

## 10 STEPS TO CONVEYING A VOF EASEMENT

### STEP 1: CONSIDERATION OF EASEMENT

Contact a Virginia Outdoors Foundation (VOF) regional office to request information and to discuss the general easement process and VOF Easement Guidelines. Consult with your family and your legal and tax advisors. After that, if you are interested in further exploring the possibility of donating an easement, please call the regional office for discussion of the property's features and your goals and submit an application form (available from the regional office or on the VOF website).

### STEP 2: SITE VISIT

We will arrange to meet with you and visit your property. On site we observe and inventory the features of your property, its natural resources and its open-space characteristics. We discuss with you options for an easement project that will meet your goals, and at the same time protect the conservation values of the property. The terms of the easement will be based on VOF's Easement Guidelines and our sample deed of easement (also available from the regional office or on the VOF website).

### STEP 3: PRELIMINARY AGREEMENT

After consulting with your advisors and deciding to proceed, you will reach a preliminary agreement with us on the proposed terms of the easement, and we will move the proposal forward. At this step, if there is a deed of trust or mortgage on the property, you should make sure that the lender will agree to subordinate its deed of trust or mortgage to the VOF easement. (See Page 3 for further information about subordinations.)

### STEP 4: VOF STAGE ONE REVIEW

A VOF staff review team will discuss the characteristics of your property, the proposed easement terms, and any additional or modified easement terms it thinks may be necessary to protect the conservation values of your property. After consideration by the review team, we will discuss with you any modifications of the easement terms suggested by the team.

### STEP 5: BOARD MEETING PREPARATION

Your attorney and the VOF staff will develop a draft deed of easement including a legal description of your property for your review. Several revisions of the draft easement are typically necessary before it is in final form and ready for submission to the VOF Board of Trustees. Your attorney (or a title company) will give us a preliminary title opinion on your property. You or your attorney should also give us copies of any recorded survey plats of the property and a letter to us stating your desire to donate the easement (letter of intent). The final draft deed, title opinion, and letter of intent must be received by us on or before the final draft deadline prior to a board meeting. (See page 2 for timeline.)

### STEP 6: VOF STAGE TWO REVIEW

A regional review team reviews the proposal approximately one month prior to the Board meeting. The regional review team considers proposed easement terms, reviews title and legal property description issues, and determines whether the proposal is ready for consideration by the Board. You and your attorney will review any revisions to the deed suggested by the regional review team and work with staff to resolve any issues you have with such revisions.

### STEP 7: VOF PROCESSING / DUE DILIGENCE FEE — \$1,500

After the Stage Two review you will be asked if you wish to have your proposal proceed to the Board meeting for approval. The Processing Fee must be paid by the due date set forth in the table below in order for the proposal to be reviewed by the Board of Trustees. The Open-Space Lands Preservation Trust Fund (PTF) is available to help with the costs, including this fee, of conveying a conservation easement, for income-eligible landowners. The most common costs that may be covered by PTF are legal, appraisal,

survey and VOF fees. Priority is given to applicants who demonstrate financial need, who seek assistance with costs only, and who wish to convey an easement on a family farm. Talk to your Easement Project Manager about applying for PTF funds.

#### STEP 8: VOF BOARD MEETING

The easement proposal must be approved by the VOF Board of Trustees. The Board meets three times in 2018 on the dates set forth on the timeline below. Staff presents the proposal to the Board with its recommendations. The Board may approve the proposal, approve it conditioned upon modification(s), or disapprove it. The Board's approval does not obligate you to complete the easement process and record the deed. You may finalize and record the easement at any time within one year of Board approval. An easement that is not recorded within one year of Board approval must be resubmitted to the Board for reconsideration, and is subject to a \$1,000 reconsideration fee. However, in the event that there are no changes in terms and conditions, this recordation period may be extended by the VOF Executive Director, who may waive the fee for good cause shown. Prior to recordation, a proposed change in any terms of the easement that would result in a less restrictive easement than the one approved by the Board must be resubmitted to the Board for its reconsideration.

