

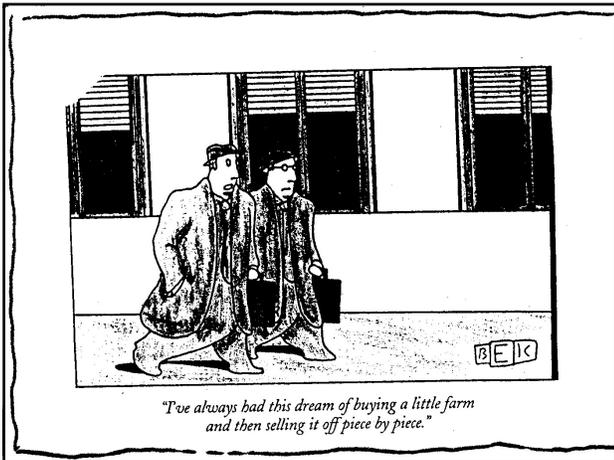


1

### VOF's Mission:

- The Virginia Outdoors Foundation (VOF) was created by the General Assembly in 1966.
- *"The Virginia Outdoors Foundation is established to promote the preservation of open-space lands and to encourage private gifts ...to preserve the natural, scenic, historic, scientific, open-space and recreational areas of the Commonwealth."*

2



3

The biggest threat to farming and open space is the advance of suburbanization and development into our rural areas.

*Easements are the strongest tool to protect your farm.*

4

### Easement Characteristics:

- **Voluntary**
- **Flexible** to protect unique land features and allow for individual situations
- **Perpetual** (required for tax benefits)
- **Cost effective**— keeps land on tax roles
- **Significant tax benefits**
- The **community benefits as well**, as easements protect air quality, soil, water quality, rural character

5

### What a VOF easement Does and Doesn't Do

- Easements keep land from being broken up into subdivisions or shopping centers.
- You can still sell your land or pass it on to children
- You can continue to farm, hunt, fish, or harvest timber on your land.
- You can change types of crops and continue rural uses such as home occupations.
- It does NOT give the public access to your land.
- Easements are totally voluntary, but they also are forever.

6



**WHY  
WOULD A  
LANDOWNER  
GIVE AN  
EASEMENT?**

**The first and most important reason:**  
Landowners loves their land and want it to stay rural.  
Farmer wants the farm to remain a farm in next generation  
Landowners want to keep a place for wildlife  
Parents want a family place to be able to stay in the family

*The other reason:* significant tax benefits

7

## Open-Space Preservation Trust Fund



**Costs That the Fund May Reimburse:**

1. Legal costs
2. Appraisal and other costs
3. Survey if needed

8

**WHAT IS IN AN EASEMENT?**

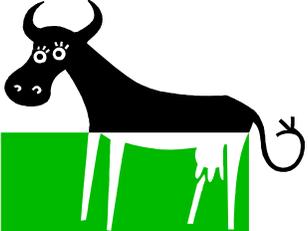


9

### Division of land:

Best always to remain as a whole is possible.  
Parcelization has the greatest impact on open space.

Each property is unique. Its conservation features and size determine whether dividing the property is workable.



10



**Dwellings:** One or more free-standing dwellings total usually stipulated. Dwellings are part of the overall impervious surface cap.

11

### Other easement terms:

- **Forest Management:** BMP's and Pre-harvest Plan when timbering.
- **Farm Buildings:** Roof area part of the total impervious surface cap.
- **Impervious Surface:** Approximately ¼ of 1% of property area.
- **Stream Buffers:** strongly recommended esp. for rivers, perennial or significant streams. Livestock usually excluded.



12

*VOF helped landowners protect over **860,000** acres in **108** localities  
4,000 miles of river and stream protected.*



13

*Conservation Easements – a flexible, cost effective choice for  
private landowners to safeguard rural lands and resources.*



14

*For more information :*



**Virginia Outdoors Foundation website:**  
[www.virginiaoutdoorsfoundation.org](http://www.virginiaoutdoorsfoundation.org)

**Contact Info:**  
Sherry Buttrick 434-293-3423 or 953-2540 (c)  
sbuttrick@vof.org

15

---

## 10 STEPS TO CONVEYING AN EASEMENT TO VOF

### STEP 1: CONSIDERATION OF PLACING AN EASEMENT ON YOUR PROPERTY

Contact a Virginia Outdoors Foundation (VOF) regional office to request information and to discuss the general easement process. After that, if you are interested in further exploring the possibility of donating an easement, please call the regional office to discuss your goals with an Easement Project Manager. The Easement Project Manager may do preliminary research to find out what the conservation attributes of your property are.

