

CONSERVATION EASEMENTS

“You hear that conservation easements are for places like the outskirts of Richmond and Washington Why in the world do you need them in the boondocks? Because rural areas are the most vulnerable when a developer buys a farm and wants to build a strip mall or turn it into farmettes You certainly do have a lot of leeway with an easement.”

Bath County Easement Donor

Conservation easements protect millions of acres of farmland and open space throughout the United States. Individuals permanently protect their land with conservation easements while maintaining ownership. They still live on their land, and can sell it or pass it on to their heirs.

Conservation easements also reduce taxes that might otherwise rob families of their legacy -- taxes that often force families to sell farms. Families who want to keep their land and protect it from development can receive significant tax advantages through conservation easements.

What are Conservation Easements?

Easements are written legal documents, just like other deeds, in which landowners retain ownership of their property yet convey certain specified rights to an easement holder. Easement holders are nonprofit, charitable land trusts and public entities. Easements are written specifically to meet the property owner’s wishes for the future use of the land. The easement holder is responsible for seeing that these wishes are upheld by future owners of the land. Most conservation easements restrict uses that destroy natural, scenic, or historic areas, while allowing traditional use such as farming and forestry. A sample form for a Deed of Easement is provided in Appendix 4 of this publication.

A conservation 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.²²

How a Conservation Easement Works

Most landowners hold a “fee simple” interest or “dominant estate” in their property. This interest is often compared to a bundle of sticks. Each stick represents a specific right associated with the property. Such rights include, among others, the right to farm, to hunt, to extract minerals, to cut timber, to subdivide, and to do anything else with a property that is not prohibited by law. Any one of these rights can be legally separated from the “dominant estate” through an easement and transferred to other parties in a “less than fee” or “partial interest.”²³

Easements are often granted to utility companies so that power and telephone lines can cross a property. Neighbors also grant easements so that 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 rights, they are called conservation easements.

For example, a landowner can forego construction rights on a property to ensure its long-term protection. The right to subdivide property beyond a specified number of parcels also can be transferred by a conservation easement. When granting specific development rights, an owner retains title to the land along with the rewards and responsibilities of ownership.

Placing an easement on land does not mean it cannot be developed at all. The owner states the types of development he wants to prohibit. The property can still be sold, rented, bequeathed, or otherwise transferred, but the conservation easement is recorded with the deed and passed on to future holders of the land. If prohibited by the easement, the land can never be subdivided or converted to more intensive uses. The property remains in its current or compatible use perpetually.

“WITH AN EASEMENT you don’t give up anything you would reasonably want to do, as long as you state it specifically and do it with good management practices. If you want to preserve the beauty of this area for your children, this would be the way to do it. There are not many things that you can do that will still make a difference not just a year from now, but in 100 years, but this really does.”

Valley Easement Donor

Landowner Benefits

Easements provide landowners with numerous benefits. Several are described below.

Permanent Protection -- Easements allow owners to ensure their property remains largely undeveloped, as a farm, a woodlot, or a natural area, permanently. There are few things one can control after death. With an easement, landowners can protect the characteristics of their property that they value the most, permanently. What is more, the holder of the easement will be there to ensure that the easement grantor's wishes are met after the grantor's ownership comes to an end.

Continued Private Ownership -- Land that is protected by a conservation easement is still private property. Typically, an easement does not change the way private land is used. Most owners design their easements to ensure that future owners will continue to use the land as they have. If an easement is placed on a farm, the owner can guarantee that the farm will be available for active agricultural production. Land under easement can continue to play a role in the local economy through agriculture and responsible forestry. The owners also continue to pay real property taxes to support local government and services.

Each Easement Is Unique -- An easement is designed to meet the specific desires of a landowner and to fit the property it protects. An easement for a small property, such as a family camp, might be quite different from one designed for a large, working farm, for instance. Some owners choose not to allow new construction on, or subdivision of, their property. Others reserve the right to divide and sell some parcels for future income or to construct one or more new homes for their children.

Lower Taxes -- Conservation easements often provide significant financial benefits to landowners who want to protect their land. Easements can reduce an owner's state and federal income taxes, estate taxes, and capital gains taxes. In jurisdictions that do not have use-value or "land-use" programs for taxing real property, easements also can reduce annual real property taxes. Many owners use the tax advantages of easements to make it financially possible for the next generation to keep a farm in the family. Easements often make affordable land protection goals that otherwise would be beyond the means of a landowner.

