# Northern Neck Conservation Easements

Preserve The Land you fore

## Table of Contents

The Northern Neck of Virginia 3-5
Why Conservation Easements are Needed Now
Two Century Farms Are Preserved7
A Description of a Conservation Easement—How It Preserves the Land
Conservation Easements: Dollars and Sense9
An Example of the Tax Benefits of Donating a Conservation Easement10
Steps for Landowners in Donation of a Land Conservation Easement
Documents Needed for a Conservation Easement Donation12
Brent and Hundley Combine Easements in Heathsville
The Pryor Forest in King George14
The First Two Open Space Easements in Northumberland County
Contact and Reference Information for LandownersInside back cover

"Conservation easements will become an increasingly important conservation tool in the 21st century. During the last century, governments at all levels made important strides in protecting land for conservation and public recreation, creating an impressive system of national, state, and community parks, wildlife refuges, and forests. This work must continue."

Byers and Ponte, The Conservation Easement Handbook, Land Trust Alliance, Washington D.C., The Trust for Public Land, San Francisco, CA 2005



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# the northern neck of virginia

n a few special places the land casts a magical spell on the people who live there... a spell which weaves the rich fabric of history and links those who lived before, to those who live now, and those who will live in the future. We are lucky enough to live in such a place, The Northern Neck of Virginia.

The Northern Neck is the northernmost peninsula on the western shore of the Chesapeake Bay in Virginia. Situated between the Potomac River on the north and the Rappahannock River on the south, it consists of the five counties of King George, Lancaster, Northumberland, Richmond and Westmoreland. First traveling to this pristine land in 1608, Captain John Smith referred to it as "a place heaven and earth never agreed better to frame a man's habitation."

The region is rich in scenic beauty, with 1,100 miles of shoreline containing beaches, marinas, old steamship wharfs and small towns that date back to colonial times. Vegetable and grain farming and a strong seafood industry once ruled the land. With more than 6,500 acres of natural areas and preserves, the Northern Neck is one of the few places on the Atlantic seaboard with numerous habitats including salt and freshwater marshes, agricultural croplands, woodlands and undeveloped open fields. While the Northern Neck is one of the least developed areas in Virginia's coastal plain, relatively little of the open space is protected from development. In fact, some of Virginia's most populous counties have a higher percentage of land permanently protected as open space than the Northern Neck.

## A Rich History

Many important figures in our nation's history were born on the Northern Neck, including presidents George Washington, James Madison and James Monroe. In addition, Civil War general Robert E. Lee and signers of the Declaration of Independence, Richard Henry Lee and his brother, Francis Lightfoot Lee, called the Northern Neck their home. "During the Colonial period, the Northern Neck was referred to as the Athens of the New World because of its collection of rich landowners dedicated to learning and civic duty.<sup>1</sup> Prior to European colonizations, the Native Americans had lived on the Northern Neck for at least 10,000 years. Rivers such as the Wicomico, Coan and Nomini are named for the native tribes that once inhabited the rivers' shores.<sup>2</sup>

Some of the historical sites on the Northern Neck include Popes Creek Plantation, the birthplace of George Washington; Stratford Hall Plantation, the boyhood home of Richard Henry Lee and Francis Lightfoot Lee; Christ Church, recognized as the finest colonial church in North America completed in c. 1735; Menokin, the plantation home of Francis Lightfoot Lee and his wife Rebecca Tayloe built in 1769; Rice's Hotel/Hughlett's Tavern in Heathsville, one of the oldest surviving examples of a colonial courthouse tavern; and the St. Mary's White Chapel Church c. 1669, the church of the Mary Ball (Washington) family and the oldest church in Lancaster county with burial graves over 300 years old.<sup>3</sup>





