts.
<https://www.landtrustalliance.org/find-land-trust>

The entities that can serve as partners for ACEP-ALE will all have different capacities and conservation goals for participating in the program. Make sure the partner you choose aligns with your values and goals for your property. Here are some things you can look for when choosing an entity to be your partner:

1. Mission statement related to protecting farmland
2. Members of the board of directors who have a background in agriculture
3. Types of resources they have already protected as part of their portfolio

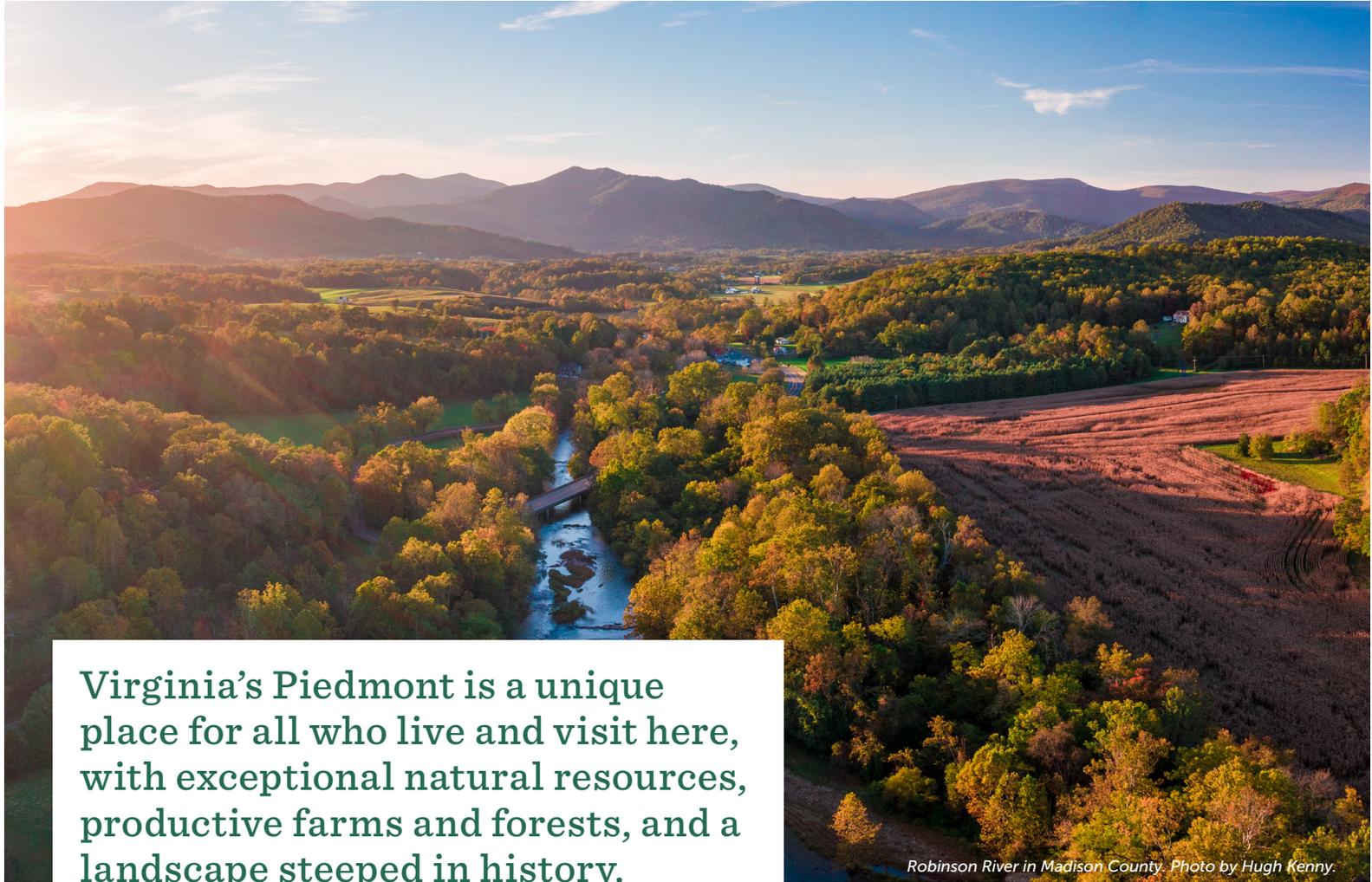
One final criterion that makes your land eligible for this program is having a written pending offer from an eligible entity to purchase an ALE. This can be a signed option-to-purchase agreement or other type of purchasing agreement, a letter of intent to sell the easement, an offer letter from you to the eligible entity, or other similar documentation. Once you partner with an entity, they will discuss this step with you.

