



## 10 STEPS TO CONVEYING A VOF EASEMENT

### STEP 1: CONSIDERATION OF EASEMENT

Landowner contacts VOF (or local land trust) to request information and to discuss general easement guidelines and possibilities. Landowner consults with family and/or legal and tax advisors, and expresses an interest to VOF and a desire to further explore the donation of an easement. Landowner submits application form (available on website) to VOF regional office. VOF and landowner discuss the property's attributes and the landowner's goals by initial phone conversation.

### STEP 2: SITE VISIT

Depending on property attributes and staff workload, VOF staff and landowner arrange to meet and view the property. Staff researches property attributes prior to visit. On site, the staff analyzes the property's features and the natural and open-space resources, and consults with the owner on long-term objectives. Staff and landowner discuss options for easement terms that will meet the landowner's goals, protect the conservation values of the property, and meet the standards of the Foundation. The terms are based on the Foundation's Guidelines and sample deed of easement.

### STEP 3: PRELIMINARY AGREEMENT

After consulting with advisors, landowner reaches a preliminary agreement with VOF on the proposed terms of the easement and states desire to move proposal forward to consideration by the VOF Board. If there is a mortgage on the property, the landowner should make sure that the lender will be supportive of the easement (See page 3 regarding subordination).

### STEP 4: VOF STAGE ONE REVIEW

VOF review team discusses property attributes and proposed easement terms of all properties up for consideration at that time. Review team determines basic restrictions desired in order to protect the identified conservation values and public benefits of each property. The team prioritizes projects based on terms and "readiness" of project in relation to other projects and may suggest more restrictive terms for some projects to move forward. Easement staff discusses team decision with landowner.

### STEP 5: BOARD MEETING PREPARATION

Landowner's attorney and VOF staff develop draft deed of easement including full legal description for landowner's review and VOF consideration. Several revisions of the draft easement are typically necessary before it is in final form and ready for submission. Landowner's attorney or a title company provides a preliminary 60-year title opinion ("certification of title" or "title report") *in favor of VOF*. The final draft deed and title report must be received no later than five weeks prior to a VOF Board Meeting (see chart on page 3). The landowner or landowner's attorney also pro-



vides copies of deeds by which the landowner obtained title as well as all recorded survey plats of the property and/or metes and bounds descriptions of the property. In addition, the landowner submits a letter to VOF stating a desire to donate the easement.

#### STEP 6: REGIONAL REVIEW TEAM (RRT) MEETING

A Regional Review Team including two of the seven board members will review the proposals for their region one month before the full board meeting. The RRT may suggest changes to the proposed easement terms, but makes no formal decisions. The RRT indicates whether a proposal is ready for full board consideration.

#### STEP 7: VOF BOARD MEETING

Each easement proposal must be approved by VOF's Board of Trustees. The Board meets five times in 2010 and the deadline for completed proposals is approximately five weeks prior to the meeting. (See 2010 deadlines listed on page 3.)

- a. The Board may accept the proposed easement, accept it subject to changes, or reject it. The Board may condition its approval on modifications to the proposed terms of the easement. The Board's approval does not obligate the landowner to complete the easement.
- b. The landowner may finalize and record the easement at any time within one year of approval. An easement that is not recorded within one year of Board approval may be resubmitted to the Board and but is subject to a \$1,000 reconsideration fee. A proposed change in any terms of the easement that would result in a less restrictive easement than that approved previously would also need to be reconsidered by the Board.

#### STEP 8: BASELINE DOCUMENTATION REPORT

VOF staff completes the Baseline Documentation Report (BDR) which may require a return visit to the property and includes maps and photos along with other related documents. Landowner reviews the information in the report, then signs and returns an acknowledgment form attesting to its accuracy.

#### STEP 9: FINALIZING EASEMENT DRAFT

Attorney sends deed of easement to VOF staff for final review. VOF staff suggests final edits, if any, and returns to attorney for editing and signatures. All legal owners and lenders must sign the deed. VOF signs the deed last. The Deputy Director cannot sign the deed until the following documents are verified in the files of VOF: the signed Baseline Documentation Acknowledgement Form and the signed VOF Consent Form (the last page of the VOF application). After receiving these documents, a VOF Deputy Director signs the deed.

#### STEP 10: RECORDATION

VOF may record the deed of easement in the Clerk's Office of the County Circuit Court after receiving final title bring down, or the landowner's attorney may complete the title bring down and record the deed of easement. A copy of the recorded deed of easement is sent to the landowner.



## ADDITIONAL INFORMATION

**Note:** The landowner can change his or her mind about the easement at any time until the deed of easement is signed and delivered to the Foundation. While these steps show the typical procedure, there are some situations in which the order of these steps varies. The process may take anywhere from a few months to more than a year to complete.

