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*NOTICE: The materials herein are intended for educational and informational purposes only. Nothing herein is to be considered legal or tax advice and readers are responsible for obtaining such advice from their own professional advisors. Conservation Partners, LLC does not provide a warranty to credit buyers or sellers, and credit sellers and their advisors are responsible for ensuring that the sellers' credits meet all legal requirements.*

*VERSION: April 15, 2010. This Guide is updated from time to time. Please contact Conservation Partners, LLC to make sure you have the most current version.*



## Introduction

Thank you for your interest in Conservation Partners, LLC (“Conservation Partners”). Conservation Partners consults with landowners and their professional advisors throughout the complex process of donating conservation easements and preparing and registering high-quality land preservation tax credits. In most cases, after an easement donor’s credits are registered, we help the donor market and sell his or her credit to individuals and businesses who are enthusiastic about purchasing high-quality credits and supporting land conservation in Virginia.

This *Landowner’s Guide* is designed to help you, as a prospective easement donor, to prepare for some of the decisions you will face as you consider an easement donation. We cannot give tax or legal advice, so you should consult with an experienced professional regarding your own tax and financial situation before signing any legal agreement or proceeding with a conservation easement donation.

We hope you will contact us to discuss your property, your plans, and how we might be able to help you and your advisors through the process of making an easement donation. Please consult with us as soon as possible if you are seriously interested in donating an easement. *You can save significant time and expense if you allow us to begin helping you and your advisors early in the easement donation process.* We will be happy to send copies of the *Landowner’s Guide* and our *Quality Standards* to your attorney, appraiser, and other advisors upon request.

Thanks again for your interest, and we look forward to speaking with you.

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## Conservation Partners' Mission Statement

Conservation Partners, LLC ("Conservation Partners") was established in 2002 to assist landowners who want to permanently protect the important conservation values of their land, including scenic beauty, wildlife habitat, historic integrity, water resources, and the land's ability to provide a farming or forestry livelihood.

Conservation Partners identifies landowners who truly care about protecting their land and its conservation values, helps those landowners understand the potential benefits of donating conservation easements, and assists landowners and their professional advisors through each step of the easement donation process. We most often work with landowners who are just beginning their easement donations, but we also work extensively with easement donors who come to us later in the process. Our experienced staff can provide significant assistance in several areas:

Education and Outreach: Conservation Partners provides conservation easement information to Virginia landowners and their advisors, and seeks out landowners whose lands have important conservation values and who are willing to protect their lands in perpetuity.

Consulting: At the invitation of an easement donor, Conservation Partners' staff works in cooperation with the easement holder and the donor's attorney, appraiser, and tax advisor. Our staff will offer recommendations, based on our *Quality Standards* and our experience with hundreds of Virginia conservation easements, for strengthening the documents to accomplish the donor's goals and result in a quality land preservation tax credit.

Processing and Credit Sales: Conservation Partners' team of processing experts manages and facilitates the complex process of collecting all documentation required by the Virginia Department of Taxation in connection with the registration of a land preservation tax credit. Special services include collection of Department of Conservation and Recreation presentation materials when required. After registration, Conservation Partners will present the donor's quality tax credit to a large market of purchasers and handle all sales and transfer logistics.



## What are Conservation Easements, and Why Do Landowners Receive Tax Benefits for Donating Them?

Conservation Values. It is commonly understood that much of the undeveloped private land in this country is providing significant benefits to the general public in the form of clean water, scenic views, wildlife habitat, and so on. The particular open fields, healthy forests, clean streams, and other characteristics of land that provide those public benefits are often referred to as the land's "conservation values." In most cases, a property's conservation values would be destroyed—and the public benefits they provide would be lost—if the land were turned into a residential subdivision or developed with a shopping mall.

Sprawl and Cost to Communities. In addition, studies have shown that "sprawl"—including certain types of residential development of farmland, forest land, and other open space—can impose net costs on communities because any increase in tax revenues is more than offset by the increased costs of providing services to new residents. So communities actually can save money by encouraging the permanent protection of open space land unsuited to efficient development.

Protecting Conservation Values Provides Public Benefit. A conservation easement is both a conveyance of an interest in real property and a legally binding agreement between the owner of land and the holder of the easement. An easement restricts the development and certain uses of the encumbered land in perpetuity to protect the land's conservation values, and by doing so, the easement provides to the public a *guarantee* that the benefits it has been receiving from the landowner's land will continue to flow, unimpaired by development. Thus the process of donating an easement entails, at the most fundamental level, first identifying the land's important conservation values and then carefully drafting the easement to protect those values.

Tax Incentives Reward Economic Sacrifice. Because placing permanent restrictions on the development and use of land almost always reduces the market value of the land, a landowner who donates a conservation easement makes a genuine economic sacrifice. The federal government and many state governments offer income and estate tax incentives that reward donors of qualifying conservation easements for making this sacrifice. Governments are willing to offer such incentives because properly-drafted easements protecting land with important conservation values can be extremely valuable to the general public. The tax incentives—especially in Virginia—can be generous, but they will not fully compensate the donor for the reduction in the value of the donor's land. Thus, an easement donor must be concerned primarily with protecting the land from development, and should look to the available tax incentives as a way of partially offsetting the cost of that protection. By offering tax benefits to donors of qualifying easements, the government is offering to *share* with landowners the costs associated with permanently protecting the important conservation values of their land.



