

10 STEPS TO CONVEYING A VOF EASEMENT

Step 1: Consideration of Easement. The landowner contacts VOF (or local land trust) to request information and to discuss general easement guidelines and possibilities. Landowner consults with family and/or legal and tax advisors, and expresses an interest to VOF a desire to further explore the donation of an easement. Landowner submits application form (available on website) to VOF regional office. VOF and landowner discuss the property's attributes and the landowner's goals by initial phone conversation.

Step 2: Site Visit. Depending on property attributes and staff workload, VOF staff and landowner arrange to meet and view the property. On site, the staff analyzes the property's features and the natural and open-space resources, and consults with the owner on long-term objectives. Staff and landowner discuss options for easement terms that will meet the landowner's goals, protect the conservation values of the property, and meet the standards of the Foundation. The terms are based on the Foundation's Guidelines and sample deed of easement.

Step 3: Preliminary Agreement. After consulting with advisors, landowner reaches a preliminary agreement with VOF on the proposed terms of the easement and states desire to move proposal forward to consideration by the VOF Board. If there is a mortgage on the property, the landowner should contact the lender to arrange for subordination of the mortgage (See page 3). Landowner's attorney and VOF staff develop draft deed of easement including full legal description for landowner's review and subsequent VOF Board consideration. Several revisions of the draft easement are typically necessary before it is in final form and ready for board consideration.

Step 4: Requirement for Title Opinion and Letter of Intent. Landowner's attorney or a title company provides a preliminary 60-year title opinion ("certification of title" or "title report") *in favor of VOF*. This report must be received no later than the deadline shown on the chart on page 3. The landowner or landowner's attorney also provides copies of deeds by which the landowner obtained title as well as all recorded survey plats of the property and/or metes and bounds descriptions of the property. In addition, the landowner submits a letter to VOF stating a desire to donate the easement.

Step 5: Staff Research. Staff completes research on the property, including:

- Determining whether the easement will conform to the comprehensive plan of the locality in which the property is located and the zoning classification of the property;
- Reviewing statewide planning documents, such as the Virginia Department of Transportation six-year plans, the Virginia Outdoors Plan, Chesapeake Bay Preservation Area Maps, and Division of Natural Heritage database;
- Collecting maps of the property (U.S.G.S. topographic maps, aerial maps and tax maps) and survey plats if available for baseline documentation of the condition and character of the property.

Step 6: Board Approval. Each easement proposal must be approved by VOF's Board of Trustees. The Board meets quarterly and the deadline for completed proposals is approximately five weeks prior to the meeting. (See 2008 deadlines listed on page 3.) The Board may accept the proposed easement, accept it subject to changes, or reject it. The Board may condition its approval on modifications to the proposed terms of the easement. The Board's approval does not obligate the landowner to complete the easement. The landowner may finalize and record the easement at any time within two years of approval. A proposed change in any terms of the easement that would result in a less restrictive easement than that approved previously would need to be reconsidered by the Board.

Step 7: Follow-up Site Visit. VOF's staff makes a return visit to complete documentation of the property if necessary. The staff photographs the natural and open-space resources of the property, as well as all structures and any areas specifically addressed in the deed. VOF staff labels all photos and completes photo point map for the Documentation Report.

Step 8: Baseline Documentation Report. VOF staff completes the 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 9: Finalizing Easement Draft. Attorney sends deed of easement to VOF staff for final review. VOF staff suggests final edits, if any, and returns to attorney for editing and signatures. Landowner, lender and/or co-holder (if applicable) sign the deed.

Step 10: Recordation. VOF signs the deed last. The Deputy Director cannot sign the deed until the following documents are verified in the files of VOF: the signed Baseline Documentation Acknowledgement Form and the signed VOF Consent Form. After receiving these documents, a VOF Deputy Director signs the deed. VOF may record the deed of easement in the Clerk's Office of the County Circuit Court after receiving final title bring down, or the landowner's attorney may complete the title bring down and record the deed of easement. A copy of the recorded deed of easement is sent to the landowner.

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 Foundation. 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.

Timeline for Easement Proposals

Easement proposals must be finalized approximately five weeks before Board meeting dates in order to provide time for preliminary review by Board members. Preparation of these proposals requires a coordinated effort between VOF staff, the landowner and the landowner’s attorney. Landowners should reference the following dates to determine an approximate timeline for their particular easements.

“Target Completion Date” refers to the deadline for submittal of the following to VOF:

- 1) Final draft deed of easement from attorney, including legal description of property (this deed is a draft that has been reviewed and refined by the landowner and VOF staff)
- 2) Letter of intent
- 3) 60-year title opinion

2008 Board Meeting Dates	Target Completion Date
Jan 24	December 21
April 16-17	March 10
July 9-10	June 2
Oct 22 -23	September 15

Subordination of Mortgages or Other Liens

(See Step 3) 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

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. VOF strongly recommends the use of a *Certified General Appraiser* but does not make specific recommendations. VOF 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 VOF 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, VOF 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.

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.

Reasons for Completing Easements Early in the Year

VOF recommends that landowners take plenty of time to think through donation of an easement. Landowners should have all the information needed to make an informed decision and time to be deliberate in their decisions. If the landowner desires to complete an easement by year's end for tax purposes, there are several reasons to begin this process as early as possible during the calendar year:

- The Virginia Department of Taxation will register only \$100 million in state tax credits for easements recorded in 2007. The amount of the annual cap will increase incrementally based on the consumer price index pursuant to Virginia Code Section 58.1-512 D.4.b. Once this annual cap is reached, any unregistered tax credits will be carried over to the next year.
- Several steps such as the appraisal, bank subordination, legal review and tax credit registration can take more time than expected to resolve.
- VOF staff, attorneys, appraisers, lenders and others involved with the easement process will have more time to support and complete projects in a timely way in the first two to three quarters of the calendar year, and may exceed capacity to do so in the fourth quarter of the year