### STEP 2: SITE VISIT

If your personal objectives for the land are compatible with VOF Easement Guidelines, we will arrange to visit your property. On site we will observe and inventory the features of your property, its natural resources, and its open-space characteristics. We will discuss with you options for an easement project that will meet your goals and at the same time protect the conservation values of the property.

### STEP 3: GETTING ADDITIONAL HELP

Once you understand the ramifications of placing an easement on your property and feel comfortable that such an easement will meet your goals for the property, you should discuss this matter with your attorney or tax advisor. If your property has a mortgage lien on it, you should also discuss the potential easement with your mortgage lender, because the mortgage lender will be required to subordinate its lien to the easement. In addition, many landowners will talk to an appraiser at this juncture to get a ballpark idea of the potential tax benefits of placing an easement on their property.

### STEP 4: PRELIMINARY AGREEMENT

Your VOF staff person will work with you in developing a “Terms Agreement”, confirming the basic requirements that will be included in the deed of easement. If you wish to proceed with the easement at this stage, you will be asked to sign the Terms Agreement. You will also have to fill out and sign a VOF application, an “Open-Space Easement Disclosure” and (if applicable) a Preservation Trust Fund application.

### STEP 5: TITLE WORK AND PROPERTY BOUNDARIES

After the Terms Agreement is signed, VOF will order a title search of your property. Upon receipt of the title report, VOF staff will analyze all deeds and survey plats and utilize GIS mapping programs to determine if the boundaries of your property are clearly delineated. If this analysis finds the property descriptions to be lacking in accurate data, new surveys may be required for a portion (or all) of the property.

### STEP 6: STAFF REVIEW

A VOF project review team will discuss the characteristics of your property and the proposed easement terms and will analyze any title or property description issues and what steps may be necessary to resolve them. The team may suggest additional or modified easement terms to ensure that the project can be recommended favorably to the Board of Trustees (the “Board”).

---

## STEP 7: BOARD MEETING PREPARATION

- a. **Draft Deed:** Your VOF staff person will draft a deed of easement for you to discuss with your attorney. Between your VOF staff person and your attorney, multiple revisions may be necessary to ready the project for submission to the Board. The final draft of the deed must be approved by you and your attorney on or before the Easement Draft Deadline prior to the board meeting at which you wish to submit your easement for consideration. (See page 3 for Easement Draft Deadlines.)
- b. **Easement Summary:** Prior to submission of your easement to the Board, you will receive a summary of your easement and pertinent maps identical to the material the Board will review. Please review these documents carefully to make sure they accurately reflect the terms that you have agreed to.
- c. **Submission to the Board:** If you wish to have your proposal proceed to the board meeting for its consideration, you will have to pay the \$1,500 Board Review Fee for Acquiring Easements (“Board Review Fee”) by the due date shown in the table below.
- d. **Fees:** In addition to the Board Review Fee, there is an additional fee of \$3,000–\$3,500 for preparation of a Baseline Documentation Report. Preservation Trust Fund (PTF) grants are available to help income-eligible landowners with expenses, including the Board Review Fee and other costs of conveying an open-space easement to VOF such as legal, appraisal, and survey costs. Priority is given to applicants who demonstrate financial need and who wish to convey an easement on a family farm. If you think that you may qualify, discuss this with your VOF staff person.

## STEP 8: BOARD MEETING

- a. Your easement proposal must be approved by the VOF Board. The Board will meet four times in 2022 on the dates shown in the table below to consider easement proposals. Staff will present your proposal to the Board with its recommendation.
- b. The Board may approve the proposal, approve it conditioned upon modification(s), or disapprove it. The Board’s approval does not obligate you to complete the easement process and record the easement. You may finalize and record the easement any time within one year of Board approval. After that, if you wish to record the easement, your project proposal must be resubmitted to the Board with a \$1,000 reconsideration fee. However, if there are no changes in the terms and conditions, the one-year recordation period may be extended by the VOF Executive Director, who may also waive the fee for good cause shown.
- c. Prior to recordation, a proposed change in any terms of the easement that would result in a less restrictive easement than the one approved by the Board must be resubmitted to the Board for reconsideration.