## Virginia's Land Preservation Tax Credit

Through the Virginia Land Conservation Incentives Act of 1999 (the "Act"), the Commonwealth of Virginia offers meaningful financial incentives in the form of transferable state income tax credits to encourage landowners of all income levels to permanently protect the conservation values of their land. While most land preservation tax credits are claimed by conservation easement donors, landowners who donate fee title to their land for conservation purposes also can receive land preservation tax credits.

The Basics. Under the Act, a qualifying easement donor can receive a land preservation income tax credit in an amount equal to forty percent (40%) of the amount by which the easement reduces the fair market value of the landowner's land (usually referred to as the "value" of the easement), as estimated by a qualified appraisal. To be eligible for a land preservation tax credit, the donation of a conservation easement must satisfy various technical requirements, and the value of the easement must be estimated by a fully-supported appraisal prepared by an independent appraiser with significant expertise in valuing conservation easements.

Credit vs. Deduction. The credit, unlike a deduction, can be used to offset the donor's Virginia income tax liability dollar-for-dollar, subject to certain statutory limits.

Transferability. Because land preservation tax credits are *transferable*, Virginia easement donors can choose to sell some or all of the tax credits generated by their donations to other individual and corporate Virginia taxpayers, who can then use the credits to offset their own Virginia income tax liability.

Pricing. Land preservation tax credits meeting Conservation Partners' *Quality Standards* are offered to the market at a sixteen percent (16%) discount, or eighty-four cents (\$.84) for each dollar of credit purchased. Conservation Partners' fee for all standard services is six cents (\$.06) for each dollar of credit sold, which means sellers will net seventy-eight cents (\$.78) for each dollar of credit sold (before the Tax Department transfer fee, see below).

Tax Department Process and Fee. The Virginia Department of Taxation (the "Tax Department") has set up various procedures for claiming, registering, and transferring land preservation tax credits, and it imposes a five percent (5%) transfer fee on each sale transfer (subject to a per-credit-holder/per-donation maximum of \$10,000). Conservation Partners works closely with the Tax Department to ensure all necessary paperwork is properly filed for our credit sellers and buyers.



## The Process: Donating a Conservation Easement and Selling Your Credit Through Conservation Partners

Conservation Partners was formed to help Virginians realize the benefits of land conservation. We take conservation seriously, and we are proud of our professional approach to assisting with the donation of quality conservation easements and the transfer of quality land preservation tax credits.

Managing a Complex Process. As you will learn from this Guide, we are committed to doing everything we can to make the process of donating easements, gathering documentation, registering and preparing credits for sale, and transferring credits as smooth and rewarding as possible. We have the personnel and resources to ensure the complex process of donating an easement does not overwhelm the donor.

Consulting. While we cannot give legal or tax advice ourselves, Conservation Partners provides high-level consulting resources for donors' attorneys, appraisers, accountants, and other professional advisors. When necessary, we can call on an extended team of national experts who have many years of experience in helping donors prepare high quality conservation easements and appraisals.

Saving Donors Money. Many easement donors find that Conservation Partners' involvement in their donation process enhances the efficiency of the process and saves their professional advisors time and effort, reducing the donors' total costs significantly.

A Significant Market of Tax Credit Purchasers. We have invested in sophisticated technology and processes that make it easier than ever for Virginia taxpayers to purchase credits through Conservation Partners, and land preservation tax credits marketed by Conservation Partners are recognized for their quality and are preferred by risk-conscious purchasers and their advisors, many of whom come to us year after year to supply them with high-quality credits.

Step-By-Step. What follows is a simplified outline of the steps in a conservation easement donation and the ways in which Conservation Partners can work with you, your easement holder, and your professional advisors to facilitate the process.

- **Contact:** If you are interested in having Conservation Partners work with you and your professional advisors in connection with your easement donation and the preparation and registration of your land preservation tax credit, please call our office at 540-464-1899 or visit our website, [www.conservationpartnersllc.com](http://www.conservationpartnersllc.com).
- **Initial Consultation With Conservation Partners:** We will meet with you by telephone or in person to talk about your land and your easement donation plans. In most situations, we are able to visit the land you plan to protect.
- **Registration Agreement:** To get things started, you and Conservation Partners will sign a short Registration Agreement by which you retain Conservation Partners to consult with you



and your professional advisors as you move through the easement donation process. In our standard Registration Agreement, you agree to sell at least half of your land preservation tax credit through Conservation Partners should you decide to complete your donation. Importantly, the Registration Agreement does not commit you to donate an easement; it may be that you ultimately decide that it would be best to wait on your donation or even pursue some other plan with respect to your land. Easement donors who wish to work with Conservation Partners but who do not wish to sell their credits through Conservation Partners should inquire about alternative arrangements.

- **Professional Advisors:** If you don't already have professional advisors, we can help you find an experienced attorney, appraiser, tax advisor, and any other advisor you need. See the "What to Expect from Your Professional Advisors" and "Attorneys, Appraisers, and Accountants with Conservation Easement Experience" sections below for more details.
- **Choosing an Easement Holder:** Certain government agencies as well as private non-profit organizations known as "land trusts" accept easement donations. Conservation Partners can consult with you and your attorney to help you decide which easement holder(s) you should approach with your donation; depending upon the nature and location of your property, you may be able to choose among several potential local, regional, and national easement holders. Representatives from the easement holder will want to visit with you and tour your property early in the donation process.
- **Easement Drafting and Title Work:** Once you have settled on an easement holder, the holder's staff will work with you, your attorney, and Conservation Partners to produce a draft easement. One of the first steps will be for your attorney to obtain a title report or title insurance commitment so that any title issues—such as any mortgages on your property—can be addressed early in the process. Any existing mortgage liens (deeds of trust) must be released or subordinated prior to a conservation easement donation, and negotiation with lenders can be time-consuming.
- **Entity Donors:** When the easement donor is a trust, partnership, corporation, limited liability company, or other entity, additional documentation must be provided to the easement holder and the Tax Department. Also, Conservation Partners will work with your attorney to obtain a legal opinion addressing the entity's power and authority to make the donation and enter into contracts. The owners or beneficiaries of entity or trust donors may be asked to provide personal guaranties to credit buyers in order to enhance the marketability of the credits.
- **The Appraisal:** In order for you to claim tax incentives for your donation, you must have the donation appraised by a qualified appraiser. It is important to involve an appraiser early in the process, as his or her input during the planning and drafting stages can be invaluable. Conservation Partners typically consults with our customers' appraisers as needed, and we have access to national easement appraisal experts to help out with thorny appraisal problems.
- **DCR Approval:** Formal review and approval by the Department of Conservation and Recreation ("DCR") is required by law with respect to donations that generate a credit claim



