

Preserving Shenandoah



Virginia Cooperative Extension and the Shenandoah County Easement Authority

June 2010



In recent years Shenandoah County citizens have expressed the desire that Shenandoah County should sustain its rural character. The exact definition of this rural character varies among citizens. However, it includes descriptors like working farms, scenic vistas, dark skies, forested land, good water quality and sustainable agriculture. This desire is echoed in the Shenandoah County Comprehensive Plan, in the Virginia Cooperative Extension Situation Analysis, and by many other groups and individuals.

This publication was developed to serve as an unbiased source of information for citizens with interest in this topic. The information contained herein is intended to empower individuals to make informed decisions and/or choices for their property.

What is a Conservation Easement?

Easements are legal documents that allow individuals to keep their property yet convey certain specified rights to an easement holder. Conservation easements are authorized in Virginia under the Open Space Land Act and the Conservation Easement Act. The rights associated with owning land are often compared to a bundle of sticks. Each stick represents a specific right associated with the property. Such rights include the right to farm, to hunt, to extract minerals, to cut timber, to subdivide, and to do anything else with a property not prohibited by law. Any one of these rights can be legally separated from the fee simple interest—ownership of the land itself—through an easement and transferred to other parties in a “less than fee” or “partial interest” agreement. Frequently easements are granted to utility companies so power and telephone lines can cross a property. A neighbor might grant an easement so the owners of an adjacent parcel can cross their land to access a road or bring cattle to a watering hole. When such transfers involve a landowner’s development interests, they are called *conservation easements*. For example, through a *conservation easement*, a landowner can forgo development rights or the right to subdivide property beyond a specified number of

parcels. The terms of an easement are written specifically to meet the property owner’s wishes for the future use of the land while also protecting the conservation values of the property, which can include scenic, historic, agricultural, forestry, and/or open space values. The easement holder is responsible for seeing that these terms are upheld by future owners of the land.

An easement does not grant the public access to a property unless its owner specifically agrees in the easement document to grant such access. The land remains private property and is protected from trespass just as any other private property. Placing an easement on land does not necessarily mean that no more houses can ever be built on the land. The landowner can retain the right to build a specified number of houses. However, this may affect the value of the easement.

Land under conservation easements can still be sold, rented, bequeathed, or otherwise transferred but the conservation easement is recorded and therefore binds future owners of the land. If prohibited by the easement, the land cannot be subdivided or converted to more intensive uses. The property remains in its current use or a compatible use permanently.

What's In It for Me?

There are two basic reasons that most people establish conservation easements on their property. First, the easement might help the landowner achieve a personal goal. Many landowners establish conservation easements because they do not want houses to be built on their land in the future. Other common personal goals include a desire that land remain in forests, a desire to protect water quality, or a desire to keep land in farming. Personal goals may take a myriad of forms. The second most common reason that people establish conservation easements is financial. Many landowners receive financial benefit by establishing conservation easements on their land, either through tax benefits (see the article below) or direct purchase of the easement by a qualified easement holder (see the list on page 3). Funding for the purchase of easements (also known as purchase of development rights or PDR) most often depends on public financing at the federal, state, or local level.



Tax Implications of Conservation Easements

Local, state, and federal laws provide incentives to landowners who protect their land by donating conservation easements. Owners who want their land to remain in agriculture and want to pass it to their heirs may find easement donation attractive. A summary of these tax incentives is outlined below and is for informational purposes only. The tax implications of land conservation depend on the owner's financial circumstances. ***Landowners considering a gift of easement or other real estate transaction should consult their accountant, as well as legal and financial advisors regarding their individual potential to benefit from these incentives.***

Local Real Estate Tax Reductions for Conservation Easements

Virginia law provides real property tax reduction to *land* under conservation easement. The state requires localities to assess the value of eased land based only on the uses of the land that are permitted by the easement. Localities may not tax the value attributable to the uses prohibited by the easement. If a locality has use value (land use) taxation, it must assess and tax *land* subject to an easement as "open space." If a property is enrolled in the land use tax program, an easement will probably have little effect on the real estate tax. If the property is not in the land use tax program, there may be a property tax reduction. Note that houses, farm buildings and other structures are, in all cases, taxed at fair market value.

Federal Income Tax Benefits for Conservation Donations

The donation of a qualifying conservation easement can be deducted from federal taxable income, just like other tax-deductible gifts made to non-profit organizations, up to 30% of the donor's adjusted gross income. The total allowable deduction can be carried forward for up to five succeeding years if it cannot all be used in the year of donation. Donations can sometimes be structured in installments to maximize tax benefits if some tax benefit would otherwise be left unused. The enhanced federal income tax benefits for donations of conservation easements expired on December 31, 2009. These benefits may be renewed and may be made retroactive to January 1, 2010, but renewal is uncertain at this time.

Virginia Income Tax Credits for Conservation Donations

Virginia also offers a state income tax credit for donations of interests in land (including conservation easements) for conservation purposes. A credit is not the same as a deduction (which reduces taxable income on which tax liability is based). A credit is an actual, dollar-for-dollar reduction of taxes owed. It applies to all donations that meet the requirements for federal income tax deduction. A credit of up to 40% of the value of the donated land or easement may be taken. The maximum annual tax credit is \$100,000 and it is transferable. Unused credit can be carried forward for up to ten years and / or sold for use by another taxpayer.