If you have trouble finding a partner, contact the ACEP-ALE program manager in your state, who is typically located in the state NRCS office. A directory of NRCS state offices is available at: <https://www.nrcs.usda.gov/wps/portal/nrcs/sitenav/national/states/>. Still having trouble? Contact AFT's Farmland Information Center.



Protecting Your Land with a Conservation Easement





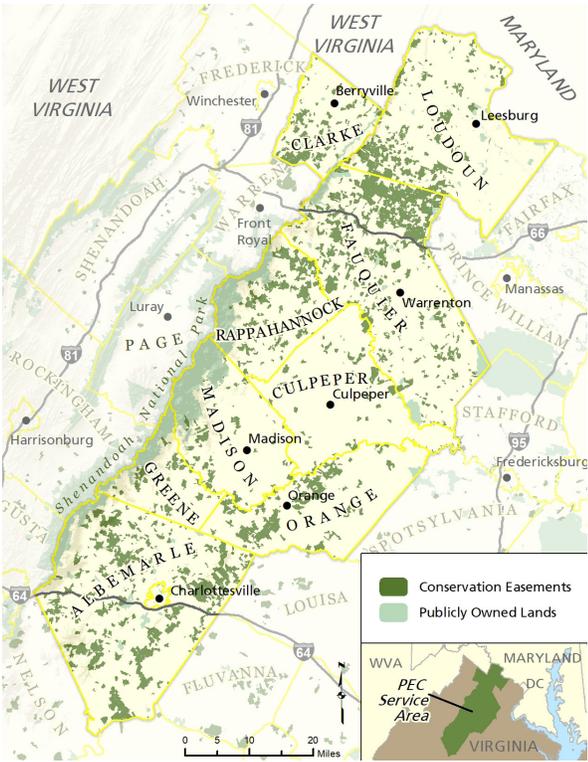
Robinson River in Madison County. Photo by Hugh Kenny.

Virginia’s Piedmont is a unique place for all who live and visit here, with exceptional natural resources, productive farms and forests, and a landscape steeped in history.

Our farms and forests have long been part of Virginia’s culture; as two of Virginia’s largest industries, agriculture and forestry together contribute over \$91 billion and more than 334,000 jobs to Virginia’s economy each year.¹ Our many streams and rivers supply drinking water and sustain the fisheries that support commercial and recreational fishing industries. Hundreds of thousands of tourists come to experience our natural wonders, undisturbed scenic views, and historic heritage, contributing about \$21.5 billion to the state’s economy annually.

In Virginia’s Piedmont region, our natural lands benefit the public by providing clean air and drinking water, absorbing carbon from the atmosphere, supporting agriculture, forestry, and recreation, and strengthening our quality of life and sense of place. Yet, its location on the narrow edge of some of the fastest growing areas of the country puts this idyllic region and all the qualities that define it at grave risk. Residential sprawl has radiated outward from Washington, D.C. and other urban centers in Virginia at a tremendous pace.

The good news is that you can do something to ensure that the beauty and abundance of the Piedmont endures for the benefit of all, that this place is forever characterized by its open spaces, beautiful vistas, healthy environment, and cultural heritage. You can permanently protect your land from development through the gift of a conservation easement.



The Piedmont Environmental Council’s 9-county region. See full-size map on page seven.