of \$1 million or more (note that past credit claims related to the same parcel may have to be combined with the current claim for purposes of the \$1 million threshold). If the preliminary appraisal indicates your donation will be subject to DCR review, Conservation Partners will work with you and your attorney to submit the deed of easement and all other required materials to DCR for preliminary and final review and approval. We are one of the few conservation consultants in the state with significant experience with the DCR approval process.

- **The Donation:** When the easement deed has been finalized and approved by the holder, it is signed by you and the holder and recorded in the Clerk's Office of the Circuit Court of the jurisdiction where the protected property is located. The appraiser will then finalize the appraisal report and deliver copies to you and to Conservation Partners.
- **Credit Registration:** Once your easement is recorded and your appraisal completed, you will be eligible to register your tax credit with the Tax Department. Conservation Partners will work with you and your tax advisor in the preparation, collection, and filing of the necessary documentation. The Tax Department will process your application and issue a registration number for your tax credit; depending on the time of year, the Tax Department's process can take up to two weeks or longer.
- **Pre-Sale Documentation for Credit Sellers:** As part of the preparation of your credit for registration, you and Conservation Partners will sign a Credit Marketing Agreement stating the amount of credit you wish to sell, setting forth certain representations regarding the credit, and giving Conservation Partners authorization to sell your credit once we locate buyers. As soon as Conservation Partners has your Tax Department registration number in hand, your credit will be placed in our queue of credits to be actively marketed and sold.
- **Tax Credit Sales:** At the closing of each individual sale of a portion of your tax credit, you and the purchaser will enter into a Tax Credit Purchase Agreement (to reduce transaction costs, you will formally authorize an officer of Conservation Partners to sign these standardized Agreements on your behalf). Under each Tax Credit Purchase Agreement, you commit to stand behind the validity of your credit and reimburse the purchaser in the unlikely event your credit is disallowed by the Tax Department. The purchaser's check for the purchase price will be written to you, and once the check clears, you will pay Conservation Partners our fee for facilitating the sale and reimburse us for costs advanced on your behalf.



## Fees Associated With an Easement Donation and Sale of a Land Preservation Tax Credit

- **Legal Fees:** You will incur legal fees in connection with your conservation easement donation. Fees are negotiated on an hourly basis between the easement donor and an attorney licensed to practice in Virginia. Careful drafting by an experienced attorney is necessary to ensure that the easement is properly crafted to meet your needs, to express your long-term plans for your property, and to comply with all applicable legal requirements. The amount of legal fees paid by easement donors varies widely, and always depends heavily upon the complexity of the donation. Conservation Partners will work with your attorney to help keep legal fees down, but even in the simplest transaction a donor should expect to pay his or her attorney upwards of four or five thousand dollars. It is important to remember that with the perpetual restriction of your property at stake—not to mention tens or hundreds of thousands of dollars of tax incentives—it simply doesn't pay to skimp on legal advice.
- **Appraisal Fees:** You also will incur fees associated with preliminary and final appraisals of your conservation easement. These normally flat fees are negotiated between the easement donor and the appraiser, and once again, it pays to hire the most experienced and expert easement appraiser you can find: many believe that an expertly prepared and well-supported appraisal is the single most important component of any claim of tax incentives for an easement donation. An easement appraisal is a complex undertaking that requires significant expertise, and experienced easement appraisers' fees can range from four or five thousand dollars to twenty thousand dollars or more for unusually large and complex easement transactions.
- **Appraisal Desk Review Fee:** Under certain circumstances, a separate "desk review" of the appraisal report by a national expert may be recommended. The desk review process usually involves at least minor revisions to the draft appraisal report, and ultimately provides the donor with additional verification of the report's compliance with appraisal requirements and best practices. Conservation Partners asks easement donors who are working with appraisers unfamiliar to us to obtain desk reviews, and we sometimes recommend very large and complex easement appraisals be desk reviewed as well. An expert desk review generally will cost an additional three to four thousand dollars.
- **Tax Advisor Fees:** Your tax advisor will charge fees for preparing the tax forms associated with your easement donation and claim of state and federal tax incentives. These fees normally are negotiated between the easement donor and the advisor, and depending upon the complexity of your tax situation can range from several hundred to several thousand dollars.
- **Tax Department Transfer Fee:** The Tax Department imposes on each land preservation tax credit transfer a fee generally amounting to five percent (5%) of the amount of credit transferred. Fees on transfers arising from donations made prior to July 1, 2010 are subject to a per-credit-holder/per-donation maximum of \$10,000.