## STEP 9: BASELINE DOCUMENTATION REPORT (BDR)

- a. A Baseline Documentation Report (BDR) must be completed before your easement is finalized. (If you intend to apply for tax benefits after recording the easement, the federal tax program for conservation easements requires that you make available to VOF a BDR describing the characteristics and condition of your property prior to recordation of the easement.) The BDR contains maps and photos of your property and related documents. It establishes in detail the condition of the property at the time of the gift and becomes the basis of comparison for future monitoring of the easement.
- b. VOF prepares the majority of BDRs for landowners. However, entities other than VOF may prepare BDRs. After Board approval, you will be asked to decide whether you want VOF staff or a different entity to prepare

your BDR. If VOF prepares the BDR, a fee of \$3,000-\$3,500 will be charged at the time the report is completed. If the report is prepared by a different entity, it must meet VOF quality standards, and a BDR review fee of \$1,500 will be charged when you submit the report to VOF. Whether VOF or a different entity prepares the report, it will be sent to you for your review and, if necessary, corrections. Once the information in the BDR is accurate, all owners of the property must sign the “BDR Acknowledgment Form” and return it to VOF.

**STEP 10: FINALIZING DEED OF EASEMENT AND RECORDATION**

- a. Your attorney will send the deed of easement to VOF for final review. We will suggest final edits, if any, and return the deed to your attorney for final document preparation and the obtaining of signatures. All legal owners must sign the deed, and any mortgage lender and its trustee(s) must sign the deed to subordinate the deed of trust to the deed of easement. VOF signs the deed last. The VOF staff member authorized to sign deeds of easement will not sign the deed until it is verified that the signed VOF Application and Disclosure forms, as well as the BDR and the BDR Acknowledgement form, are in our files. After such verification, VOF signs the deed.
- b. VOF will send the fully executed deed of easement back to the title company handling your project, which, after doing a final title search (“performing a title bring-down”), will record the deed in the courthouse of the locality(ies) in which the property is located.

**ADDITIONAL INFORMATION**

The dates of board meetings in 2022 and final draft deadlines for each board meeting are as follows:

Easement Draft Deadlines	Board Review Fee Payment Due Dates	Board Meeting Dates
February 7, 2022	March 25, 2022	March 31, 2022
May 16, 2022	June 24, 2022	June 30, 2022
August 1, 2022	September 2, 2022	September 8, 2022
September 19, 2022	October 28, 2022	November 3, 2022

**SUBORDINATION OF DEED OF TRUST**

A lender holding a deed of trust on your property must subordinate its deed of trust to the easement to protect the easement in the event of foreclosure and also for your easement to be a tax-deductible charitable contribution under federal tax law. You or your attorney should contact the lender early in the process, both to confirm willingness to subordinate and because the lender’s review may take a long time. In addition, the lender may require an appraisal prior to agreeing to subordinate its lien, which may affect the sequence of events set forth here or the costs of completing your easement. Potential easement donors often experience significant delays and sometimes other problems getting a lender to subordinate its lien. In some cases, landowners have had to refinance a loan in order to get a lender willing to subordinate its deed of trust to the VOF easement.

**APPRAISAL**

VOF does not require an appraisal for a gift of easement. However, in order to claim a federal tax deduction or a state tax credit for a non-cash charitable gift such as a gift of easement, you must engage an independent appraiser to determine the value of your gift. The IRS requires that the appraisal be made by an IRS-defined qualified appraiser;

---

a Certified General Appraiser will probably qualify. We do not make specific recommendations as to which appraisers you should use, and we are not involved in the appraisal process. To satisfy IRS requirements, appraisals must be dated no earlier than 60 days prior to recordation of the gift and no later than the due date (with any extensions) of your tax return.

