

## **STEPS TO DONATING**

### **A CONSERVATION EASEMENT**

(Easement Purchase follows a separate procedure)

**Step 1: Consideration of Easement.** The landowner contacts the Clarke County Conservation Easement Authority (CEA) staff, Alison Teetor, at (540) 955-5134 to request information and to discuss general easement guidelines and possibilities.

**Step 2: Landowner consults with family and/or legal and tax advisors** and expresses an interest to CEA a desire to further explore the donation of an easement. Landowner should also contact any lien holders to notify them of the intent to donate an easement. Two advisors the County has worked with include:

Accountant

Bob Dale

Yount, Hyde & Barbour  
6 South Pendleton Street  
Middleburg, VA 20118  
(540) 687-6580

**Step 3: Landowner submits application.** Landowner submits application form (available on website, [www.clarkecounty.gov](http://www.clarkecounty.gov)) to CEA office. CEA staff and landowner discuss by phone the property's attributes and the landowner's goals. The submittal of the application initiates the Authority review process for a particular easement.

**Step 4: Staff reviews application to insure donation criteria are met.** Parcel must meet several criteria to insure it can be considered for donation. Staff will review these criteria with the applicant as needed.

**Step 5: Staff submits the application to Authority at regular monthly meeting.** The CEA usually meets the third Wednesday of each month in the Conference Rooms, 2<sup>nd</sup> Floor, 101 Chalmers Ct., Berryville, VA. Staff prepares a report describing the conservation attributes of the parcel and which criteria have been met. If acceptable, the Authority may vote to preliminarily approve the donation.

**Step 6: Site Visited.** If preliminary approval is granted, a site visit is scheduled for the Authority to view the property. The landowner need not be present.

**Step 7: Documents Required.**

- 1) Draft Deed of Easement for review by the Authority, landowner and/or the landowner's attorney. Details specific to the property are included. Document provided by County staff.
- 2) Consent Form signed by landowner, indicating their understanding regarding the placement of the property in Conservation Easement.
- 3) Title Report (60 years) provided by landowner's attorney or title company

**Step 8: Final Approval.** At a subsequent Authority meeting, members discuss the outcome of the site visit and may give final approval for the donation. This approval authorizes the Chair to sign the Deed as long as all required documents are provided.

**Step 9: Final version of Deed of Easement.** Once the Authority, landowner, and/or his/her attorney agree on the content of the Deed of Easement, the landowner may sign the Deed. If there is a mortgage or lien on the parcel, a copy of the Deed must be sent to the lien holder for signature. This is often a lengthy process. The landowner should identify the appropriate person at the mortgage company to expedite this process. Once the Deed is signed by the landowner, lien holder, and/or trustees, the document is submitted to the County for signatures by the Chair of the Authority and Chair of the Board of Supervisors.

**Step 10: Recordation.** The County signs the deed last. Staff will record the deed of easement in the Clerk's Office of the County Circuit Court after receiving final certification of title and other required documentation. A copy of the recorded deed of easement is sent to the landowner.

**Step 11: Baseline Documentation Report.** Staff completes a Baseline Documentation Report, which may include an easement summary, topographic map, aerial map, built environment map, special conditions maps, county tax maps, survey plats of the property if available and photographs of the property keyed to a map. Landowner reviews the information in the Baseline Documentation Report, then signs and returns an acknowledgment form attesting to its accuracy.

**Step 12: Tax Forms.** In order for the landowner to get tax credits for an easement donation, two forms must be submitted (attached). The 8283 must be signed by the Chair of the Easement Authority by December 31<sup>st</sup> and included with the donors tax return. The LPC-1 form must be submitted within 90 days of easement recordation to the State Department of Taxation. It is recommended that all easement donors consult with their attorney or accountant regarding these forms.

***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 County. 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.*

## **Other Relevant Information**

### **Subordination of Mortgages or Other Liens**

(See Step 2 & 8) 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 because 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 – 8283 Form**

In order to claim a federal tax deduction or a state tax credit for a noncash charitable gift, the landowner must engage an independent appraiser to determine the value of the gift. CEA strongly recommends the use of a Certified General Appraiser but does not make specific recommendations. CEA does not require an appraisal and is not involved in the appraisal process. In order to qualify as a noncash 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 CEA 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, CEA 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 (noncash 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 2008 taxes must be purchased by December 31, 2008). 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.