- **Baseline Documentation Fee and Stewardship Endowment:** A few easement holders require that the easement donor provide or pay for the preparation of maps, reports, photographs, and other materials required by law to establish the condition of the property at the time the easement is donated. Some land trusts also ask for a cash donation to help endow the perpetual stewardship of your easement.
- **Conservation Partners' Fee:** Our fee is equal to six percent (6%) of the amount of your land preservation tax credit that we sell. Each credit buyer will write a check to you for the full purchase price of the amount of credit he or she is buying, and you will then pay Conservation Partners our fee from your sales proceeds. Easement donors who wish to work with Conservation Partners but who do not wish to sell their credits through Conservation Partners should inquire about alternative arrangements.
- **Advance Funding to Cover Fees:** As a service for cash-strapped easement donors, through July 1 Conservation Partners will consider requests for advance funding to help cover costs associated with easement donations, subject to certain limitations and full reimbursement to Conservation Partners at the end of the process.
- **Fee Estimates:** We have found that donors' relationships with their professional advisors can be improved in some circumstances if the donor obtains up front from each professional advisor an estimate of the fees and other costs expected in connection with the easement donation, with the understanding that the professional will notify the donor in the event costs exceed the original estimate.
- **Keeping Fees Under Control:** As mentioned earlier, Conservation Partners' involvement in the easement donation process can greatly enhance the efficiency of the process and help donors save on professional fees.



## What to Expect of Your Professional Advisors

The following is a brief introduction to help guide you in your initial discussions with your professional advisors. See the “Attorneys, Appraisers, and Accountants with Conservation Easement Experience” section below for a number of attorneys, appraisers, and tax advisors who have advised Conservation Partners’ customers and who have demonstrated their ability to work in compliance with our *Standards*.

### I. The Attorney’s Role

Conservation Partners strongly recommends you work with an attorney who has significant experience with the federal and state laws relating to conservation easement donations. Good legal work is essential to your easement donation. Among other things, your attorney is responsible for:

- Ensuring that an easement is appropriate for your particular circumstances, and that it is in your best interest to donate a conservation easement. This aspect of the attorney’s role cannot be overemphasized.
- Helping you negotiate the terms of the easement with the easement holder, and ensuring that the easement is drafted clearly, that it expresses your intentions for your charitable gift, and that it complies with all applicable laws.
- Handling title issues, such as providing an accurate legal description of the property you are protecting, ensuring you convey good legal title to the easement to the holder, and working with you and your lenders early in the process to make sure any mortgage liens are properly released or subordinated to the easement.
- Together with your tax advisor, describing and addressing any potential tax issues raised in connection with your easement donation.
- Addressing the various issues raised when the property to be protected is owned by several persons or by a trust, limited liability company, partnership, or other entity.
- We recommend that your attorney review our *Standards* and speak with us directly before he or she begins drafting or reviewing your easement. We consider it part of our job to consult with your attorney regarding the recommendations contained in our *Standards*, and we look forward to the opportunity. Please remember that Conservation Partners does not and cannot provide legal advice, that our consulting services only concern our *Standards*, and that your attorney is responsible for ensuring your easement complies with applicable state and federal laws and is appropriate for your particular circumstances.



## II. The Appraiser's Role

Conservation easement appraisals are complex and required specialized knowledge of easement appraisal practice and the numerous applicable laws, regulations, and professional standards. Consequently, Conservation Partners advises all easement donors to hire an appraiser with significant experience and expertise in conservation easement appraisals.

- Your appraiser can be very helpful during the planning and easement drafting stages of the process. An expert easement appraiser can help you understand the potential effect on your property's value of various decisions you will face when the easement is being drafted, and he or she can help you avoid expensive mistakes in your planning.
- Many prospective donors ask their appraiser to prepare a preliminary valuation to give them a ballpark idea of the value of their contemplated donation. Significant work is usually required to give even a ballpark value, and appraisers are constrained by professional standards dictating the form and content of value opinions, but most are willing to provide a preliminary valuation for a percentage of the fee they would charge for the complete report.
- Don't be put off when your appraiser asks if you, your family, or any "related entities" own any other property in the vicinity of the property you're protecting. An easement appraiser is required to consider whether the protection of the property will benefit you or your family by increasing the value of other property you own nearby. This is a highly technical issue, but good easement appraisers are capable of addressing the "enhancement rules" in a way that complies with applicable law and makes sense from a real estate market perspective.
- The appraiser should be willing to provide a draft appraisal report—preferably in electronic form—for review by you, Conservation Partners, and your attorney and/or tax advisor, if appropriate.
- The final appraisal report filed with the Tax Department should include a copy of the recorded deed of easement. Ideally, the appraiser will wait until the easement is recorded before producing a final appraisal report, but that is not always possible. If the appraisal is finalized before the easement is recorded, the appraiser should be willing to provide a letter addendum incorporating a copy of the recorded deed into the report. If the appraisal report is finalized before the easement is recorded and more than 60 days passes before recordation, regulations require that the appraisal be updated, which often involves an additional fee.

Note About Appraisers Not on Conservation Partners' List of Professionals. On occasion, an easement donor wishes to work with (or has already obtained an appraisal by) an appraiser not on our list of conservation easement appraisers who have demonstrated their ability to produce appraisal reports that meet our *Standards*. We are always open to working with new expert easement appraisers, but in order to ensure the new appraiser is qualified, in this situation Conservation Partners generally will ask the donor to obtain a desk review of the appraisal from one of the national easement appraisal experts we work with. Please contact our office for more details.