## TIMING OF EASEMENT DONATIONS

We recommend that you take plenty of time to think through the donation of an easement, because an easement is forever. If you have decided to donate an easement and wish to do so prior to the end of a particular calendar year for tax purposes, there are several reasons to begin the process as early as possible in that calendar year:

- ✦ There is a limit on the amount of tax credits that the Department of Taxation may issue. The tax credit ceiling is currently \$75 million per calendar year.
- ✦ The Department of Taxation does not guarantee that any LPC-1 Applications for Land Preservation Credits filed after the close of the first business day of November 2022 will be processed in time to issue the credits and enable you to make transfers of credits in 2022. In order to meet this filing deadline for projects going to the board in September of this year, you should be in contact with your attorney, your appraiser, and your tax advisor so that their respective tasks can be coordinated and completed in order to meet this deadline.
- ✦ Tax credits of \$1 million or more will be issued by the Department of Taxation only if the conservation value of your donation has been verified by the Director of the Department of Conservation and Recreation (DCR), based on criteria adopted by the Virginia Land Conservation Foundation (VLCF). In order to avoid an adverse post-filing decision from DCR, you may obtain a pre-filing review of the conservation value through DCR. Contact Suzan Bulbulkaya at DCR (804) 371-5218.
- ✦ Several steps, such as the appraisal, bank subordination, legal review, and tax credit registration, may take a long time to complete.
- ✦ VOF staff, landowners' attorneys, appraisers, and others involved in the easement process will have more time to work on projects in the first three quarters of the year, and projects incomplete by the fourth quarter may exceed staff's capacity to complete before the end of the year.



## Tax Benefits of Conservation Easements

The gift of an open-space easement in perpetuity to the Virginia Outdoors Foundation (VOF) may qualify as a non-cash charitable gift, providing the donor with various tax benefits. A donor applying for tax benefits must hire an independent certified appraiser to establish the value of the easement, which value is primarily based on the value of the development rights relinquished. Once that value is established, it becomes the basis for calculating tax benefits.

**Federal Income Tax Deduction.** Donations of open-space easements that meet federal tax code requirements may entitle the donor to federal income tax deductions. For tax year 2021 and thereafter, the deduction is limited to 50% of adjusted gross income, which if not used up in 2021, may be carried forward at 50% of adjusted gross income for an additional fifteen years or until the donation is fully expended, whichever comes first. In addition, a farmer or rancher who receives in 2021 or thereafter more than 50% of adjusted gross income from the trade or business of farming or ranching is eligible for a tax deduction of 100% of adjusted gross income with the same carry forward right. IRS Form 8283 must be filed to obtain this deduction. Form 8283 requires attachment of a copy of the appraisal, an appraiser's declaration, VOF's acknowledgement of the gift, copies of the deed as recorded and the baseline documentation report.

**Certain federal court cases raise serious questions as to (1) whether an easement provision that allows substitution of property not under easement for property initially placed under easement or (2) whether an easement that does not provide for building envelopes or that allows for movement of building envelopes on the property ("floating" building envelopes) meets the requirements of the Internal Revenue Code and allows the federal deduction for the contribution of a conservation or open-space easement. There are conflicting court opinions amongst recent cases, and the issue has not yet been addressed by the Fourth Circuit Court of Appeals covering conservation easements granted in Virginia. See in particular *Bosque Canyon Ranch II, L. P. v. Commissioner*, 867 F. 3d 547 (5<sup>th</sup> Cir. 2017), *Pine Mountain Preserve, LLLP v. Commissioner* 151 T. C. 14 (2018), and *Pine Mountain Preserve, LLLP v. Commissioner*, No. 19-11795 (11th Cir. 2020) overruling the 2018 tax court decision.**

**Reduction in federal charitable deduction:** Treasury Regulations, effective August 28, 2018, reduce the federal charitable deductions for gifts of qualifying open-space or conservation easements by the amount of the land preservation tax credit (40% of the easement value). For example, if a landowner gives VOF an open-space easement with an easement value of \$500,000, if applied for the state tax credit would be \$200,000 and the federal deduction would be reduced from \$500,000 to \$300,000.

## **Federal Estate Tax Reduction and Exclusion from Estate Tax.**

- (a) Extinguishing some or all of the development rights for a parcel of land through a conservation easement may substantially reduce the value of the land for estate tax purposes, thus reducing estate taxes.
- (b) In addition, Section 2031(c) of the Internal Revenue Code provides an estate tax exclusion from the gross estate of up to 40% of the easement-encumbered value of the land protected by a qualified conservation easement. The exclusion is capped at \$500,000 and is reduced if the conservation easement reduced the land's value by less than 30% at the time of the contribution. To qualify the easement must prohibit all but "*de minimis* commercial recreational use" of the property, and a number of other requirements must be met. Consult your tax advisor about this exclusion.

