



VALLEY CONSERVATION COUNCIL'S

# Landowners' Guide

YOUR GUIDE TO CONSERVATION EASEMENTS IN THE SHENANDOAH VALLEY

For over 30 years, Valley Conservation Council has worked with communities and landowners across Virginia's greater Shenandoah Valley region to promote land conservation and sensible models of growth. As a result, tens of thousands of acres of valuable farmland and forestland and hundreds of miles of streams and rivers are now permanently protected in VCC's 11-county service region.

**VCC is an accredited land trust.** We follow the highest legal, environmental, and financial standards to hold conservation easements for landowners. We also actively promote best practices in development, support working farms and the agricultural community, and teach future generations about the importance of conservation.

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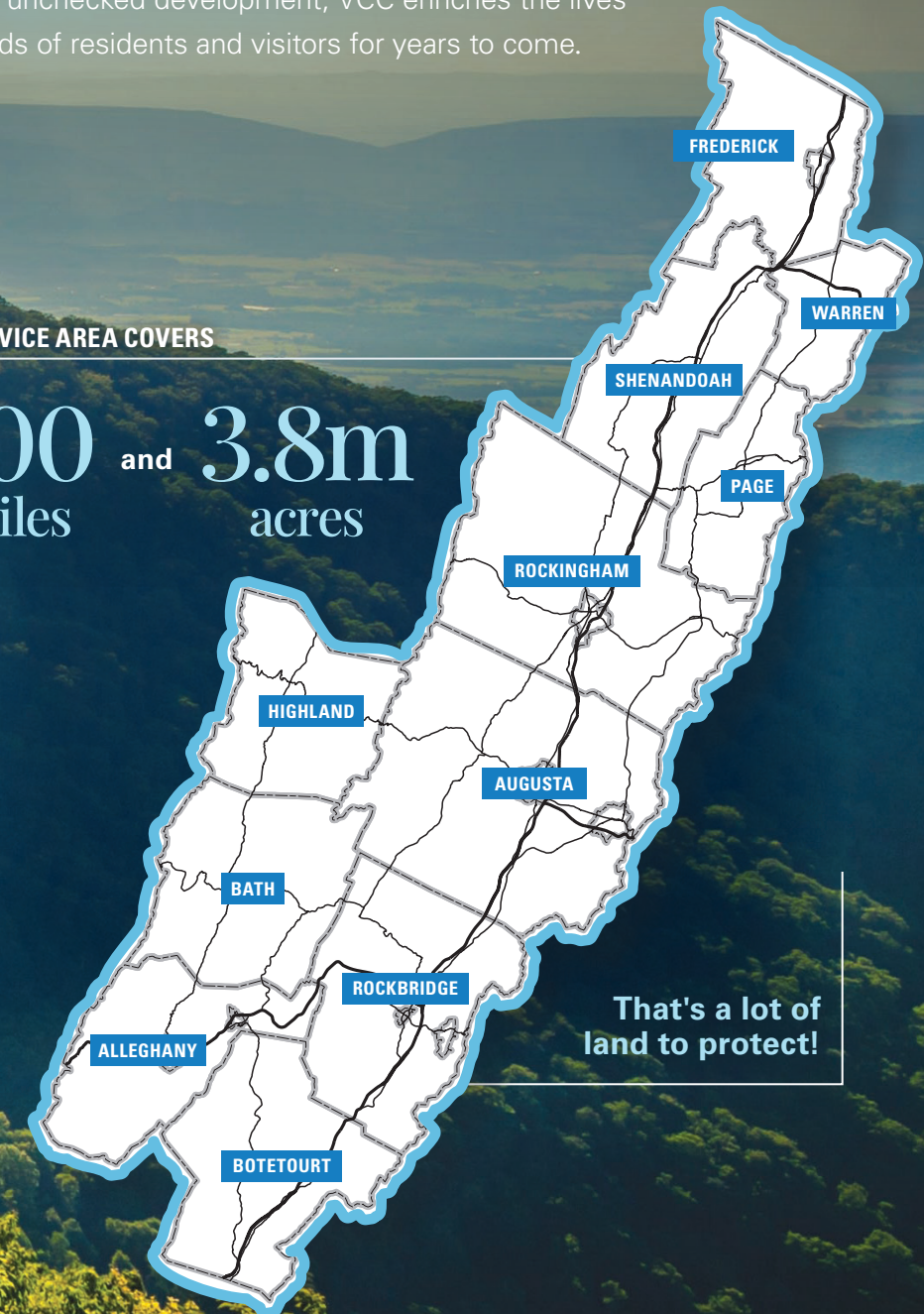
# Our Vision

for the Greater Shenandoah Valley Region

VCC envisions a greater Shenandoah Valley region that remains defined by spectacular open spaces, verdant fields and pastures, pristine waterways, productive soils, abundant biodiversity, unique geology, and lush forests. By resisting the pressures of unchecked development, VCC enriches the lives and livelihoods of residents and visitors for years to come.