### **III. The Tax Advisor's Role**

In the past few years, we have come to appreciate how important it is for an easement donor to work with a tax advisor who is experienced with conservation easement donations. After all, tax benefits for conservation easement donations can only be claimed through the filing of complex tax forms, which are the bailiwick of accountants and other tax advisors. In addition, conservation easement donations will virtually always affect the donor's tax situation, so professional tax planning is strongly recommended for every conservation easement donor.

Following are a few examples of the services your tax advisor will be called upon to provide in connection with your easement donation:

- If your advisor does not have any experience with conservation easement donations, he or she should consult with a specialist to make sure all of the important tax issues have been covered for you. Conservation Partners can provide a list of specialists to your advisor on request.
- Your advisor should consult with you to discuss the federal and state tax incentives for easement donations in general, including the possibility that (i) any federal and/or state tax benefits from a donation that fails to qualify under applicable law could be reduced or denied altogether, (ii) an invalidated state tax credit may require amended federal and/or state income tax returns, which could result in additional income tax, plus interest and penalties, and (iii) buyers of any of your credit that is invalidated will likely be entitled to claim reimbursement from you.
- You and your tax advisor should discuss any issues raised by your particular circumstances; for example, additional tax considerations come into play if you have owned your land for less than a year, if you are a "qualified farmer or rancher," or if you hold title to your land through a trust, limited liability company, or other entity.
- Certain tax forms and other documentation required in connection with your tax credit registration will need to be prepared by or in cooperation with your professional tax advisor before filing.
- Once your credit is registered, you should consult with your tax advisor concerning how much of your tax credit you should save for your own use, how much you should sell, and the tax consequences of your decision.



## *Quality Standards: An Introduction*

Conservation Partners' *Quality Standards* have two main components: easement quality and valuation. The easement quality standards are meant to ensure that we only work with conservation easement donations that provide significant benefits to the public. Valuation standards have to do with easement appraisals, and are meant to ensure that easement donors claim the land preservation tax credits they are entitled to—no more and no less.

The following is only intended to be a brief introduction to our *Quality Standards*. Please feel free to request a copy of our *Quality Standards* or download them from our website, [www.conservationpartnersllc.com](http://www.conservationpartnersllc.com).

### **I. Easement Quality**

Recall that the process of donating an easement entails, at the most fundamental level, first identifying the land's important conservation values and then carefully drafting the easement to protect those values. The easement quality sections of our *Quality Standards* attempt to address these two fundamental elements: (i) the land encumbered by an easement must have important conservation values, and (ii) the easement must be drafted to provide an appropriately high level of protection for those values. Only if those two elements are present will an easement provide significant public benefit, which is the whole point of Virginia's land preservation tax credit program.

- Characteristics of the Land: Some of the more important factors we look for include the size of the property to be protected; adjacency/proximity to other protected land; presence of threatened, endangered, or sensitive species or ecosystems; presence of water resources such as creeks, rivers, or wetlands; scenic values; historic values; and designation by particular federal, state, or local conservation programs.
- Easement Provisions: The deed of easement must describe in some detail the specific conservation values of the property, make convincing arguments that the easement complies with applicable legal requirements, and go on to impose restrictions on the use and development of the land sufficient to protect its conservation values and provide significant benefit to the public. The easement must satisfy certain technical requirements, and it must not reserve to the grantor any use and development rights that are inconsistent with the protection of the property's conservation values. The important issue of reserved or retained rights is discussed in detail in our *Quality Standards*.

### **II: Conservation Easement Appraisals**

The donor of a conservation easement will be eligible for a Virginia land preservation tax credit only if the value of the easement is substantiated by an appraisal that meets certain applicable appraisal standards. An appraisal that fails to meet those standards, or that overstates the value of the easement, may cause the tax credit to be disallowed in whole or in part if successfully



challenged by tax authorities. For these reasons the quality of a donor's easement appraisal is absolutely crucial to the quality of the donor's land preservation tax credit.

- The Before and After Method. For purposes of the land preservation tax credit program, the value of a conservation easement generally is equal to the difference between: (i) the fair market value of the land immediately before the donation of the easement (the "before-easement value") and (ii) the fair market value of the land immediately after the donation of the easement (the "after-easement value"). Not surprisingly, this is known as the "before and after" method of easement valuation:
  - *The Before-Easement Value.* Appraising the before-easement fair market value of the easement donor's land should be no different from any run-of-the-mill appraisal of land. According to applicable law, the appraiser must estimate the price at which the land would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having a reasonable knowledge of relevant facts. In other words, the appraiser should estimate the price at which the donor realistically could sell the land in its current state in the open market. To do that, the appraisal most often will employ the "sales comparison approach," in which the appraiser compares the easement donor's land to other similar properties that have recently sold in the relevant real estate market.
  - *The After-Easement Value.* In the second step, the appraiser will estimate the value of the donor's land after its use has been restricted by the easement. As in the before-easement step, the preferred method to estimate the land's after-easement value generally will be the sales comparison approach. The best comparable sales are sales of similar parcels that were protected by conservation easements when they were sold, and the appraiser often will need to conduct extensive, time-consuming research in order to find useful after-easement comparable sales. In the third step of the easement appraisal, the land's after-easement value is simply subtracted from its before-easement value to calculate the value of the easement.
- The Enhancement Rules. The appraisal can become somewhat more complex when the donor or related persons own other properties in the vicinity of the protected property, as the appraiser must analyze whether the value of such properties might be "enhanced" by the donation of the easement. Application of the enhancement rules can affect the final value of the easement; for example, if the donor owns property near the protected property that is enhanced when the easement is donated, the amount of such enhancement is subtracted from the value of the easement for purposes of calculating the amount of the donor's land preservation tax credit.
- Good Appraisals are Good for Conservation. Conservation Partners inspects the appraisals substantiating the value of the easements underlying all of the credits we work with, and we will market a credit only if it is supported by an appraisal that meets our *Quality Standards*. Conservation Partners will not market credits that are based on appraisals we feel are abusive or not appropriately supported by market evidence. We hope that our insistence on



well-supported appraisals that assert a defensible value for easements will help to avoid damaging accusations of abuse of the tax incentives in the media and the legislature, thus benefiting Virginia's land conservation efforts over the long term.