### Maritime Tradition

Lacking a rail line, people and produce moved between the Northern Neck and neighboring areas on the water. Great steam ships, small sailing craft, fishing boats and other vessels transported summer visitors, agricultural and commercial cargo, oysters and crabs, and even took children to and from school. The maritime history of the Northern Neck dates back to the 1880's when the economy was booming. Steamboats out of Baltimore and Norfolk traveled the Chesapeake Bay, stopping in wharf towns that had stores, post offices and hotels to serve the voyagers. The river areas became a popular vacation site for city folk and a destination for religious retreats. In fact, "in 1907, a steamship company catalog offered transportation and room and board for \$1 a day."<sup>4</sup> Kinsale, on the Yeocomico River in Westmoreland County, was once known as a ship building center and then became a thriving steamboat landing during the late 1800's. In 1867, Elijah Reed, a New England sea captain followed schools of menhaden fish in the Chesapeake Bay and founded the fishing community of Reedville on Cockrell's Creek. By the early 1900's, the menhaden fishing business was so lucrative, that Reedville was said to have been the richest town per capita in the United States.<sup>5</sup>

1 Wikipedia, the free encyclopedia, The Northern Neck, January 2008, Wikipedia® is a registered trademark of the Wikimedia Foundation, Inc., all text is available under the terms of the GNU Free Documentation License.

2-5 Northern Neck Tourism Council, NNTC@northernneck.org. Along the Northern Neck Heritage Trail, 2003-2006

"Every time I return across the Downing Bridge at Tappahanock, I am reminded of why I am part of this land, and why others must be drawn to the area. My hope is that you and I can help to assure that the rural character we love and the natural beauty that draws others to the area are preserved."

Northern Neck of Virginic

Dr. Elizabeth Crowther President, Rappahannock Community College

## why conservation easements are needed now

evelopment can be beneficial or detrimental. While it employs people during construction and provides places of employment or residences, development can result in the loss of natural lands, historic landmarks, scenic views and agricultural areas. Growth can be planned and managed to protect high value natural areas, however, in recent years, sprawl has caused land to be consumed at a faster rate than population has grown. Moreover, Virginia spends far less than most states on buying land for parks, refuges, and other open space. Instead, the Commonwealth has encouraged private conservation through tax incentives for the donor of conservation easements.

The Office of the Secretary of Natural Resources has stated that over the past decade, Virginia has lost over 60,000 acres a year to development. In the Chesapeake Bay watershed we lose approximately 188 acres per day. The loss to our natural and cultural environment impacts our state economy. Agriculture and tourism are both dependent upon natural and historic resources. Residential development is advancing rapidly through the agricultural landscape of Virginia. Over the last 50 years, Virginia farmland has shrunk from 13.5 million acres to 8.5 million, according to the Virginia Department of Agriculture and Consumer Services. If the Northern Neck's rural character and our cultural heritage are to be preserved, it will be because private property owners are concerned enough to become involved in conservation.





## two century farms are preserved

he Northern Neck has been home to Ann and Wallace Carter and their ancestors since about 1659. The Carters of Lancaster County have placed separate conservation easements on the nearly 200 acre Bondfield Farm outside Kilmarnock and on the 145 acre Lombardy Grove Farm on the Corrotoman River and John's Creek. "After 350 years of family ownership, I want this property to be protected for our family" said Ann. She started thinking about protecting her Lombardy Grove family property, now in its third century, more than 20 years ago. She found her initial forays into easements in the 1980's frustrating; however it was much easier in 2005 with the help of NNLC and the Virginia Outdoors Foundation. Along with an assessor, Ann states that the NNLC executives "held my hand and walked me through everything. The process was very thorough and I feel very comfortable about how it went." She talks about how her ancestors arrived at what was to become Lombardy Grove Farm in 1659, but didn't build a house there until 30 years later. Her grandfather had been Magistrate/Justice of the Peace. As for Bondfield Farm, another certified Century Farm, Wallace Carter, who grew up on the property, says that under the easement he is pretty much free to do as he pleases with the property- farm, hunt, fish, or even build an additional residence. Ann stated, "if only one additional person puts their land into conservation easement, it will be worth it!"

## a description of a conservation easement how it preserves the land

conservation easement is a written legal agreement between a landowner and a holder, such as a land trust or government agency, that permanently limits uses of the land in order to protect its conservation values. The owner continues to own and use the land and may sell it or pass it on to heirs. Easements are permanent and are recorded with the register of deeds office in the county in which the land lies. Present and future owners of the land are bound by the easement's terms and conditions. A conservation easement can protect woodlands, bay marshes, beach dunes, farmland, stream valleys, or any type of natural habitat or rural land.

