



## **10 Steps for Donating a Conservation Easement** **Information for Landowners**

### **Overview**

The Northern Neck Land Conservancy (NNLC) is delighted that you are considering placing a conservation easement on your property. This document spells out more clearly the 10 steps required to prepare a conservation easement and contains general information about the tax benefits, appraisals, and documents required to complete this project. Please read this document carefully and completely, as it discusses some of the important legal issues and costs involved.

### **Background**

In general, a conservation easement is a landowner's voluntary agreement to permanently restrict the use and development of their property. The landowner continues to own, use, and manage the property subject to the terms of the conservation easement. The landowner may sell, rent, lease, bequeath, or mortgage the property like any other landowner, although the property always remains subject to the conservation easement.

### **Public Benefit**

A conservation easement is a gift that significantly benefits the public and the Commonwealth. The public benefit of an easement might include the uniqueness of the property and the likelihood that its development would degrade the scenic, natural or historic character of the area; or preserving a local or regional landscape for its scenic or tourism benefit.

**Step 1: Consideration of Easement and Letter of Intent.** Phone the NNLC office to request information and to discuss the general easement process and guidelines. Consult with family and/or legal and tax advisors, and then contact the NNLC office or representative to discuss the property's attributes and your goals. An NNLC application form will be given to you to complete. In addition, you will need to submit a letter of intent to the NNLC stating a desire to donate the easement. An electronic copy and two paper copies shall be submitted.

**Step 2: Site Visit.** A representative from the NNLC will arrange to meet with you and view the property. On site, the NNLC analyzes the property's features and the natural and open-space resources and consults with you on long-term objectives. Options for easement terms that will meet your goals and protect the conservation values of the property will be discussed.

**Step 3: Preliminary Agreement.** After consulting with advisors and deciding to proceed, you and the NNLC will reach a preliminary agreement on the proposed terms of the easement and your proposal will move forward to consideration by the NNLC Board. If there is a mortgage on the property, you will need to contact the lender to arrange for subordination of the mortgage. Your attorney and NNLC staff draft a deed of easement for your review and subsequent NNLC Board consideration. Several revisions of the draft easement are typically necessary before it is in final form and ready for board consideration.

**Step 4: Appraisal (if seeking tax credits)** In order to claim a federal tax deduction or a state tax credit for a non-cash charitable gift, the landowner must engage a qualified appraiser who meets the *Uniform Standards of Professional Appraisal Practice* to determine the value of the gift. In addition, the appraiser cannot have any personal stake in the property or the donated easement, cannot be related to the donor or to a Northern Neck Land Conservancy insider, or have any business relationship with either party that would cause a reasonable person to question the appraiser's independence. The appraiser's fee cannot be based upon a percentage of the appraised value of the easement. An electronic copy and two paper copies shall be submitted.

**Step 5: Title Opinion.** Your attorney or a title company provides a preliminary 60-year title opinion of the property. This report must be received prior to finalizing the easement deed. Title insurance may need to be attained. You or your attorney should also provide copies of deeds by which you obtained title as well as all recorded survey plats of the property. In many cases, a survey is performed to delineate the specific conservation zones of the easement, as well as to clarify any potential boundary disputes, and the cost is born by the landowner. An electronic copy and two paper copies shall be submitted.

**Step 6: Staff Research.** Staff completes research on the property, including:

- determining whether the easement will conform to the comprehensive plan of the county and the zoning classification of the property;
- reviewing statewide planning documents, such as the Virginia Department of Transportation six-year plans, the VA Outdoors Plan, Chesapeake Bay Preservation Area Maps, and Division of Natural Heritage database; and
- collecting maps of the property (topographic maps, aerial maps and tax maps)
- review of easement in terms of NNLC's Criteria for Conservation Easements
- determination of Stewardship Fee is made and shared with the applicant

**Step 7: Baseline Documentation Report.** A *Baseline Documentation Report* is completed by the applicant which shall 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. The Owner will review the information in the Baseline Documentation Report, and then sign and return an acknowledgment form attesting to its accuracy. An electronic copy and two paper copies shall be submitted.