### **III. *Quality Standards* Are Not Professional Advice**

Our *Quality Standards* are based upon the cumulative experience of various nationally recognized conservation easement and appraisal experts, and we update the *Quality Standards* periodically to keep them current with evolving state and national private land conservation practice. However, our *Quality Standards* are not necessarily coextensive with applicable law or professional standards or the requirements of various organizations that accept conservation easement donations, and we can't predict what positions tax authorities may take with respect to easements' or appraisals' compliance with applicable requirements. Thus, our acceptance of a land preservation tax credit does not constitute a warranty by Conservation Partners that the easement or appraisal complies with applicable laws or that the credit is valid. Conservation Partners cannot and does not provide legal, tax, or appraisal advice, and it is up to the easement donor's attorney, appraiser, and other professional advisors to ensure compliance with applicable laws and standards.

### **IV. Other Resources**

A few secondary sources that prospective easement donors and their professional advisors often find helpful are listed below.

- Elizabeth Byers and Karin Marchetti Ponte, *The Conservation Easement Handbook* (Land Trust Alliance, 2d ed. 2005). This book (along with a plethora of other helpful resources) is available from the Land Trust Alliance at <http://www.lta.org/publications/index.html>.
- Stephen J. Small, *Preserving Family Lands, Books I, II, and III* (available at <http://www.www.preservingfamilylands.com>); *The Federal Tax Law of Conservation Easements* (1997) (appropriate primarily for attorneys; available from the Land Trust Alliance).
- For more detailed explanations of the easement appraisal process, see James H. Boykin, *Transfer Methods and Valuation Procedures For Conservation Easements* (Right of Way International Education Foundation, 1998), *Appraising Easements, Guidelines for Valuation of Land Conservation and Historic Preservation Easements* (Land Trust Alliance, 3rd ed., 1999), and James H. Boykin and James A. McLaughlin, "Addressing Enhancement in Conservation Easement Appraisals," in *The Appraisal Journal*, Volume LXXIV, Number 3: Summer 2006 (available at <http://www.conservationpartnersllc.com>).



## A Few Important Points to Keep in Mind

The following points are intended to flag a few of the issues that can confuse first-time easement donors. Please discuss these issues with your professional advisors if necessary.

Credit = 40% of easement value: A land preservation income tax credit generally is equal to forty percent (40%) of the appraised value of the donation.

The \$100 million cap: Applications for tax credits are subject to an annual overall cap of \$100 million (adjusted each year for inflation), and credit applications processed by the Tax Department after the cap has been reached will be put off until the following year.

Annual limit: Each taxpayer can use up to \$50,000 of credit against state income tax liability.

The Tax Department transfer fee: Credit transfers are subject to a Tax Department fee generally equal to 5% of the credit transferred. Fees on transfers arising from donations made prior to July 1, 2010 are subject to a \$10,000 per credit holder, per donation maximum.

DCR review: Credit claims of \$1 million or more (i.e., easements valued at \$2.5 million or more) are subject to review and verification by DCR. Past credit claims related to the same parcel may have to be combined with the current claim for purposes of the \$1 million threshold.

Credit limited to percentage of basis: If the donor has owned the protected property for one year or less, the amount of the tax credit may have to be calculated based upon the donor's proportional basis in the donated easement.

Delayed easement recordation: If the appraisal report is finalized before the easement is recorded and more than 60 days passes before recordation, the appraisal report will have to be updated, which usually involves an additional fee.

Title report: Title issues can dramatically affect an easement donation, and they can take time to resolve. Easement holders generally require that their donors obtain a title report or other professional title investigation early in the donation process.

Mortgage or Deed of Trust: Any mortgage liens on a property to be protected must be subordinated to the conservation easement or released prior to or simultaneously with the donation of the easement. Lenders can cause significant delays in the easement donation process, and negotiations with any relevant lender(s) regarding subordination or release should begin as early as practicable in the donation process.

No credit sales without registration number: A donor's credit *cannot be sold or otherwise transferred* until the credit is registered and the donor has been issued a registration number by the Tax Department. The Tax Department is swamped with registrations in November and December and cannot guarantee that late-year registrants will receive their registration numbers in time to sell credits before year-end.



## Conservation Partners' Confidentiality Policy

Our work involves communicating with landowners and their advisors about preserving their lands, and we obtain certain financial, tax, and personal information from landowners as well as tax credit purchasers in the course of facilitating the transfer of land preservation tax credits. Conservation Partners will keep confidential all information about potential land transactions and all financial, tax, and personal information obtained from landowners and credit purchasers, except as required by law or legal process.

Please note that certain documents such as appraisal reports and personal information such as names, addresses, and taxpayer identification numbers must be included in filings with the Tax Department to register or transfer credits. In addition, prospective credit buyers may request copies of the deed of easement and appraisal report supporting the particular credits they propose to purchase.

To prevent unauthorized access, maintain data accuracy, and ensure the correct use of information, we have put in place appropriate physical, electronic, and managerial procedures to safeguard and secure the confidential information provided to us.