Conservation easements offer great flexibility. An easement on property containing rare wildlife habitat might prohibit any development, for example, while one on a farm might allow continued farming and the building of additional agricultural structures, as long as the natural, historical and cultural aspects are preserved.

> "The Northern Neck is our home. We should do our part to preserve and protect its natural and historic resources for our children and grandchildren."

W. Tayloe Murphy, Jr., Honorary NNLC Board member, former Virginia State Delegate and author of the 1988 Chesapeake Bay Preservation Act

Congress and the Virginia General Assembly have recognized the benefits of a conservation instrument by providing financial incentives for donating easements. There are potential tax benefits to the landowner and the possibility of financial compensation.

In Virginia, most conservation easements are donated to the Virginia Outdoors Foundation (VOF), a state agency established by the Virginia General Assembly to hold easements in public trust.<sup>6</sup> Easements are also held by the Virginia Department of Forestry, and Virginia counties. Certain qualified nonprofit conservation organizations may also hold easements, including the Chesapeake Bay Foundation, The Nature Conservancy, Audubon Society, Soil and Water Conservation districts and land trusts such as the Northern Neck Land Conservancy.

An easement may apply to just a portion of a property, and does not provide for public access unless the donor wishes it. The land conservation organization holding your easement is responsible for regular inspections of the property to ensure that all agreements made in the easement are followed. The land is protected. This means that the holder of the easement does not acquire any development rights given up by the landowner, nor can the holder modify the uses reserved by the landowner.<sup>7</sup>

7 Roe, Leidy and Herlevich, Conservation and Historical Preservation Easements To Preserve North Carolina's Heritage, Conservation Trust for North Carolina and North Carolina Coastal Land Trust, 2004, p. 7-8

# conservation easements: dollars and sense

he primary reason most landowners donate conservation easements is to preserve the natural, scenic, and historical integrity of their land forever. Many want to establish a legacy for their children and grandchildren. At the same time however, placing an easement on your property may make good financial sense for it could provide for a secure retirement, or address medical expenses, or create an estate which includes land as well as cash. There are also significant tax advantages associated with a donation. Typically, to realize those financial benefits an easement must (1) be given in perpetuity (2) be given to a qualified governmental or non-profit organization (3) have a qualified appraisal and (4) be donated exclusively for "conservation purposes" characterized by significant natural, scenic, historic, scientific, recreational, or open space value.

The following summary of the tax benefits of conservation easements is for informational purposes only. Consult an attorney and/or accountant for professional advice on the implications of a donation on your own tax situation. These benefits may also change with new legislation, so check with the IRS and Virginia state laws for most recent donation tax applications.

## Federal Income Tax Deduction

The donation of a conservation easement is treated as a charitable gift. Donors can deduct the value of the easement, within certain limits, from their income for federal tax purposes. An appraiser will calculate the value of the easement, by assessing the value of the donor's land before the easement is given, then subtracting the value of the land after the easement is donated.

For example, in 2006 and 2007, the income tax 100% of their income.

Estate taxes can be very high for a landowner's heirs, deduction was limited to 50% of gross adjusted income thereby making it difficult for landowners to pass land in the year the easement was given and any unused on to their children. In some cases, the heirs have to deduction could be carried forward over 14 additional sell the property to pay the tax. But, by donating an years. Farmers who received more than 50% of their easement, landowners reduce the overall value of their income from agricultural activities could deduct up to estate by the value of the easement, which translates into less or possibly no estate tax due. In addition, the American Farm and Ranch Protection Act of 1997 Easement donors can claim state tax credits worth allows heirs to exclude up to an additional 40% of a 40% of the value of the donated easement. The the remaining value of their land from the Federally taxable estate. credit can be claimed in the year of the donation and

carried forward for nine additional years or until fully expended, whichever comes first. In addition, Virginia allows the donor to sell tax credits to others. Sometimes the credits from an easement greatly exceed the donor's Virginia tax liability. Rather than carry the credits forward to many years, it may be advantageous to sell the credits to someone else and realize all or most of the benefit soon after the easement is donated.