### TIMELINE FOR EASEMENT PROPOSALS

Easement proposals must be finalized approximately five weeks before Board meeting dates in order to provide time for preliminary review by Board members. Preparation of these proposals (especially the draft deed of easement) requires a coordinated effort between VOF staff, the landowner and the landowner’s attorney. Landowners should reference the following dates to determine an approximate timeline for their particular easements.

Timeline for Easement Proposals	
2010 Board Meeting Dates	Target Completion Date
February 4	December 30
April 1	February 24
June 24	May 19
September 2	July 28
October 28	September 23

“Target Completion Date” refers to the deadline for submittal of the following to VOF:

1. Final draft deed of easement from attorney, including legal description of property (this deed is a draft that has been reviewed and refined by the landowner and VOF staff)
2. Letter of intent
3. 60-year title opinion

### SUBORDINATION OF MORTGAGES OR OTHER LIENS

(See Step 3) If there is a mortgage or other lien on the property to be placed under easement, the holder of the mortgage is required to subordinate\* the mortgage or lien to the easement so that the easement will continue to be protected in the event of a foreclosure. Bank subordination is also required for the easement to be tax deductible under federal tax law. The landowner or the landowner’s attorney should contact the mortgage holder as soon as there is a draft of the easement for the holder of the mortgage to review as this process may take time.

\*A mortgage subordination is an instrument by which the mortgage holder agrees that its mortgage is subject to a conservation easement even though that mortgage was recorded prior to the recordation of the easement.

### THE APPRAISAL

In order to claim a federal tax deduction or a state tax credit for a non-cash charitable gift, the landowner must engage an independent appraiser to determine the value of the gift. VOF strongly recommends the use of a *Certified General Appraiser* but does not make specific recommendations. VOF does not require an appraisal and is not involved in the appraisal process. In order to qualify as a non-cash charitable contribution, the easement must meet the requirements of Section 170(h) of the Internal Revenue Code. Following the appraisal of the gift, the landowner submits to VOF the IRS Form 8283



signed by the appraiser along with the summary appraisal showing the value of the property before and after the easement. After recordation of the easement, VOF signs the form to acknowledge receipt of the gift of easement and returns it to the landowner. To satisfy IRS requirements, appraisals must be dated no earlier than 60 days prior to the gift or the appraisal may be completed after the recordation of the easement, but no later than when the landowner files his taxes, setting forth the values as of the date of the gift.

If the landowner plans to use the value of the easement as a charitable income tax deduction, the landowner must submit Federal Tax Form 8283 (non-cash contributions) with the tax return. If the landowner intends to claim a VA tax credit under Virginia Code Sections 58.1-510 -513, the landowner will need to register the credits with the Virginia Department of Taxation using Form LPC (Virginia Land Preservation Tax Credit Notification Form), and it is recommended that this form be filed at least 60 days prior to filing taxes. State tax credit applications require several items of supporting information.

Effective January 1, 2007, for donors claiming a Virginia tax credit of \$1 million or more (gift of easement value exceeding \$2.5 million) the deed of easement must meet Virginia Department of Conservation and Recreation (DCR) criteria, which may require additional conservation restrictions. DCR will provide an optional pre-filing review upon request to determine if a particular easement meets the tax credit criteria.

#### TRANSFER OF STATE TAX CREDIT

If the landowner plans to sell credits to another taxpayer, the transaction must be completed within the tax year for which the buyer wishes to claim the credits (i.e. credits to be claimed against 2010 taxes must be purchased by December 31, 2010). Form LPC must be filed with each credit transfer, and the Department of Taxation will charge a fee on the transfer of tax credits. It is recommended that landowners planning to use a private sector tax credit broker to sell credits contact the broker early in the process, as the broker may require the use of certain appraisers or may have other requirements affecting the easement or easement process.

#### REASONS FOR COMPLETING EASEMENTS EARLY IN THE YEAR

VOF recommends that landowners take plenty of time to think through donation of an easement. Landowners should have all the information needed to make an informed decision and time to be deliberate in their decisions. If the landowner desires to complete an easement by year's end for tax purposes, there are several reasons to begin this process as early as possible during the calendar year:

- The Virginia Department of Taxation registered only \$106 million in state tax credits for easements recorded in 2009. The amount of the annual cap increases incrementally based on the consumer price index pursuant to Virginia Code Section 58.1-512 D.4.b. Once this annual cap is reached, any unregistered tax credits will be carried over to the next year. In 2009, the cap was reached during the first week of December.
- Several steps such as the appraisal, bank subordination, legal review and tax credit registration can take more time than expected to resolve.
- VOF staff, attorneys, appraisers, lenders and others involved with the easement process will have more time to support and complete projects in a timely way in the first two to three quarters of the calendar year, and may exceed capacity to do so in the fourth quarter of the year.