Should you have questions or concerns about our confidentiality policy, please submit your questions to [info@conservationpartnersllc.com](mailto:info@conservationpartnersllc.com) or call our Lexington office at 540-464-1899.



## Attorneys, Appraisers, and Accountants with Conservation Easement Experience

NOTE: This list is provided for the convenience of prospective easement donors and other interested persons. Conservation Partners does not hereby provide a referral service, an endorsement of any of the professionals listed, or a guarantee of their competence or services. Version: October 1, 2009.

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**Appraisers:**

The following appraisers have demonstrated their ability to prepare conservation easement appraisal reports that meet Conservation Partners' *Quality Standards* (appraiser listings are by geographical location, though many of the appraisers listed also practice outside of their listed area; these are noted where possible):

**Eastern Shore:**

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Kendall C. Bradley  
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## Virginia Department of Taxation Form LPC-1: Application for a Land Preservation Credit

A blank Form LPC-1, which is the form easement donors use to register their land preservation tax credits, is included below. Conservation Partners will work with you and your professional advisors to fill out and file the Form and all required attachments. We are providing the Form in this Guide so that prospective easement donors can see what information the Tax Department and DCR require in connection with the application for a land preservation tax credit. Please don't hesitate to contact us if you have any questions about the Form LPC-1.

# Form Application for a Land Preservation Credit LPC-1



- **Acknowledgment of receipt by the Department of Taxation of this application form does NOT constitute certification, approval, or validation of the donation or of the credit valuation.**
- Before completing Form LPC-1, please read the instructions.
- To avoid delays at the time of annual return processing, Form LPC-1 should be filed by the applicant within 90 days of the donation, but at least 90 days before filing your annual return. Applications for tax credits of \$1 million or more should be submitted at least 120 days before filing an annual return.

Mail Form, Attachments (See What To Attach) and Payment (if Applicable) To:

**Virginia Department of Taxation  
Tax Credit Unit  
PO Box 715  
Richmond, VA 23218-0715**

For General Assistance, Call **804-786-2992**

Also Send a Copy of Form and Specified Attachments (See What To Attach) To:

**Department of Conservation & Recreation  
Tax Credit Program  
203 Governor Street, Suite 302  
Richmond, VA 23219**

For Assistance regarding Sections IV, V and Schedules B & C, call **804-371-5218**

**What to Attach**

- To the **Department of Taxation** - A copy of the **FULL** appraisal a signed statement or notarized affidavit from the appraiser, a copy of the recorded deed and a copy of a signed, completed IRS Form 8283.
- To the **Department of Conservation & Recreation** - For donations for tax credits of \$1 million or more that were made after January 1, 2007- A copy of the recorded deed and, if less-than-fee simple, a copy of the baseline documentation report.

**Sections to Complete**

- For a donation made on or before December 31, 2006, complete Sections I, III, VI, and VII. Also complete Schedule A (if applicable).
- For a donation made on or after January 1, 2007, complete all applicable Sections and Schedules.

**Section I - Applicant Information**

A) Entity Type - Check One			
<input type="checkbox"/> Individual Taxpayer	<input type="checkbox"/> Multiple Donors	<input type="checkbox"/> Non-Profit	<input type="checkbox"/> Other Entity - Specify _____
<input type="checkbox"/> Corporation	<input type="checkbox"/> Pass-Through Entity	<input type="checkbox"/> Trust/Estate	
B) Applicant Name (As Shown on Deed)		C) Applicant Identification Number (Check appropriate box and enter number.)	
		<input type="checkbox"/> SSN	
		<input type="checkbox"/> FEIN	
D) Street Address or PO Box Number		City	State ZIP Code
E) Contact Name, If Different From Above	F) Phone Number	G) FAX Number	H) E-mail

**Section II - Questions for a Donation Made on or After January 1, 2007**

A) Are you a non-profit holder of easements as defined in Va. Code § 10.1-1009?	<input type="checkbox"/> Yes <input type="checkbox"/> No
B) If yes, do you hold one or more conservation easements excluding this donation?	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>IF YES, STOP. YOU DO NOT QUALIFY.</b>	
C) Have you applied for a Historic Rehabilitation Credit in the last five years on this property/building?	<input type="checkbox"/> Yes <input type="checkbox"/> No
D) In the past 11 years, have you, a family member or an affiliate applied for a credit for a conservation easement on any portion of this parcel(s)?	<input type="checkbox"/> Yes <input type="checkbox"/> No
E) Is this interest dedicated as open space within, or as part of, a residential subdivision or any other type of residential or commercial development; dedicated as open space in, or as part of, any real estate development plan; or dedicated for the purpose of fulfilling density requirements to obtain approvals for zoning, subdivision, site plan, or building permits?	<input type="checkbox"/> Yes <input type="checkbox"/> No

**Section III - Property and Credit Information**

A) Type of Donation - Check One		B) Bargain Sale - Check One		C) Number of Acres		D) Date Acquired	
<input type="checkbox"/> Fee Simple		<input type="checkbox"/> No					
<input type="checkbox"/> Less-Than- Fee Simple		<input type="checkbox"/> Yes (If Yes, Enter Amount Received)					
<input type="checkbox"/> Facade		<b>\$ .00</b>					
E) Property Street Address (No P. O. Box)				City		State ZIP Code	
F) Property Information - Attach additional pages, if needed.							
<b>Deed Book Reference</b>			<b>Tax Map or PIN</b>			<b>Locality</b>	
1.							
2.							
3.							
4.							
G) Name(s) of Eligible Conservation Agency(ies) Receiving Donation				H) Jurisdiction(s) Donation Was Recorded		I) Date Recorded	
J) Appraisal Company Name				K) Company's FEIN or SSN		L) Appraisal Date	
M) Appraised Value of Donation		N) Credit Amount Requested		O) Assessed Value Per Acre		P) Appraised Value Per Acre	



**Section IV - Conservation Information for Reporting Purposes**

A) **Conservation Purpose:** Identify the conservation purpose(s) protected by the donation by checking the applicable box(es). Also, specify the acreage of each use indicated. See Instructions for definitions of these conservation purpose categories.