### Estate Tax Reduction

<sup>6</sup> Tax Benefits of Land Conservation in Virginia, Virginia Department of Conservation & Recreation, December 2006

## an example of the tax benefits of donating a conservation easement

The following simplified numbers are purely hypothetical and are not to be relied on by anyone as a representation or guarantee of tax results. Donors are encouraged to obtain independent legal advice before proceeding with a donation.

Example: Jim and Mary own 137 acres of Virginia forestland. The land was appraised at \$1,314/acre for a total of \$180,000. Jim and Mary chose to donate a conservation easement. The easement was appraised at one-half the value of the property, or \$90,000. The land was also assessed for property taxes at \$180,000, and the town's property tax rate is 1.5%.

### Amount of Charitable Contribution: \$90,000

Estimated Federal Income Tax Deduction: (over 15 years)	\$45,000
Estimated Federal Estate Tax Savings:	\$0 - \$44,100
Estimated Local Property Tax Savings: (per year)	\$1,350
Estimated State Income Tax Credit: (over 10 years)	\$36,000

The appraisal placed the value of the conservation easement at \$90,000, so this is the amount of the charitable contribution made by Jim and Mary. Jim and Mary may also save on estate taxes, depending on when they die and the size of their estate. In addition, their property taxes are reduced. Instead of paying tax on \$180,000 worth of property, they are now taxed on only \$90,000.

Article adapted from R. Levin; privatelandownernetwork.org

In addition to the Federal, estate, income and local property tax benefits of donating a conservation easement, easement donors in Virginia have a significant State income tax benefit in the form of a State income tax credit.

The "Virginia Land Conservation Incentives Act of 1999," as amended, allows Virginia taxpayers who donate a conservation easement to claim a credit against their Virginia State income tax liability of 40% of the value of the donated easement. For the example

above, if your easement is valued at \$90,000, the credit is \$36,000. Any portion of the credit that is not used up in the year the easement is donated can be carried over for an additional 9 years. The amount of the credit used in any one year may not exceed the amount of state income tax due or \$100,000.

A taxpayer entitled to a land preservation tax credit is allowed to transfer or sell unused but otherwise allowable credit to another taxpayer.

# steps for landowners in donation of a land conservation easement

- Plan ahead! It can take three to four months to take the necessary steps to donate an easement. If it is important to you that your easement be finalized this
- Contact the Northern Neck Land Conservancy (NNLC) at 804-462-0979; by email to nnlc@kaballero.com, or via the website at www.nnconserve.org. Click on Contact Us link.
- Read Virginia Outdoors Foundation materials, including the sample easement and Virginia Outdoors Foundation (VOF) guidelines. Information and the location of an office near you can be found at www.virginiaoutdoorsfoundation.org.
- Contact the Northern Neck Land Conservancy to discuss the easement process and typical tax consequences of easement donation. Consult your own attorney or tax planning professional to explore how an easement will affect your particular financial and estate planning situation.
- The NNLC can work with you to arrange a site visit with the Northern Neck Land Conservancy staff, Virginia Outdoors Foundation staff, or staff of another potential recipient of the easement.
- Arrange to have an appraisal done to establish the value of the easement property.

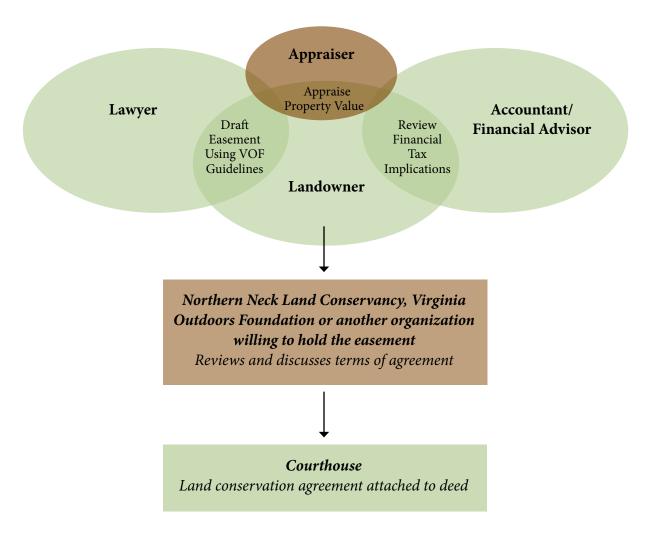
year, do not wait until October to start the process.