1 <https://www.vdacs.virginia.gov/markets-and-finance-agriculture-facts-and-figures.shtml>

Cover photos: Landscape by Hugh Kenny. Farm couple by Katherine Vance. Three friends by Oya Simpson. White-throated sparrow by Will Parson, Chesapeake Bay Program.

What Is a Conservation Easement? And is it right for me?

A conservation easement is an agreement between a landowner and a private land trust or a governmental conservation agency that limits future development on a property. In doing so, an easement protects the land you love for the benefit of current and future generations.



Photo by David Anheld

The purpose of a conservation easement is to protect a property's particular conservation values, whether that be its farm, forest, water, scenic or cultural attributes. Conservation easements offer flexibility and each one is unique; the terms of an easement and the protections placed on the property are negotiated between the landowner and the conservation organization. Typically, those terms:

- Limit the amount of subdivision and development allowed on the property;
- Protect important natural resources, including streams, productive agricultural soils, forests and natural habitat areas;
- Limit dumping, mining, grading, blasting on the property;
- Allow continuation of productive rural uses, such as agriculture, forestry, hunting, and fishing;

The restrictions in the easement run with the land and apply to all future landowners. The landowner who donates the easement continues to own, use and control the land subject to the terms of the easement. The landowner still decides who has access to the property and for what purpose, just as before. The conservation organization is responsible for enforcing the terms of the conservation easement.

Landowners who donate conservation easements make a difference in their communities. People donate easements because of their love of the land and their desire to see it protected forever. Their actions also foster land and resource stewardship that benefits all of us with: clean water, productive farm and forestland, thriving natural habitats, climate resiliency, and beautiful vistas. For these and many other benefits associated with conserving their land, landowners may also be eligible to receive tax benefits for their charitable donation.

“[A conservation easement] allowed us to stay on the farm and keep it in the family and keep the land open, keep the property intact and beautiful. It was a life preserver for us that was thrown out and we’re still hanging onto it. You take care of the land and the land takes care of you.”

Dean and Carina Elgin

Mountain Hollow Farm, Fauquier County
Dairy and cattle operation. Virginia Century Farm.





Photo by Hugh Kenny

Tax Benefits of a Conservation Easement Donation

Most conservation easements in Virginia are donated by a landowner, although in limited circumstances a conservation organization may be able to purchase a conservation easement. Both options bring the peace of mind that the land is protected forever; however, by donating a conservation easement, a landowner may be eligible for income and property tax benefits due to the significant public benefit associated with the protection of the land. Tax benefits will be based on the difference between the market value of the land before the donation and after the conservation easement is in place. These values are determined by a qualified appraiser of the landowner's choice.



Photo by Marco Sánchez

Enjoying the view of protected landscape after a hike to PEC's Piedmont Memorial Overlook in Paris, VA.

Virginia Land Preservation Tax Credit

In Virginia, landowners who donate a conservation easement may be eligible for a Land Preservation Tax Credit (LPTC) equal to 40% of the value of their donation. These tax credits can be used to directly pay the landowner's Virginia income tax liability, and as a result, each \$1 of credit is actually worth \$1 to the landowner.

- Each individual taxpayer can use no more than \$20,000 in LPTCs per year.
- Unused LPTCs may be carried forward for an additional 10 years (up to 11 years in total).
- Virginia caps the statewide total amount of LPTCs issued to landowners in any one calendar year at \$75 million.
- Landowners may also choose to transfer or sell their LPTCs to other Virginia taxpayers, an incentive that may be particularly beneficial to those that do not have the income to use all the credits themselves.

For example: A landowner who donates an easement worth \$500,000 would receive \$200,000 in land preservation tax credits (40% of \$500,000). The landowner could use those credits to offset their own Virginia income (up to the \$20,000 per year individual annual cap) and sell the rest to other Virginia taxpayers.

Credits can be traded among private parties or through an attorney, accountant, or tax credit broker. After paying Virginia Department of Taxation fees and other transaction costs, landowners typically net about 80 cents on the dollar when they sell their credits.