For example, the gift of an easement worth \$600,000 could generate a state income tax credit of \$240,000. If the easement donor pays \$15,000 a year in state income tax, he can use the tax credit to offset \$150,000 of tax (\$15,000 for the year of the donation and for each of the following 10 years). The donor can also sell the remaining unused \$90,000 in credits to another taxpayer. Since the inception of the credit, a market for the sale of these credits, at a discount to the buyer, has developed.

Virginia Income Tax Deductions for Conservation Donations

Virginia income tax is determined with reference to federal taxable income (with some adjustments), so the federal income tax deduction for conservation donation results in an identical deduction for state income tax purposes.

Estate Tax Reductions for Easements

In 2009, there was no federal estate tax on estates valued at \$3.5 million or less. With a modest amount of estate planning, a husband and wife could have conveyed a total of up to \$7 million worth of assets at their deaths (\$3.5 million each). The estate tax is abolished in 2010.

In 2011, the federal estate tax will return with an exemption for estates valued at less than \$1 million, unless the United States Congress acts. Congress is expected to pass an estate tax that would exempt estates of between \$3 million and \$5 million. This would allow an husband and wife, with some estate planning, to pass between \$6 million and \$10 million tax free at their deaths. In addition, gifting and other estate planning tools can help families pass even more property to the next generation free of the estate tax. However, it is uncertain as to what action Congress will take, making estate planning difficult.

For families with estates valued above the exemption amount prior to 2010 and after 2011, a properly structured donation of a conservation easement may reduce estate taxes in two ways:

- by reducing the value of the estate, because the value of the land may be reduced by the conservation easement.
- by additionally excluding from the estate for tax purposes up to 40 percent of the remaining value of the land (after the easement is taken into account, but subject to a \$500,000 cap).

Who Holds Easements?

The list below contains some of the groups that hold easements in Virginia. Selecting someone to hold the easement on your property is a two way street. The landowner developing the easement gets to choose who will hold the easement. However, the group holding the easement can also choose whether or not

they want to hold an easement on your property. Landowners might have specific requirements/ desires that they want placed in the easement. The same goes for easement holders. Each of the groups below has their own goals, requirements, and system for holding easements.

Easement Holder	Contact Information
Shenandoah County Easement Authority	540-459-6190 http://www.shenandoahcountyva.us/committees/cea/
Virginia Outdoors Foundation	434-292-5169 http://www.virginiaoutdoorsfoundation.org/
Potomac Conservancy	540-667-3606 http://www.potomac.org/site/
Shenandoah Battlefields Foundation	540-740-4545 http://www.shenandoahatwar.org/index.php
Virginia Department of Historic Resources	804-367-2323 http://www.dhr.virginia.gov/
Virginia Department of Forestry	540-459-3151 http://www.dof.virginia.gov/land/index.shtml
The Nature Conservancy	434-295-6106 http://www.nature.org/wherewework/northamerica/states/virginia/
Valley Conservation Council	540-886-3514 http://www.valleyconservation.org/
Lord Fairfax Soil and Water Conservation District	540-465-2424 http://lfsxcd.org/
Land Trust of Virginia	540-687-8441 http://www.landtrustva.org/

Easements: One Tool in the Toolbox

Among other things, the vision statement of the Shenandoah County Comprehensive Plan sets the goal that in the year 2025, Shenandoah County will still be a primarily rural community that protects its natural resources. Achieving that goal will take the cooperation of landholders, state, local, and federal governments, local farmers, and the citizens of Shenandoah County's six towns. Over 37% of the total land area in Shenandoah County is designated as a state forest or park, part of a national forest, located within a voluntary agricultural and

forestral district or protected by a conservation easement. Over 4,000 acres in Shenandoah County are protected by conservation easements. While 4,000 acres is certainly no small achievement, it represents less than 2% of Shenandoah County's land area. In comparison, more than 65,000 acres of Fauquier County have been preserved in conservation easements, representing 15% of the county's area.

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Shenandoah County

Shenandoah County Easement Authority: The New Kid on the Block.



Did you know Shenandoah County now supports conservation easements? The Shenandoah County Board of Supervisors approved an ordinance creating the "Conservation Easement Program". The Board felt this tool would help the county landowners protect and preserve farms, forest land, open space, and natural resources. It also helps the county preserve its unique rural character and furthers the goals set out in the Comprehensive Plan.

The "Conservation Easement Program" will be administered by the Shenandoah County Easement Authority. The authority consists of seven members appointed by the Board of Supervisors. Presently the authority is in the process of learning the ropes regarding conservation easements, preparing the process for accepting easements, and generally getting organized.

For more information about the easement authority please contact:

Shenandoah County Dept. of Planning and Zoning
600 North Main Street, Suite 107
Woodstock, VA 22664-1855
540-459-6190

planningzoning@shenandoahcountyva.us

Additional Sources of Information

- VA Dept. of Ag. Office of Farmland Preservation
<http://vdacs.state.va.us/preservation/index.shtml>
- Piedmont Environmental Council
<http://www.pecva.org/anx/index.cfm>
- Natural Resource Conservation Service
<http://www.nrcs.usda.gov/programs/frpp/>
- Extension Publications
<http://www.reap.vt.edu/publications/horizons/conservation%20easements.pdf>
<http://pubs.ext.vt.edu/448/448-094/448-094.pdf>

VCE Shenandoah County
600 North Main Street Suite 100
Woodstock, VA 22664
540-459-6140
raclark@vt.edu
<http://offices.ext.vt.edu/shenandoah/programs/anr/index.html>

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