• Draft the easement using the Virginia Outdoor Foundation Guidelines and the Sample Easement. This should be done either by your attorney or the staff of the organization which will hold the easement. If there is a mortgage on the property, the lender must subordinate to the easement.

- If you are planning to take an income tax deduction for your gift of an easement, arrange to have an appraisal completed as soon as possible.
- Draft a personal letter to the potential easement recipient stating that you wish to give an easement on your property and describing your interest in conserving the property. This letter gives a permanent record of your conservation intent.
- Submit the letter, draft easement and any other required documents to the Northern Neck Land Conservancy, Virginia Outdoors Foundation, or other recipient of the easement. The VOF Board of Trustees meets on a quarterly basis to determine which easement to accept.
- Record the easement in the county courthouse land records office along with the deed to the property. For Federal tax purposes, the date of gift of easement will be considered the date that the easement is recorded.

# documents needed for a conservation easement donation

- 1. Tax Map showing the property
- 2. Survey
- 3. Recorded Deed to property
- 4. Draft of easement
- 5. Letter to potential easement holder indicating your desire to donate an easement. The letter must describe your interest in conserving the property. This letter gives a permanent record of your conservation intent.
- 6. If the easement will be held by VOF, have their Landowner Consent Form showing that either the landowner has consulted with his own attorney or chooses not to seek independent legal advice.



Each land conservation easement is unique. This is a typical scenario. A land conservation agreement is a voluntary legal agreement between a landowner and a qualified government agency or non-profit organization that places permanent limits on development and upholds the landowner's personal desires.

## brent and hundley combine easements in heathsville

etired veterinarian Jim Hundley and his wife Charlotte decided they were going to sell a parcel of about 27 acres off Route 360 in Heathsville. They wanted full market value price, however they did not want to see the land developed. They asked their neighbor, Mason Brent, whose nearly 200 acre property encircled the Hundley lot, if he were interested. However, Brent could not justify paying development value for a piece of land he knew he would never actually have developed. He himself was living on a certified Century Farm that had been in his family since 1852. So he investigated conservation easement options and came up with a solution that would suit everyone's needs.

He recommended that the Hundleys put their He pointed out that the 27 acre Hundley property 27-acre plot into conservation, and Brent would put 90 might not have gotten the support needed from the VOF to make the transaction viable, but by adding the other acres of his own contiguous property into an easement, making the total package highly desirable to the NNLC 90 contiguous acres, bringing the total to about 117 acres, and the VOF. Explaining the plan, Brent stated, "the the total package became attractive. And the quarter-Hundleys would get the financial benefits they wanted mile of frontage along the north side of Route 360 made the site all the more attractive from the standpoint of from their property by putting it into an easement and realizing the tax incentives. Then after it was in an those wanting to conserve agricultural land. Truly a wineasement, I could buy that property at fair market value win situation! for agricultural purposes".



# the pryor forest in king george

rs. Pryor and her husband Harold moved to their King George property in 1954 and chose a forested lot, similar to Mary's childhood haunts. Their forest was a place of solace for Harold and Mary, particularly after a fresh snow fall when Mary said, "We would sit in the woods and listen to the wind and find absolute peace". Eventually, King George developers began pressuring the Pryors to sell their land. Mr. Pryor responded, "I couldn't live here looking at the bulldozers tearing up the woods." Mr. Pryor passed away 11 years ago and it is this memory, and Mrs. Pryor's own love of their woodlands, that formed the impetus for her to pursue an easement on her property.

Mrs. Pryor initially placed an easement on 91.5 acres with the Virginia Outdoor Foundation as the easement holder. "I didn't do it for the tax deductions and credits. Development would have brought more money." Mary placed this easement because she believes that it's important that our country always has a local



The woodlands inspired Mary Pryor and her husband to place their property into conservation easement.

source of timber and land to produce food. Permanently excluding development from her woodlands provided that source for timber production.

Mary placed an additional 51 acres of her land under easement in December 2007. This process was easier and shorter than the first easement. This was due to the 51 acre parcel being adjacent to the first easement. Because the land was contiguous, a modification of the original easement was made that did not require the approval of the VOF Board.