Types of Conservation Easements

Conservation easements can be written to target a variety of resources and to provide various public benefits. In order to qualify for federal tax advantages, an easement must be permanent and must provide a public benefit by protecting an identifiable resource. Easements are often called historic preservation easements, scenic easements, or riparian easements depending on the resource they protect, but they are all conservation easements and all offer landowners the same basic options and benefits. Some ways conservation easements can be tailored to target specific resources are listed below:

- **Agricultural or Open Space** easements can be used to protect farm and forest land. They can set aside prime agricultural resources and soils while allowing compatible development on other, less productive lands. In Virginia, all conservation easements must comply with local land-use policies, including the local comprehensive plan.
- **Historic Preservation** easements protect the architectural features of historic structures in rural or urban settings. They often require the owner to get approval from the easement holder before altering the building.
- **Riparian** easements focus on streams, rivers, and their floodplains, setting aside only the riparian areas of a property. Often the only property right restricted in the easement is the right to destroy vegetation that protects the stream bank. These easements can obligate the holder of the easement and the landowner to engage in specific stream management practices to reduce erosion, such as fencing or planting vegetation buffers.
- **Scenic** easements can be tailored to protect the views along a historic road or the vistas that the public sees from a historic site, such as a Civil War battlefield.
- **Public Recreation** easements can create recreational opportunities by protecting the land traversed by a bicycle or pedestrian trail and providing public access.
- **Wildlife Habitat** that is in a relatively natural state can be protected under an easement if it represents a high-quality native ecosystem or land form; provides habitat to a rare, threatened, or endangered species; or contributes to the ecological viability of a public park or conservation area.

The Open-Space Lands Preservation Trust Fund

In 1997, the Virginia General Assembly created a new fund to assist landowners with the costs of conveying conservation easements. This fund helps eligible landowners offset some of the associated costs of placing easements on their property, such as appraisals and legal fees. The fund can also be used to purchase all or part of the value of an easement.



The Hull House (left), located in Highland County within the McDowell Corridor, is one type of property that would qualify for a historic easement. This house was used as the Union headquarters in the month prior to the Battle of McDowell and by General “Stonewall” Jackson in its aftermath.

The Use of Conservation Easements

No two parcels of land are exactly the same. Likewise, no two landowners share identical situations or goals for their property. The beauty of conservation easements is that each one is unique, written to fit the land it protects and the circumstances of the property owners. Several widely different instances of the use of easements in the Shenandoah Valley, all of which were established with the assistance of the Valley Conservation Council, are described on the following pages. They demonstrate the opportunities open to owners interested in maintaining the special character of their properties.

SAVING A MOUNTAINTOP: Development for Conservation

Conservation easements can be used creatively to make affordable conservation goals that might otherwise be beyond the financial means of a landowner. For example, a group of Shenandoah Valley property owners recently used innovative financing and easements to protect a large mountain property that they cherished.

The longtime residents of a rural Valley community became concerned when a 1,300-acre parcel on a mountain overlooking their homes was put on the market. The largely pristine mountain tract had been the site of a major development proposal, but the builder's plans fell through, placing the land back on the market. Area residents decided to take action before another development was proposed that might erode the character of their neighborhood.

The group wanted to ensure the relative wilderness quality of the mountain over the long term by preventing development that would disturb its natural and aesthetic values. However, they did not have the resources to purchase and hold the property, which carried a price tag of nearly a million dollars. First they formed a small corporation and purchased the entire property to get it off the market. Then they developed a conservation plan that made their protection goals economically feasible.

The plan essentially involved development for conservation. The group did not want any construction at higher elevations where it would mar scenic views, cause erosion and sedimentation of streams, and detract from the area's rural character. At the same time, they considered developing 12 lots on about 300 acres at the mountain's lower elevations -- land that was suitable for a moderate amount of environmentally sensitive, residential development.

The group placed a conservation easement on about 1,000 acres of the more fragile, higher-elevation land. The easement donation generated an income tax benefit, making the project more affordable to the owners. The lots at the foot of the mountain were sold to finance the protection of the larger tract higher on the mountain. The arrangement was so attractive that five purchasers acquired all of the buildable lots.

While the lots were buildable, they were sold with covenants attached



Jump Mountain: an example of creative flexibility in the use of conservation easements. *Jump Mountain's higher elevations remain protected from development because of the concern and foresight of nearby landowners. As a group, these landowners purchased a 1,300 acre parcel and designed an ecologically-sensitive development plan.*

to preserve the area's scenic, rural character. Their deeds defined specific sites where construction was permitted, leaving buffers between structures on adjoining lots to assure each landowner's privacy. Further subdivision was also prohibited. Lot owners have exclusive rights to the 1,000-acre tract on the mountain, which they own in common.

