



www.virginiaoutdoorsfoundation.org

EASEMENT DISCLOSURE

Consult a VOF easement specialist before completing this form. Locate the VOF office that serves your locality by visiting our website or calling (540) 347-7727.

(OFFICE USE ONLY)

Date
received:

Donation of an Open-Space Easement to the Virginia Outdoors Foundation

General Information: Donation of an open-space easement is an act of land protection which will permanently affect how your land may be used in the future. An easement donation is voluntary, and you may change your mind about the donation at any time until the easement is signed and recorded. All restrictions on the use of the property that you are agreeing to are contained in the deed of easement, and, upon recordation, will become permanently binding on you and all subsequent owners of the property. Information related to the donation that you provide to the Virginia Outdoors Foundation (VOF) and other information in your VOF file will be a matter of public record and, with statutory exceptions, such as personal tax information, will be subject to Freedom of Information Act requests.

Appraisal: VOF does not require an appraisal for the gift of an easement and is not involved in the appraisal process; however, if you intend to take a federal tax deduction or claim a state tax credit for the donation of a conservation easement, you will need to engage a qualified appraiser to determine the value of the gift. VOF strongly recommends the use of a certified general appraiser. Federal Tax Form 8283 setting forth the easement valuation must include a declaration by a qualified appraiser and must be signed by VOF to acknowledge the gift. In order for VOF staff to sign a Form 8283, you must submit the following: (1) a fully completed Form 8283, including your name, description of the gift, appraised fair market value of the gift, (2) copy of the page(s) of the appraisal stating the before easement and after easement value of the property, and (3) the most recent county/city assessed fee simple value of the tax parcel(s), all or a portion of which are being put under easement. VOF brings to the attention of the Virginia Tax Department Form 8283s that (1) claim \$2.5 million or more in easement value, (2) claim an easement value of 50% or more of the appraised fee simple value, or (3) show an appraised fee simple value of the property (before easement) more than one and one-half times the county/city assessed fee simple value. VOF's acknowledgment on a Form 8283 does not represent its agreement with the claimed fair market value of the gift.

Federal tax deduction and conservation purposes: In order to obtain a federal tax deduction for the donation of a conservation easement to VOF, the contribution must be made exclusively for one of the conservation purposes set forth in the Internal Revenue Code. VOF does everything that it can to ensure that its program complies with the federal tax code and regulations, but it cannot guarantee that the IRS will grant you a charitable gift deduction for your donation. You should confer with your tax advisor or attorney, who can help you understand the Internal Revenue Code and Treasury Regulations and assist you in applying for the tax deduction. Like any other tax matter, the IRS will make the final determination of deductibility. The federal tax deduction for tax year 2012 is 30% of adjusted gross income (AGI) for individual taxpayers, the unused portion of which may be carried forward for a period of five years.

Mortgage liens on property: If there is a mortgage or deed of trust on the property you are placing under easement, the mortgage holder must subordinate it to the easement so that the easement will continue to protect the property in the event of a foreclosure. In addition, subordination is necessary for the donation to be a tax deductible contribution under the IRC. You or your attorney should contact the mortgage holder as soon as you begin the easement process, as obtaining approval from the mortgage company to subordinate the mortgage can be difficult and take a considerable amount of time.

Land Preservation Tax Credit (LPC): If you donate a qualifying open-space easement on property in Virginia to VOF, you may also claim a land preservation tax credit against Virginia income tax of 40% of the value of the easement. The amount of the credit claimed by a taxpayer may not exceed \$100,000 for taxable year 2012 and for each taxable year thereafter, but you may carry over any unused credit for a maximum of 10 consecutive taxable years following the taxable year in which the credit originated. In the event that you have more credits than you can use against your state tax liability, you may sell or otherwise transfer the credits to other persons or entities with Virginia income tax liability. In the event that you decide to transfer a state tax credit to another such person, the Virginia Department of Taxation will charge you a fee in the amount of 2% of the amount of the easement value (5% of the amount of the tax credit) on the transfer of the tax credit. Income from the sale of tax credits will not be considered income for state income tax purposes. *(Check with your tax advisor or attorney to determine whether the sale of tax credits is the sale of a capital asset that will result in short-term or long-term capital gain. A recent case in the U. S. Tax Court suggests that if tax credits are held for more than one year prior to sale, then the proceeds would be considered a long-term capital gain taxed at a more favorable rate.)*

Tax credit form: In order to claim a state tax credit you will be required to submit a form LPC-1 to the Virginia Department of Taxation. VOF recommends that you or your tax advisor look over the tax form (available from the Virginia Department of Taxation website) early in the process, so that you will understand the information that will be required for the form.

Tax credits of \$1 Million or more: Tax credits of \$1 Million or more (based on easement valuations of \$2.5 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). Meeting the VLCF criteria may involve adding restrictions on the use of your property that would not always be required for a VOF easement. For example, such restrictions may include requirements that (1) certain new roads be approved by VOF, (2) agricultural operations be conducted in accordance with a USDA-approved conservation plan, and (3) livestock be excluded from riparian buffers. In order to avoid an adverse post-filing decision from DCR, you may obtain a pre-filing review of the conservation value through DCR. For more information, visit the Virginia Department of Conservation and Recreation's website under "Land Conservation" and read about the "Conservation Value Review Criteria".

Tax credit cap: There is an annual limit on the amount of tax credits that the Department of Taxation issues, beginning in calendar year 2007 with a ceiling of \$100 Million, which amount is adjusted annually by changes in the consumer price index.

Timing of tax credit application: You should be aware that tax credit applications may reach the tax credit ceiling prior to the end of the calendar year in which your easement is given, so that applications made late in the year may have to be used in a later calendar year and any applicable carryover years. Information about the total amount of tax credits applied for at any particular point in time is available from the Department of Taxation at (804) 786-2992.

Commercial timbering: VOF requires that all material timber management activities on your property be guided by a Forest Stewardship Management Plan prepared by the Department of Forestry or a private certified consulting forester. The current fee for preparation of a plan by the Department of Forestry is \$1.50 per acre with a \$200 minimum charge.

Local Real Estate Taxes: Pursuant to Virginia Code Sections 20.2-1011 and 58.1-3205 local real estate taxes on property under easement may be reduced. However, if your property is under land-use assessment as land devoted to agricultural, forestal, horticultural, or open-space use, there may be no further reduction in local real estate taxes.

The Virginia Outdoors Foundation does not provide legal or tax advice. You should consult with your advisors on estate planning, real estate and tax matters and have an attorney assist you in the drafting and review of the easement throughout the process. You will also need your attorney to review with you the effect of the gift of easement on your estate plan.

I acknowledge that I have received this disclosure.

SIGNATURE: Landowner(s)

Date: _____

Date: _____

Date: _____

Date: _____