Mary has advice for those considering an easement on their land:

- Talk to someone who has done an easement.
- Get a clear understanding of the sequence of actions necessary to complete the easement process
- Allow for plenty of time, start early in the year

"You don't know what will inspire someone to do an easement. A man could find that inspiration just sitting on his porch and looking out over his land."



# the first two open space easements in northumberland county *Adapted from writings by Anne Hobson Freeman*

udith Claybrook Wheeler, known as "Polly", loved her river land so much that she was determined to protect it for the future. In 1950, she and her husband, Colonel Clarence Wheeler, anticipating his retirement from the Air Force, bought 44 acres and a farmhouse in Northumberland County. The property is on a peninsula directly across the water from the town of Kinsale where Polly's mother had grown up. Named "Oyster Shell Point Farm" because of the many layers of oyster shells lying just below the surface, it is bounded by the West Yeocomico River and Hampton Hall Creek. In the 19th Century it was owned by Captain Joseph Hudson, who is now buried on the property. After Colonel Wheeler's death in 1964, Mrs. Wheeler found it difficult to live there alone so she rented out the river house and moved to Fredericksburg.

In the mid-1970s, she decided that she could no longer hold on to the river property, but she was determined that it would never be fragmented into small waterfront lots. So he sought advice from Tyson Van Auken, Director of the Virginia Outdoors Foundation, and with his help drew up a plan to divide the property into three large parcels, each

The Pryor Forest in King George { *Pay* 

restricted to a single dwelling. The Hampton Hall Creek parcel would go to her son. The other two parcels, facing the Yeocomico River, she put on the market, but wouldbe buyers balked at the restrictive covenants.

It is at this point that our family enters the story. On a February morning in 1976 the telephone rang in our house in Richmond. It was our friend Tayloe Murphy explaining he had a client who owned some "very desirable" waterfront property in the Northern Neck which she wanted to put it into perpetual open-space easements and then sell to buyers with "some aesthetic appreciation for the environment."

Tayloe knew that George would be a likely prospect, since he had been devoting most of his pro bono time as a lawyer for the past ten years to historic preservation and conservation easements. Add to that the fact that for the past few years, the Murphys had arranged for us to rent a cottage on Albany Farm, facing the Potomac River in Westmoreland County from Tayloe's cousin. Our family had fallen in love with the Northern Neck its open sky, its wide sweeps of water, its resident eagles and migrating ducks and geese. Immediately George said he wanted to buy both parcels on the Yeocomico River, a total of about 34 acres. But no matter how thin we stretched our strained resources, we could not come up with the price that Mrs. Wheeler was asking.

Then the two lawyers, Tayloe and George, put their heads together. Mrs. Wheeler didn't seem particularly interested in a federal tax deduction. If she would sell the two parcels unrestricted, with the understanding that George would give an open-space easement on them to the Virginia Outdoors Foundation, the resulting income tax deduction would make it possible for him to buy the property. The open question was: Would Mrs. Wheeler take Tayloe's word that George was trustworthy and remove the restrictive covenants from the deed of sale? If so, George could sign the contract and once he owned the property, convey an easement with the same restrictions she proposed.

Polly Wheeler took the chance, because she trusted Tayloe. George bought the land. Minutes later, he conveyed to the VOF one of the first two Open Space easements in Northumberland County. The other was the easement given simultaneously by Dr. Robert Wheeler on the ten acres he owned on Hampton Hall Creek.

Some years later, Dr. Wheeler sold that property to us, together with an acre and small house adjoining to it. In 1986 we bought from Hugh Ferguson the only part of the peninsula that had not belonged to the Wheelers, three acres and a house. We put both of the two new properties under easement. That brought the entire peninsula, now 48 acres, under Virginia Outdoors Foundation easements, protecting in perpetuity almost a mile of waterfront on the West Yeocomico River and its tributaries.

As it turned out, Mrs. Wheeler's passion for preserving river land was contagious. Twenty-five years later, Tayloe Murphy and Dr. Charles Griffith's son, Lloyd, were to put well over a thousand acres in Westmoreland County into easements on King Copsico Farm and on Albany Farm, the place where the Freemans first learned to love the Northern Neck.