The explanation of complex tax and land planning issues provided in this fact sheet has been greatly simplified. For more detailed information and to ensure that a conservation easement donation will qualify for the described tax deductions in your particular situation, you are encouraged to seek professional legal and tax advice. Piedmont Environmental Council staff cannot assure the deductibility of a conservation easement donation or the applicability of the benefits described.

Tax Benefits of a Conservation Easement Donation *continued*

Photo by David Anhold

Federal Income Tax Deduction

Conservation easement donors also may be eligible for a federal income tax deduction. This deduction would be equal to the value of their easement donation, minus the value of any state income tax credits, such as the LPTC, received in exchange for the donation.

The landowner can claim that deduction at the rate of 50% of their federal Adjusted Gross Income (AGI) per year. Any remaining deduction may be carried forward an additional 15 years (up to 16 years in total).

Further, landowners who are farmers earning more than 50% of their income from agriculture in the year they donate the conservation easement may deduct the donation at the rate of 100% of AGI every year the deduction is available.

For example: A landowner who donates an easement worth \$500,000 and receives \$200,000 in Virginia LPTCs, could be eligible for a \$300,000 federal tax deduction to be used at the 50% rate (or 100% rate for farmers) and carried forward up to 15 years as described above.

Estate Taxes

Very few Americans have estate taxes due upon their death. In the rare circumstances where the value of the estate is exceptional, the estate tax rate is 40% of the total assets over an IRS-determined exclusion amount. In such circumstances, donating an easement may help reduce the estate tax burden by lowering the value of the taxable estate and allowing for an exclusion of up to \$500,000 of the protected property's value from the estate.

Reduced Property Taxes

Some counties use Virginia's Land Use Assessment Program for determining property taxes. In these counties, land that is protected with a conservation easement may be taxed based on its "use value," which could result in a lower property tax bill than if the property were taxed at its "market value."

Counties that do not use Land Use Assessment, simply tax land under conservation easement at its reduced value under the easement.

“We look at all the different farms in the area – families we know – and many are struggling to survive in agriculture. We want our kids to be able to farm and provide for future generations. And that’s kind of the whole goal of this.”

Tom and Kim Nixon

Glenmary Farm, Orange County
Cattle, turkey and grain operation.



Glenmary Farm owners, Tom and Kim Nixon, with their daughter Elizabeth and son Robert.



Photo by Bruce Jones



Photo by Marco Sánchez

Cost & Cost Assistance

As with most real estate transactions, a landowner may incur the costs of working with legal counsel, an appraiser, an accountant, and sometimes a surveyor. Additionally, conservation organizations and agencies that hold easements may ask the landowner for a stewardship donation to help cover the expense of ensuring the easement terms are forever upheld. In certain circumstances, PEC and other conservation organizations have funds available to alleviate some of the costs associated with protecting a property.

How do I get started?

The first step in donating an easement is to contact the Piedmont Environmental Council (PEC). PEC is a private nonprofit land trust whose knowledgeable staff can guide you through the easement donation process and provide you with up-to-date information on tax incentives.

In Virginia, easements can be donated to a number of public and private entities. The majority of conservation easements in Virginia are held by the Virginia Outdoors Foundation (VOF), which is a quasi-state agency. In some cases, the Virginia Department of Historic Resources, the Virginia Department of Forestry, or a local county government may be the best entity to accept your easement. PEC staff will work with you closely to evaluate your options and help you choose the right easement holder for you and your land.

“We are blessed to have springs, fields, and forests bringing a diverse array of plants and animals to our property. By placing our land in conservation easement, we could ensure all of it is protected for our children and grandchildren to enjoy.”



Samantha Adhoot
Rappahannock County
Landowner.

