

Using Conservation Easements to Make Trails Happen



Sarah Richardson, Land
Conservation Coordinator

How do we protect land?

Land conservation = acquisition

- **What** is acquired?
 - **Fee simple interest**
 - **Conservation easements**
 - ★ **Most land protection in Virginia is done through easements**

Who acquires the land?

- **State & federal agencies**
- **Local governments**
- **Private land trusts**

How is it acquired?

- **Purchase**
- **Donation**

State Programs for Land Conservation: A Three-Legged Stool

1. Virginia Land Conservation Foundation

- **Competitive matching grant program for individual projects**
- **Eligible: state agencies, local governments, nonprofits**
- **Grant applications ranked by an interagency team**
- **Future funding unknown**



State Programs for Land Conservation: A Three-Legged Stool

2. Purchase of Development Rights

- Office of Farmland Preservation (VDACS)
- Matching funds to localities – not competitive
- Like VLCF, funding is uneven



3. Tax Incentives

- Generous federal and state tax incentives for donations or bargain sales
- Landowners donate conservation easements to private land trusts, VOF, state agencies, soil & water conservation districts, or localities

What are conservation easements?



Owning Land

- Landowners possess a collection of rights that are like a bundle of sticks.
- Each stick in the bundle represents a right the landowner possesses.
- These include the right to:
 - occupy the land;
 - use the land;
 - sell the land, give it away, or bequeath it in a will;
 - keep others off the land; and
 - subdivide the land.
- Owning all the sticks is called “fee simple” ownership.



Conservation Easements

- A conservation easement is a voluntary, legally binding, and perpetual agreement created when a landowner gives or sells a few of their property rights (some of the “sticks in the bundle”) to another party, who holds those rights in public trust forever.
- The landowner does this with the express intention of conserving some characteristics of the land.
- Enforcement of the easement is transferred to a public body or a “holder.”



Conservation Easements

- By giving up some rights from the “bundle of sticks,” a landowner ensures that the property will be protected from unrestricted development forever.
- The landowner retains possession and use of his land, while conserving the property for future generations and potentially realizing some of the financial gain from that asset.

Conservation Easements

- **Rights commonly given up in a conservation easement are:**
 - ✓ The right to subdivide,
 - ✓ The right to build new structures,
 - ✓ The right to engage in activities that may endanger the resource(s) being protected.
- **These rights are given up forever.**

Conservation Easements

- Rights that are not given up in a conservation easement:
 - ✓ The right to sell or give the land away,
 - ✓ The right to occupy the land,
 - ✓ The right to use the land in any way that does not endanger the resource being protected,
 - ✓ The right to exclude others from the property (except the easement monitor),
 - ✓ Any right not specifically mentioned in the conservation easement.

Who Holds Conservation Easements?

The Code of Virginia authorizes public bodies and “holders” to receive conservation easements.

- **Public bodies are state agencies, counties or municipalities, park authorities, Soil & Water Conservation Districts, or community development authorities.**
- **Holders are defined by Va. Code as charitable organizations whose primary purposes include protecting natural, historic, or open-space values of real property.**

What Are the Best Candidates for a Conservation Easement?

- A landowner who is motivated by love of the land and desire to preserve it.
 - Tax incentives are great, but they won't make the landowner wealthy!
- Land that has good conservation value, in an appropriate location.
- Land that doesn't require intensive management.
- Current and future uses of the land are compatible with preservation.

Tax Incentives

- **To qualify as a charitable contribution, a donation must be:**
 - **In perpetuity (permanent);**
 - **Made to a qualified grantee (land trust or public agency); and**
 - **Must meet at least one of the following conservation purposes:**
 - ✓ **Preservation of land for public outdoor recreation or education**
 - ✓ **Protection of relatively natural habitats of fish, wildlife, or plants**
 - ✓ **Preservation of open space including farm and forest land**
 - ✓ **Preservation of historically important land or buildings**

Federal Tax Deductions

- **Generous deduction**: Landowners who donate a conservation easement on their land can apply the value of the donation as a deduction on up to **50%** of their adjusted gross income (AGI).
- **Farmers**: Qualified farmers and ranchers (50 percent of income from agriculture) can deduct the value of the donation on **100%** of their AGI each year.
- **Carry forward**: The donor can carry the deduction forward for **15 years**.
- **2008 and 2009** – these rules expire 12/31/09 unless Congress decides to extend them.

Other Tax Incentives

- **Capital gains tax exclusion**
 - If the land is dedicated to open-space use, any profit on the sale of land or an easement on land is not taxed.
- **Estate and gift taxes**
 - Donation of a conservation easement reduces the assessed value of the land, which can reduce the tax liability of an estate or taxes due on gifts of land.
- **Property taxes**
 - Land restricted by a conservation easement is eligible for reduced property taxes.

Virginia Land Preservation Tax Credit

- LPTC is a credit against Virginia state income tax available to landowners who donate any interest in land for a conservation purpose in perpetuity.
 - ★ The credit is worth 40% of the appraised value of the easement.
 - ★ The recipient can use the credit for their state taxes or sell it to another taxpayer.
 - ★ “Land-rich, cash-poor” landowners can receive cash and still own their land.

Virginia Tax Credits

- Cap: each year, tax credits granted will be capped statewide at \$100 million.
 - Cap is indexed - \$102 million in 2008
 - First come, first served – donations that come in after the cap is reached are rolled over to the next year.
- Carry forward: Tax credits can be claimed in the year of the gift and the subsequent 10 years or until used up.

Example of Land Preservation Tax Credit

- **Ms. Jones owns 100 acres of land with an appraised value of \$300,000.**
 - ★ **She donates a conservation easement, which reduces the value of her property by giving up subdivision rights and restricting development.**
 - ★ **After the donation her property has an appraised value of \$200,000.**
 - ★ **Therefore, the appraised value of the easement is \$100,000.**

Appraised Value of Ms. Jones' Conservation Easement

Property Value Before Easement = \$300,000

Property Value After Easement = \$200,000

Value of Conservation Easement = \$100,000

Land Preservation Tax Credit = 40% of \$100,000

Land Preservation Tax Credit = \$ 40,000

So What Can YOU Do?

- **Encourage localities to enact open-space conservation zoning and PDR programs**
- **Landowner outreach**
 - **Hand out brochures or other publications**
 - **Hold landowner information meetings**
- **What to do in the absence of funding**
 - **Encourage donations**
 - **Track inquiries to demonstrate need**
 - **Refer landowners to appropriate easement holders**

DCR's Office of Land Conservation

Sarah Richardson

(804) 225-2048

sarah.richardson@dcr.virginia.gov

www.dcr.virginia.gov/land_conservation/