The easement became a permanent attachment to the deeds of all of the properties involved, guaranteeing the integrity of the mountain perpetually. It prohibits the subdivision of the 1,000-acre parcel, bars motor vehicles and road construction on the mountain, and allows only minor structures that would not disturb its pristine character. The easement allows timber to be harvested under sound forestry management but prohibits mining on the mountain.

The protection of the property in an undeveloped state will benefit the public in a number of ways that are stated in the easement document. It will contribute to the future viability of adjacent state-owned wildlife management areas. The future health of a nearby city's water supply, which is drawn from a river beneath the mountain, will be enhanced by the protection of steep lands in its watershed. The easement also furthers the goals of the local county comprehensive plan.

PRESERVING A FAMILY CAMP: Recreational Conservation

“Our joint concern was that the property might be available to future generations as we have known it. As time passes by, rights and interest in property change.”

Highland County Easement Donor

Conservation easements can be appropriate in places that seem far removed from the intrusions of urban America. In fact, the best time for property owners to consider an easement may be long before their land is threatened by development. Nor do easements always involve large acreage; they can be used to protect critical resources on smaller parcels.

For instance, three couples jointly own a family camp in a remote area of the Shenandoah Valley. The 10-acre parcel is on the crest of a mountain, surrounded by an 8,000-acre tract of publicly owned forest. They wanted to ensure that their children and grandchildren could continue to enjoy and use the camp as they have known it. Despite its remote location, the owners decided a conservation easement would best serve their needs.

Since they did not want the use of the property to change in the future, the owners gave away all of their future rights to divide the parcel or build more houses on it. They also prohibited its use for any commercial activities other than farming, forestry, or horticulture, but specifically reserved the right to renovate or replace their existing cabin and its outbuildings.

If these owners had simply decided to leave the land to their children, eventually it would have been held jointly by nearly a dozen separate owners, making proper management difficult. With an easement, the owners felt they could influence the use of the land long into the future when it is inherited by their children and grandchildren. The families still own the land and will continue to use the small hunting cabin on it, just as they have for decades.

The public will also benefit through the preservation of the property's scenic beauty and because the easement will contribute to the long-term health of the surrounding public forest and the wildlife that lives there. The easement was donated to the Virginia Outdoors Foundation.

A FARM FACING DEVELOPMENT PRESSURE: Agricultural Conservation

Easements are especially valuable in areas close to cities and major transportation routes where rising land prices make it hard for families to justify not subdividing and selling their farmland for more intensive uses. The owners of a 130-acre farm not far from Interstate 81 recently found themselves in just such a position. Under their county comprehensive plan and zoning, the property could be divided into 12 separate tracts. The neighborhood was desirable and considered prestigious. Consequently, developers were actively acquiring large parcels like theirs and dividing them into smaller residential lots. The appraised value of their land, exclusive of their antebellum home and house site, had risen to \$2,000 an acre.

The landowners used conservation easements to cut the development potential of their land by two-thirds. In the process, the market value of their land was reduced by more than half, bringing them substantial income tax benefits. The easement, which they donated to the Virginia Outdoors Foundation, was valued at \$135,000. By deducting that amount from their taxable income, they were eligible for tax savings of more than \$61,000 on their federal and Virginia income taxes.²⁴

The easement donors also reserved the right to divide their land into as many as four buildable parcels. This left them with the option of selling a portion of their farm in the future, if a change in their financial circumstances requires them to do so. The owners ensured their land will remain a farm and experienced substantial monetary benefits without restricting their future options in a way that might jeopardize their future financial stability. Public benefits provided by the easement include the protection of the drinking-water supply of a nearby city and protection of soils of countywide importance for future food production.



When preserved by easement, large tracts of farmland can remain in productive use.

PROTECTION FROM ALL DEVELOPMENT: Agricultural Conservation

“As I looked around and saw lands being developed and fewer and fewer places to find solitude, I felt I should do something to save this land for posterity.”

Augusta County Easement Donor

A family outside a growing Valley city became concerned because the rural character of their neighborhood was becoming fragmented by creeping residential development. There was no imminent threat, but the area's close proximity to employment, shopping, schools, and major highways made it attractive for single-family home buyers. Rising land values and taxes had compelled neighboring owners to carve lots from their farms for new residential development. In response to these rising development pressures, the owners decided to permanently protect their 285-acre farm through a conservation easement.

With the help of substantial income tax benefits, the owners did not feel they would need additional revenues from their property in the future. Consequently, they barred all future development on the property through their easement. To protect the diverse wildlife and plant communities in the majority of their forested property, they restricted future timber harvests to those yielding firewood for its occupants. The deed states, “the existing woodlands (will) be maintained in their natural state ... all forest management activities shall be carried out so as to maintain biological diversity and preserve the environmental and scenic qualities of the area.”