**Virginia State Tax Credit.** A Virginia state tax credit has been established for conservation easements at 40% of the value of the easement. The amount of the credit claimed by a taxpayer, including amounts carried over from prior taxable years, may not exceed \$20,000 for taxable year 2021, but you may carry over any unused credit for a maximum of 13 consecutive taxable years following the taxable year in which the credit originated. For each taxpayer, in any one taxable year, the credit used may not exceed the amount of income tax otherwise due. In addition, any unexpended portion may be transferred to another Virginia taxpayer. A recent tax court opinion suggests that the income from the sale of tax credits held for more than one year prior to sale may receive more favorable long-term capital gains treatment. (*Check with your tax advisor or attorney to determine whether and when tax credits should be sold.*) Tax credits of \$1 million or more will be issued only if the conservation value of the donation has been verified by the Director of the Department of Conservation and Recreation (DCR) based on criteria adopted by the Virginia Land Conservation Foundation. Pre-filing review of the conservation value is available through DCR. There is a \$75 million limit on the amount of tax credits that the Department of Taxation may issue in each calendar year. Form LPC-1 must be filed with the Department of Taxation for registration of credits and Form LPC-2 for transfer of credits. **Timing of tax credit application: For the conveyance of a conservation easement made on or after January 1, 2020, no credit shall be allowed unless a complete application for tax credit has been filed with the Department of Taxation by December 31 of the second year following the calendar year of the conveyance.**

**Local Property Taxes.** Local property taxes may be reduced with respect to land (but not dwellings, farm buildings, or other improvements on the land). However, if land is already assessed at "use value", for example, enrolled in a locality's land-use assessment taxation program, an additional reduction in taxes is unlikely.

*VOF provides this information about tax benefits to assist landowners, but not as tax advice. Please check with your tax advisor or attorney about qualifying for any tax benefits associated with conservation easements.*



# FACT SHEET

[www.virginiaoutdoorsfoundation.org](http://www.virginiaoutdoorsfoundation.org)

## ABOUT THE VIRGINIA OUTDOORS FOUNDATION

**HISTORY:** The Virginia Outdoors Foundation (VOF) was created by the General Assembly in 1966. Its creation was among the recommendations of the 1964 Virginia Outdoor Recreation Study Commission, which also included the creation of an Historic Landmarks Commission, a system of scenic byways, and an enlarged state park system. VOF is governed by a Board of Trustees appointed by the Office of the Governor.

**PURPOSE:** VOF's purpose under law is to "promote the preservation of open space lands and to encourage private gifts of money, securities, land or other property to preserve the natural, scenic, historic, open-space and recreational areas of the Commonwealth."

**EASEMENTS:** The primary tool that VOF has used to accomplish its mission is open-space easements. VOF currently holds easements on nearly 850,000 acres in 109 localities. These easements protect a wide variety of natural resources, including farm and forest land, natural areas, watershed areas, parkland, rural historic districts and the settings for historic homes, scenic views, and lands adjacent to public parks and game preserves. VOF holds over 4,000 easements—more than any land trust in the nation.

**OTHER LANDS:** VOF owns approximately 4,400 acres of open-space land, including 2,350 acres in the Bull Run Mountains in Northern Virginia. Some of these sites help meet a demand for public access and low-intensity recreational use at negligible cost to the Commonwealth.

**OPEN SPACE LANDS PRESERVATION TRUST FUND:** The 1997 General Assembly created the Open Space Lands Preservation Trust Fund to assist landowners with the costs of conveying conservation easements and to purchase all or part of the value of easements. Priority for funding is given to applications: 1) on family farms or with public access, 2) with demonstrated financial need, and 3) for cost-only projects. To date, VOF has allocated more than \$7 million from the fund to help landowners cover the costs associated with protecting their land.

**STEWARDSHIP:** As the number of conservation easements VOF manages grows, monitoring and stewardship become increasingly important. VOF must assist the heirs or the new owners of lands under easement in understanding of the terms of the easement. VOF staff responds to questions from landowners, prospective buyers, real estate agents and attorneys on an ongoing basis and regularly engages in the review of forestry plans, building plans, infrastructure projects, and VDOT road projects to make sure the conservation values in easements remain protected. This stewardship function of the conservation easement program is crucial to its overall success.