#### STEP 9: BASELINE DOCUMENTATION REPORT

After Board approval, you will be asked to decide whether you will request VOF staff or a third party to prepare the required BDR. The federal tax program for conservation easements requires that you make available to us a BDR setting forth the characteristics and condition of your property prior to recordation. The BDR contains maps and photos of your property and related documents. It establishes in detail the condition of the property at the time of the gift and becomes the basis of comparison for future monitoring of the easement. If VOF prepares the BDR, a fee of \$3,000-\$3,500 will be charged at the time the report is completed; PTF funds may be available to landowners of moderate means (ask your VOF Easement Project Manager for details). Alternatively, if the report is prepared by a third party, it must meet VOF quality standards, and a BDR review fee of \$1,500 will be charged with the submission of the report to VOF. Whether VOF or a third party prepares the report, it will be sent to you for your review and corrections if necessary. Once the information in the BDR is accurate, you and any other owners of the property must sign the BDR acknowledgment form and return it to us.

#### STEP 10: FINALIZING EASEMENT DRAFT AND RECORDATION

Your attorney will send the deed of easement to us for final review. We will suggest final edits, if any, and return the deed to your attorney for editing and signatures. All legal owners must sign the deed, and any mortgage lender and its trustees must sign the deed to subordinate the deed of trust to the deed of easement. VOF signs the deed last. The VOF staff member authorized to sign deeds of easement may not sign the deed until it is verified that the signed VOF Application and Disclosure forms, as well as the BDR Acknowledgement form, are in our files. After such verification, VOF signs the deed. VOF will send the fully executed deed of easement to your attorney, who will record the deed after doing a final title search ("performing a title bring-down"). In certain circumstances, VOF staff may record the deed after receiving the final title report from your attorney or a title company.

#### ADDITIONAL INFORMATION

The dates of board meetings in 2018 and final draft deadlines for each board meeting are as follows:

Easement Draft Deadlines	Processing Fee Payment Due Date	Board Meeting Dates
January 30, 2018	March 2, 2018	March 22, 2018
May 1, 2018	June 1, 2018	June 21, 2018
July 31, 2018	August 31, 2018	September 20, 2018

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## ADDITIONAL INFORMATION

### SUBORDINATION OF DEEDS OF TRUSTS

If there is a deed of trust on your property, the lender is required to subordinate its deed of trust lien to the easement for the easement to be a tax deductible charitable contribution under federal tax law and to protect the easement in the event of foreclosure. You or your attorney should contact the lender early in the process, both to confirm willingness to subordinate and because the lender's review may take a considerable length of time. In addition, the lender may require an appraisal prior to agreeing to subordinate its lien, which may affect the sequence of events set forth here or the costs of completing your easement. VOF has often experienced problems in getting lenders to subordinate their liens.

### APPRAISAL

VOF does not require an appraisal for a gift of easement. However, in order to claim a federal tax deduction or a state tax credit for a non-cash charitable gift such as a gift of easement, you must engage an independent appraiser to determine the value of your gift. The IRS requires that the appraisal be made by an IRS-defined qualified appraiser; a Certified General Appraiser will likely qualify. We do not make specific recommendations on which appraisers you should use, and we are not involved in the appraisal process. To satisfy IRS requirements, appraisals must be dated no earlier than 60 days prior to the gift and no later than when you file your tax returns.

### TIMING OF EASEMENT DONATIONS

We recommend that you take plenty of time to think through the donation of an easement to us, since an easement is forever. If you have decided to donate an easement and wish to do so prior to the end of a particular calendar year for tax purposes, there are several reasons to begin the process as early as possible in that calendar year:

- ✦ There is a limit on the amount of tax credits that the Department of Taxation may issue. The tax credit ceiling is \$75 million per calendar year.
- ✦ The Department of Taxation does not guarantee that any LPC-1 Applications for Land Preservation Credits filed after the close of the first business day of November 2018 will be processed in time to issue the credits and enable you to make transfers of credits in 2018. In order to meet this filing deadline for projects going to the board in September of this year, you should be in contact with your attorney, your appraiser, and your tax advisor so that their respective tasks can be coordinated and completed in order to meet this deadline.
- ✦ Tax credits of \$1 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). In order to avoid an adverse post-filing decision from DCR, you may obtain a pre-filing review of the conservation value through DCR. Contact Suzan Bulbulkaya at DCR (804) 371-5218.
- ✦ Several steps, such as the appraisal, bank subordination, legal review, and tax credit registration, may take a long time to complete.
- ✦ VOF staff, landowners' attorneys, appraisers, lenders, and others involved in the easement process will have more time to work on projects in the first two to three quarters of the calendar year, and projects incomplete by the fourth quarter may exceed staff's capacity to complete before the end of the year.