



April 2022

OFFICE USE ONLY:

Date Received:

Disclosure for New or Amended Open-Space Easements

Discuss the following disclosure with your VOF staff person and your attorney before signing an easement or amended easement

General Information

- A new or amended open-space easement (an “easement”) is an act of land protection which will permanently affect how your land may be used in the future.
- The conveyance of an easement is voluntary, and you may change your mind about it at any time until the easement is signed and recorded at the courthouse.
- 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 your property.
- With an easement on your property, what you are prohibited from doing on your property is governed both by the restrictions in the easement and by local laws and regulations, whichever is more restrictive.

For example:

- a) if a locality allows you to subdivide your property, but the easement prohibits it, the easement restriction governs.
- b) if the easement allows you to build multiple dwellings on your property, but the locality prohibits it, the locality’s restriction governs.

Mortgage Liens on Property

If there is a mortgage or deed of trust on the property you are placing under easement, you or your attorney should contact the mortgage holder as soon as you begin the easement process. The mortgage holder must agree to subordinate the mortgage lien to the easement. Subordination of the mortgage lien ensures continued protection of the property in the event of a foreclosure. Subordination is also required for the donation of an easement or amendment thereof to be a tax-deductible contribution under the Internal Revenue Code. Obtaining approval from the mortgage holder to subordinate the mortgage can be difficult and take a considerable amount of time.

Appraisals

- VOF 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 deed of easement throughout the process. Your attorney should also review with you the effect of the donation of an easement or amendment thereof on your estate plan. **(*See box at the end of this disclosure if you wish to forego representation by an attorney.)**

- VOF does not require an appraisal for the donation of an easement or an amendment thereof and is not involved in the appraisal process. However, if you intend to take a federal tax deduction and/or claim a state tax credit for the donation or partial donation of an open-space easement or an amendment thereof, you will need to engage an appraiser to determine the value of the gift.
- The IRS requires that the appraisal of an open-space easement donation be made by an IRS-defined qualified appraiser. A Certified General Appraiser should qualify.
- To obtain a federal tax deduction for your donation, you will need to file Federal Tax Form 8283 Noncash Charitable Contributions with your tax return. This form sets forth the easement valuation, must include a declaration by your appraiser, and must be signed by VOF to acknowledge the gift. You will need to share your full appraisal with VOF when you submit your Form 8283 for VOF's signature.

Federal Tax Deduction

To obtain a federal tax deduction for the donation of an easement or amendment to VOF, the donation must be made exclusively for one of the conservation purposes set forth in the Internal Revenue Code (the "IRC"). VOF does everything that it can to ensure that its program complies with the IRC and the Treasury Regulations, but it cannot guarantee that the IRS will grant you a charitable gift tax deduction for your donation. You should confer with your tax advisor or attorney, who can help you understand the IRC 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 2022 and subsequent years is limited to 50% of adjusted gross income (AGI) for individual taxpayers, the unused portion of which may be carried forward for a period of fifteen years. In addition, a farmer or rancher who receive in 2022 or thereafter more than 50% of AGI from the trade or business of farming or ranching is eligible for a tax deduction of 100% of AGI.

An Issue That Could Jeopardize Your Tax Benefits

At the time of your easement donation, you may not have plans to add buildings or structures on your property, though you will probably want to keep that option open. If you do, your VOF Conservation Specialist will ask you to designate areas of your property ("building envelopes") within which construction of future buildings or structures would be suitable and within which buildings and structures over a certain size would be required to be located. You are not required to make such designation, but if you don't, the IRS may take the position that you will not be entitled to a tax deduction for your donation. There are conflicting court opinions amongst recent cases, and the issue has not yet been addressed by the Fourth Circuit Court of Appeals covering conservation or open-space easements granted in Virginia. For attorneys - See **Bosque Canyon Ranch II, L. P. v. Commissioner**, 867 F. 3d 547 (5th Cir. 2017), **Pine Mountain Preserve, LLLP v. Commissioner**

151 T. C. 14 (2018), and Pine Mountain Preserve, LLLP v. Commissioner, No. 19-11795 (11th Cir. 2020) overruling the 2018 tax court decision. (***See box at the end of this disclosure if you wish to forego the designation of building envelopes.**)

Reduction in Federal Charitable Deduction

Treasury Regulations, effective August 28, 2018, reduce the federal charitable deductions for gifts of qualifying open-space or conservation easements by the amount of any state land preservation tax credit (For land in Virginia an amount equal to 40% of the easement value). For example, if a landowner gives VOF an open-space easement on property in Virginia with an easement value of \$500,000, the state tax credit would be \$200,000 and the federal tax deduction would be reduced from \$500,000 to \$300,000.

Virginia Land Preservation Tax Credit

If you donate a qualifying open-space easement on property in Virginia to VOF, you may 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 \$20,000 for taxable year 2022, 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. If 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. If 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 value of the donated interest (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.*)

State Tax Credit Form

To claim a state tax credit, you will be required to submit a form LPC-1 Application for Land Conservation Credit 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. The Tax Department does not guarantee that any LPC-1 application received/postmarked on or after the first business day of November 2022 will be processed in time to make transfers of credit in 2022. Timing of tax credit application: For the conveyance of an easement made on or after January 1, 2020, no credit shall be allowed unless a complete application for tax credit has been filed with the Department of Taxation by December 31 of the second year following the calendar year of the conveyance.

State 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. 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" or contact Suzan Bulbulkaya at DCR (804) 304-1117.

State Tax Credit Cap

There is a \$75 million limit on the amount of tax credits that the Department of Taxation may issue in each calendar year. Total statewide tax credit applications may reach the cap or ceiling on the annual allocation prior to the end of the calendar year in which your easement is given, so that tax credits applied for late in the year may have to be used in a later calendar year (and any applicable carry-forward years). Information about the total statewide amount of tax credits which have been applied for at any time is available from the Department of Taxation by calling (804) 786-2992.

Local Real Estate Taxes

Pursuant to Virginia Code Sections 10.1-1011 and 58.1-3205 local real estate taxes on property under easement may be reduced. However, if your property is, for example, 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.

Information Given to VOF During the Easement Process

Information related to the deed of easement 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 the confidentiality of personal tax information, will be subject to Freedom of Information Act requests. Personal contact information furnished to a public body for the purpose of receiving electronic mail from the public body is excluded from the mandatory disclosure provisions of FOIA, provided that the electronic mail recipient has requested that the public body not disclose such information. (***See box at the end of this disclosure.**)

Check the following if they are applicable to you and sign below.

I have been advised by VOF of the advisability of having an attorney represent me with respect to the drafting and reviewing of this easement. However, I wish to proceed with this easement without the assistance of an attorney.

I have been advised by VOF of the advisability of designating building envelopes for an easement project that is intended to generate tax benefits. However, I wish to proceed with this easement without designating building envelopes.

I would like VOF to avoid distributing my home or business address, e-mail address, telephone numbers, or comparable numbers assigned to any electronic communication device.

I acknowledge that I have received this disclosure.

SIGNATURES: (All owners must sign.)

_____	Date: _____
_____	Date: _____
_____	Date: _____
_____	Date: _____
_____	Date: _____
_____	Date: _____

**Please email this completed form to your VOF staff person or mail it to VOF at
PO Box 85073
PMB 38979
Richmond VA 23285-5073**