The donation of the easement to the Virginia Outdoors Foundation made the grantors eligible for an income tax deduction of \$155,000, the appraised value of the development rights. The easement enhances the local comprehensive land-use plan's goal of protecting “the natural scenic beauty of the county's mountains and agricultural landscape.” It protects the bank of a major Valley river for a mile upstream from the intake of a public water system. It also ensures that “prime farmland soils,” those defined by the U.S. Department of Agriculture as best suited for continuous agricultural use, will be available to the local economy.

Conservation easements can serve many purposes: “perpetuating the natural or open-space values of real property, assuring its availability for agricultural, forestal, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving historical, architectural, or archaeological aspects of real property.”

The Virginia Conservation Easement Act²⁵



A conservation easement permanently protects this 300-acre farm located in Augusta County near Middlebrook.

PRESERVING SOIL and WATER QUALITY: Steambank Conservation

Easements can be used to maintain and restore the banks of streams, providing improved water quality and habitat for wildlife while protecting valuable soils from erosion. The land surrounding a stream is called the riparian zone. Consequently, easements that protect these important areas are known as riparian easements.

The best way to stabilize a stream bank from flooding and erosion is to keep it well vegetated with plants, such as alders and willows, that are best suited for stream ecosystems and have great root mass. Consequently, local soil and water conservation districts (SWCD) have acquired from numerous Valley landowners easements that ensure that stream-side vegetation will be maintained. In these riparian easements, the primary right the landowner gives up is the right to destroy vegetation that protects the stream bank.

An Augusta County farmer decided to place a riparian easement on a portion of his property because he was losing valuable soil to severe erosion along a stream that traversed his property. Working with the local SWCD, he identified a 24-acre section of the floodplain that was especially prone to erosion. Together they designed a plan for "sound soil, water, timber, and wildlife resource management" in the floodplain. Through an easement, they agreed to implement the plan cooperatively.

The farmer agreed not to build structures in the easement area. He also agreed to maintain fences to exclude livestock from most of the stream. He specifically reserved the right to maintain two livestock watering holes in the stream and to farm in the floodplain. Logging, annual crops, pasturage, and livestock feeding are specifically permitted in the easement document, as long as these activities are conducted in accordance with the management plan.

The conservation district agreed to assist the farmer in finding funding for grading, seeding, and reforestation of badly eroded stream banks, as well as for constructing watering holes and restoring fences destroyed by floods. The easement document did not guarantee funding for these conservation measures, but obligated the conservation district to help find funding from available public and private sources.



Working with the local SWCD, the owner of this property combined streambank restoration methods and a riparian easement to correct a serious sedimentation and erosion problem.



Before (top) and after (bottom) photographs reveal the improvement to the streambank.

Other riparian easements in the Valley have been used to protect stream banks as small as 3.9 acres. Landowners donating easements have experienced significant tax benefits from their gifts. In some Valley watersheds, including the Middle River, which traverses the McDowell Corridor, soil conservation districts have funding to purchase easements on highly erodible stream banks.

PRESERVING AN IN-TOWN ESTATE: Historic Resource Conservation

"I just wanted the property to remain in its natural state, and I thought it was a great opportunity to keep a little green space in the city."

Staunton Easement Donor

Easements can be placed on historic properties to maintain the integrity of both historic buildings and their surroundings. In the Commonwealth, easements protecting properties listed on the Virginia Landmarks Register or the National Register of Historic Places can be held by the Virginia Board of Historic Resources, a state agency.²⁶ Other public and private conservation agencies often can accept easements protecting historic sites, whether or not they are listed on the state or national registers.

Historic easements can be appropriate in both urban and rural settings, as well as for properties on the margins of the two. That is where a Valley family recently found itself when they decided to place an easement on their historic home. The easement protects a Greek Revival home, which is a national landmark, and the surrounding 20-acre property. The house was constructed in 1929, on the outskirts of town, but neighborhoods had sprouted up around it over the years.

The owners designed an easement that prevents the subdivision of the property and the construction of additional homes or commercial buildings. It also defines the historic characteristics of the house, inside and out, and prohibits their alteration without the written permission of the easement holder, the Virginia Historic Resources Board. The property includes exceptional formal gardens, which are also protected in the easement.

Because of the high development potential of the property, the easement donation made the owners eligible for substantial tax benefits. For instance, the donation of the development rights on the land reduced its value by 86 percent. This amount, a portion of the value of the easement, is deductible on the donors' federal and state income taxes. Because the locality does not have land-use value taxation, the easement also reduces the owners' annual local real property tax liability by 86 percent by reducing the assessed value of their land.