**Step 8: Board Approval.** Each easement proposal must be approved by NNLC's Board. The Board meets four times per year. 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 and its approval does not obligate the landowner to complete the easement. If the easement is to be a co-hold between NNLC and a County or another organization, the request for acceptance by the appropriate official(s) would then be made.

**Step 9: Finalizing Easement Draft and Stewardship Pledge.** Your attorney will send the deed of easement to the NNLC staff for final review. The NNLC staff suggests final edits, if any, and returns it to the attorney for editing and signatures. The landowner, any mortgage lender and the co-holder (if applicable) sign the deed. Note that a stewardship fee or stewardship pledge is customary and compliant with Land Trust Alliance Standards. An electronic copy and two paper copies shall be submitted.

**Step 10: Recordation.** The NNLC signs the deed last. The Board President will sign the deed when the signed Baseline Documentation Acknowledgement form, the signed letter of donor intent, and a title search/certificate are verified in the files of the NNLC. Copies of the recorded deed of easement is sent to the NNLC and landowner. The NNLC should receive an electronic copy and two paper copies.

**Note- Final approval of tax credit documentation is considered after recordation.** Prior to claiming a tax credit, the landowner submits IRS Form 8283 signed by the appraiser to the NNLC, along with the final appraisal showing the value of the property before and after the easement. The Northern Neck Land Conservancy will sign the 8283 only when Parts I and III of Section B have been completely filled out and only when it has no significant concerns about the tax deduction claimed for the donation. An electronic copy and two paper copies shall be submitted.

### **Timeline for Easement Proposals**

Easement proposals must be finalized approximately two 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 the NNLC staff, the landowner and the landowner's attorney.

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

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 and Tax Benefits**

In order to claim a federal tax deduction or a state tax credit for a non-cash charitable gift, the landowner must engage a qualified appraiser who meets the *Uniform Standards of Professional Appraisal Practice* to determine the value of the gift. In addition, the appraiser cannot have any personal stake in the property or the donated easement, cannot be related to the donor or to a Northern Neck Land Conservancy insider, or have any business relationship with either party that would cause a reasonable person to question the appraiser's independence. The appraiser's fee cannot be based upon a percentage of the appraised value of the easement. Following the appraisal of the gift, the landowner submits IRS Form 8283 signed by the appraiser to the NNLC, along with the full appraisal showing the value of the property before and after the easement. The Northern Neck Land Conservancy will sign the 8283 only when Parts I and III of Section B have been completely filled out and only when it has no significant concerns about the tax deduction claimed for the donation. The NNLC's execution of the Form 8283 is neither a guarantee of desired tax benefits nor an endorsement of the appraisal. If the easement is co-held by a county, a representative of the county must also sign Form 8283 and return 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.

### **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. 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**

The NNLC recommends that landowners take plenty of time to think through donation of an easement. If the landowner desires to complete an easement by year's end for tax purposes, it is important to begin this process as early as possible during the calendar year because steps such as the appraisal, bank subordination, legal review and tax credit registration can take time to resolve.

It is recommended that you retain this document for your records. The landowner may change his or her mind about the easement at any time until the easement deed is signed and delivered to the NNLC. While these steps show the typical procedure, there are some situations where the order of these steps varies. The process may take anywhere from a few months to more than a year to complete.

Please contact the Northern Neck Land Conservancy for any other questions you may have. We can be reached at 804-462-0979 or by email at [execdir@nnconserve.org](mailto:execdir@nnconserve.org)

***This information is intended to give a general overview of tax code and appraisal requirements for tax deductions claimed for donated conservation easements. It is not a complete summary of these requirements; nor does it constitute legal or tax advice. For additional information and guidance, consult a qualified attorney or tax professional. It is the policy of Northern Neck Land Conservancy to review the landowner's appraisal before signing Form 8283. Northern Neck Land Conservancy will not participate in conservation projects where it has significant concerns about the tax deduction.***