

STEPS TO REQUESTING AN

EASEMENT PURCHASE (w/ Appraisal)

(Easement Donation follows a separate procedure)

Step 1: Solicitation for Easement Purchase. Although applications for purchase may be submitted at anytime, the County solicits for easement purchase application once annually, usually in the spring.

Step 2: 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 3: Landowner consults with family and/or legal and tax advisors, and expresses an interest to CEA to further explore the easement purchase. Landowner should also contact any lien holders to notify them of the intent to place an easement on the property. An advisor the County has worked with is:

Accountant

Yount, Hyde & Barbour
6 South Pendleton Street
Middleburg, VA 20118
(540) 687-6381

Step 4: Landowner submits application. Landowner submits application form (available on website, 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 5: Staff reviews application to insure purchase criteria are met. Parcel must meet several criteria to insure it can be considered for purchase. One of the criteria is a Property Resource Score. This score is an objective calculation used to evaluate the conservation values of the parcel, which would include items such as: the parcel is adjacent to the Shenandoah River, it has an historic house, owner is terminating a number of development rights, etc. Staff can review these criteria with the applicant as requested.

Step 6: Applications Ranked. Once the deadline is reached, all applications for purchase are ranked against each other in order to prioritize purchase offers.

Step 7: Application rankings submitted to Authority at regular monthly meeting. The CEA usually meets the third Wednesday of each month in the in the Conference Rooms, 2nd Floor, 101 Chalmers Ct., Berryville, VA. Staff prepares a report describing the conservation attributes of the parcels and which criteria have been met. The Authority determines which properties will be considered based on scores and available funding. Staff is directed to contact chosen applicants.

Step 8: Determination of Purchase Value. As described in the Determination of Conservation Easement Value Policy two factors are evaluated when determining an easement value: 1) the appraised value of the easement and 2) the owner's three-year average adjusted gross income, based on the 1040 tax forms. The percentage of the appraised easement value offered by CEA is adjusted based on the income of the owner. Lowest-income owners may be offered up to the full-appraised value of the easement. Middle-income owners may be offered a portion of the appraised value and higher-income owners may be offered a minimal amount. Landowners may be entitled to seek tax deductions and tax credits for the balance not compensated for the appraised value. Landowner is asked to submit tax forms detailing adjusted gross income for the last three years.

Step 9: Staff resubmits applications to Authority at regular monthly meeting. Based on the response to the income request, applications are resubmitted to the Authority. If acceptable, the Authority may vote to preliminarily approve the purchase.

Step 10: Site Visit. If preliminary approval is granted, a site visit is scheduled for the Authority to view the property. The landowner need not be present.

Step 11: Purchase Agreement. The applicant will be asked to sign a purchase agreement with the Authority. This agreement outlines the terms of the purchase and is signed by the applicant and the Chair of the Authority. This insures understanding of the terms of an easement purchase.

Step 12: Appraisal. The second part in determining the easement value is an appraisal of the property. Depending on the income level of the applicant, the Authority may pay for an appraisal to determine the easement value. The applicant will be asked to sign a letter indicating their willingness to reimburse the CEA for the cost of the appraisal should the applicant decide not to proceed with the purchase.

Step 13: Final Approval. At a subsequent Authority meeting, members discuss the outcome of the site visit and may give final approval for the purchase. This approval authorizes the Chair to sign the Deed as long as all required documents are provided.

Step 14: 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 Insurance (60 years) provided by landowner's attorney
- 4) A survey may be required depending on what is currently available
- 5) A Baseline Documentation Report is prepared describing the current condition of the property. The landowner will review, and if accurate, sign.

Step 15: Final version of Deed of Easement. Once the landowner and 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, finally the Deed is submitted to any agencies providing grant funding for signature.

Step 16: Settlement Statement. The County attorney will prepare a settlement statement. After all required documentation is received, staff will record the deed of easement in the Clerk's Office of the County Circuit Court after all required documentation. A copy of the recorded deed of easement is sent to the landowner.

Step 17: Tax Forms. In order to get tax credits for an easement donation, two forms must be submitted. The 8283 must be included with donees 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 & 10) 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 – 8283 Form

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. 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 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 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 (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.

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 2018 taxes must be purchased by December 31, 2018). 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.