Conservation Purpose	Check Applicable Boxes	Acres
1. Agricultural Use	<input type="checkbox"/>	
2. Forestal Use	<input type="checkbox"/>	
3. Natural Habitat and Biological Diversity	<input type="checkbox"/>	
4. Historic Preservation	<input type="checkbox"/>	
5. Natural Resource Based Outdoor Recreation and Education	<input type="checkbox"/>	
6. Watershed Preservation	<input type="checkbox"/>	
7. Preservation of Scenic Open Space	<input type="checkbox"/>	
8. Conservation and Open Space Lands Designated by Local Governments	<input type="checkbox"/>	

9. Briefly describe the specific features of the property that provide these conservation purposes.

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B) **Public Benefit:** Briefly describe how the donation will protect the conservation purpose(s) identified above and benefit the public.

1. If the donation is in **fee simple**, identify the public or private conservation agency to which the donation was made and describe the public benefit associated with that agency's ownership.

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2. If the donation is a **less-than-fee interest**, describe how the terms of the deed of conservation easement ensure the protection of the conservation purpose(s) and describe the public benefit associated with that agency's ownership of the conservation easement.

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C) **Water Quality Best Management Practices:** Will water quality best management practices ("BMP") be implemented on the property?  Yes  No

If **Yes**, indicate which of the following BMPs will be used, and whether the terms of the deed of easement require the practice.

Best Management Practice	Check Applicable Boxes	Included in Terms of Deed of Easement
1. Nutrient Management	<input type="checkbox"/>	<input type="checkbox"/>
2. Livestock Stream Exclusion	<input type="checkbox"/>	<input type="checkbox"/>
3. Riparian Vegetative Buffers at Least 35 Feet Wide	<input type="checkbox"/>	<input type="checkbox"/>
4. Cover Crops	<input type="checkbox"/>	<input type="checkbox"/>
5. Continuous No-till	<input type="checkbox"/>	<input type="checkbox"/>
6. Other (please specify _____)	<input type="checkbox"/>	<input type="checkbox"/>

D) **Forest Management:**  
 Is the property fully or partially forested?  Yes  No  
 If **Yes**, is a forest management plan included in the terms of the donation?  Yes  No



**Section V - Fee Simple Donation**

	Check Applicable Boxes
A). The donation is a full or partial gift in fee simple to a public or private conservation agency. (If the application is for \$1 million or more, also complete Schedule C.) Conservation Agency Name: _____	<input type="checkbox"/>
B). The donation is a full or partial gift to a "holder" as defined in Va. Code § 10.1-1009, and documentation is included that the agency agrees that subsequent conveyances of the fee interest in the property will be made subject to a conservation easement or will be made to the Commonwealth of Virginia or a federal conservation agency. Conservation Agency Name: _____	<input type="checkbox"/>

**Section VI - Less-Than-Fee Simple Donation**

Explain how this donation meets the requirements of §170 (h) of the United States Internal Revenue Code of 1986, as amended. Attach additional pages if needed.

**Section VII - Declaration, Signature and Notarization**

**Attachment Checklist**

<p><b>DCR - All Donations (2007 &amp; After)</b></p> <p><input type="checkbox"/> A copy of LPC Application</p> <p><b>DCR - Donations of \$1 million or more (2007 &amp; After)</b></p> <p><input type="checkbox"/> Recorded deed</p> <p><input type="checkbox"/> Baseline documentation</p>	<p><b>TAX - All Donations</b></p> <p><input type="checkbox"/> Original LPC Application</p> <p><input type="checkbox"/> Recorded deed</p> <p><input type="checkbox"/> A copy or <b>CD</b> of <b>Full</b> appraisal</p> <p><input type="checkbox"/> IRS Form 8283</p> <p><input type="checkbox"/> Signed Statement or Affidavit from Appraiser</p>
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I (we) the undersigned declare, under the penalties provided by law, that this form (including any accompanying schedules, statements, and attachments) has been examined by me (us) and is, to the best of my (our) knowledge and belief, a true, correct, and complete application, made in good faith pursuant to the income tax laws of the Commonwealth of Virginia. I (we) understand that the Department of Taxation will record the information submitted on this application; however, acceptance of this application does not constitute certification, approval, or validation of the donation or valuation of the credit by the Department of Taxation. If a person other than the taxpayer prepares this application, their declaration is based on all information of which they have knowledge.

**I authorize the Department of Taxation to discuss my application with the contact person listed in Section I of Schedule A, DCR, and my broker, if applicable. Further, I authorize the Department of Conservation and Recreation to discuss my application with the contact person, the holder of the conservation easement, or the holder's representative, if applicable.**

<b>Must Be Signed in Presence of Notary</b>	Signature of Applicant		Signature of Applicant	
	Print Name		Print Name	
	Title	Date	Title	Date

<b>Notary Information</b>			
Subscribed and sworn before me this _____ day of _____,			
20____, in the (City/County) _____, of _____.			
Notary Public Signature			Date
Notary Public Name Printed			My Commission Expires