For further information about the donation of easements, please contact PEC:
540.347.2334
easementinfo@pecva.org

Protected Land in the Piedmont

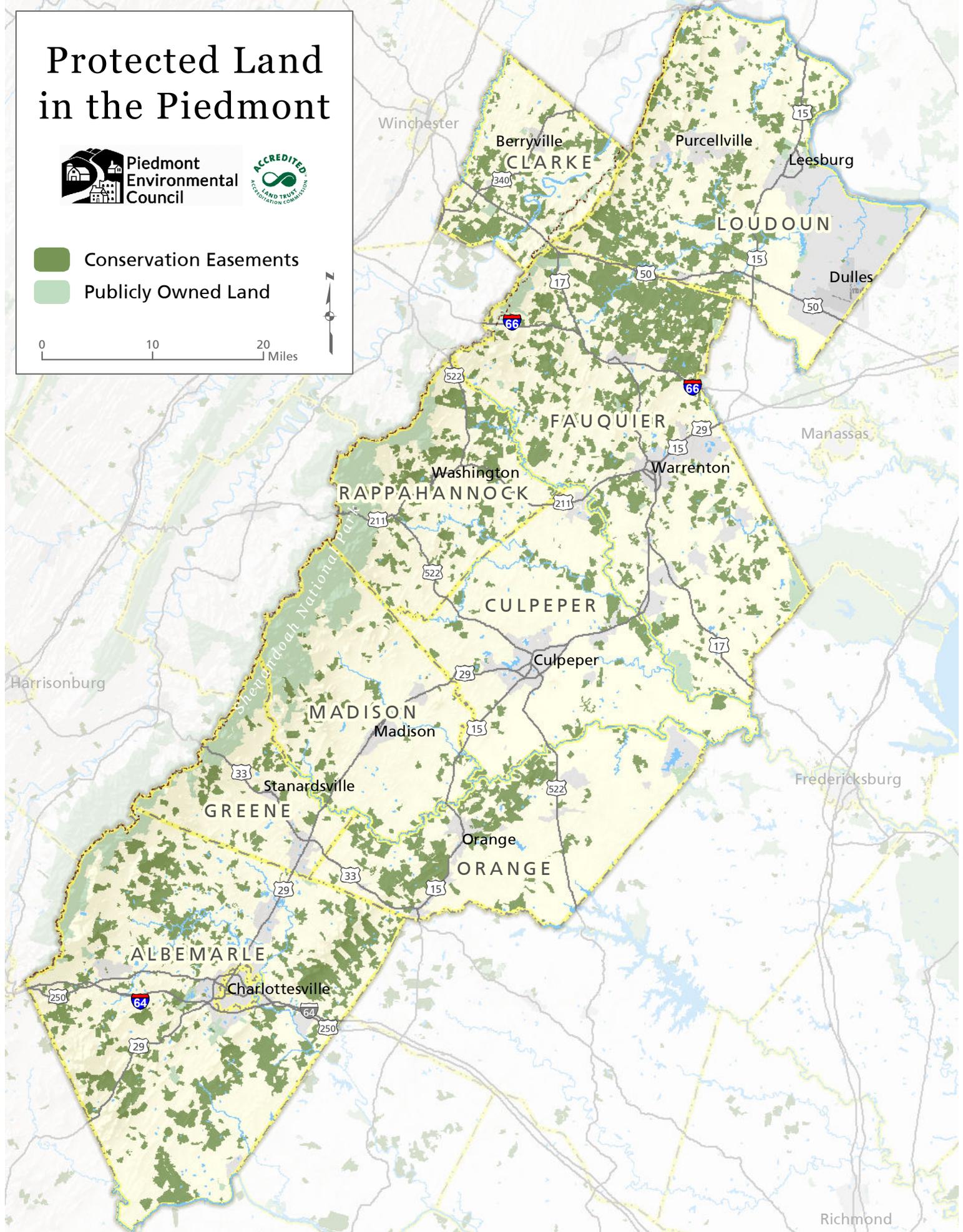


Piedmont Environmental Council



- Conservation Easements
- Publicly Owned Land

0 10 20 Miles





The Piedmont Environmental Council, founded in 1972, is an accredited land trust and community-supported non-profit organization dedicated to protecting and promoting the natural resources, rural economy, history and beauty of the Virginia Piedmont.



Piedmont Environmental Council

pecva.org



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