OUR SERVICE AREA COVERS

200 miles and 3.8m acres



That's a lot of land to protect!

# Hello,

and warm greetings from all of us at Valley Conservation Council!

We love this beautiful Shenandoah Valley, and we know that as someone who owns land here, you do too. The goal of this guide is to demystify conservation easements, which are one of the ways that we work with landowners like you to protect and preserve the farms, forests, and waters of this region.

From the outside, donating an easement may seem overwhelming, but we're here to make it feel manageable. We'll start by laying out the basics to help you understand who we are, what an easement is, and why it could be a good fit for you and your land. Then we'll walk you through the whole process of donating an easement step by step. Finally, we've included tools to help you calculate and weigh all of the costs and benefits of an easement so you can make a fully informed decision. We've also included all the forms you'll need to fill out to get the process rolling.

We believe that easements are a clear win-win: *You* win when you protect the land you cherish for future generations to come and *our larger community* wins because you've protected the clean water, beautiful landscapes, and rural way of life that our Valley is famous for.

OUR SINCEREST THANKS,  
VALLEY CONSERVATION COUNCIL

## What is a conservation easement?

A conservation easement is a legal agreement between a landowner and a land trust, like VCC. The landowner retains full ownership, management, use, and enjoyment of their property, while setting out certain restrictions for both themselves and any future owners of the land in the deed of easement. When we say a landowner has “donated an easement” it’s because they have “given away” certain rights, such as continual subdivision and development, that are now restricted by the easement. The land trust then commits to seeing that all current and future owners of the land abide by these terms and restrictions.

Easements can be tailored to meet the owner’s wishes regarding future use of their land. Most conservation easements restrict development and set a limit on how many times the property can be subdivided while still allowing land uses such as farming, forestry, and recreation. Easements are a fully voluntary agreement, and the terms of each easement are unique to both your goals for the property and its unique conservation values.

Landowners donate conservation easements primarily because they love their land and wish to see it preserved. An easement is considered perpetual, and protects a property’s natural, historic, and scenic features forever. We as a land trust hold easements because we want to preserve the health and vitality of the Shenandoah Valley as the iconic landscape that it is.

The landowner and the easement holder work together to solidify this permanent protection in a way that meets both parties’ goals long term by creating a legal document called the “deed of conservation easement,” which is then recorded in the land records of the local jurisdiction.



# What are the financial benefits of a conservation easement?

**Donating a conservation easement to a qualified easement holder like Valley Conservation Council is considered a charitable gift by the IRS.** You, the landowner, are donating certain development rights to your property and by doing so you are giving up the ability to make money from certain activities, such as the continual subdivision and sale of a property. These lost financial opportunities can be considered a donation for public benefit in the preservation of open space, agricultural land, or natural habitat. Just as with other charitable donations, there are certain tax benefits at the state and federal level from making that donation.

These benefits can include a federal income tax deduction, a state income tax credit, estate tax benefits, and local property tax benefits. Specifically, the state income tax credit can either be used or sold for cash-in-hand. Landowners have used these tax benefits in a number of ways, from reducing the debt they owe on the land itself, investing back into the care and farming of their land, or even towards the acquisition of additional farmland. The basis for these tax benefits is obtained by a qualified appraisal which determines the value of the conservation easement gift.

VCC does not provide legal counsel or appraisals. Our role is to hold the easement and to take on the responsibility for stewarding the property in perpetuity to make sure all future owners abide by the agreed upon terms. We strongly recommend consulting with an attorney or financial advisor regarding the financial benefits of donating a conservation easement, and we recommend working with an attorney throughout the whole process to ensure that your interests are fully represented and that you understand everything being agreed upon in the final deed.



"I was originally concerned that an easement would limit the future use of our property, but VCC was flexible and worked with us to accommodate the way we have traditionally used our land while preserving the property and its history forever. I'm a big Teddy Roosevelt fan, so preserving the mountain and rivers for my daughter and future grandkids was key to this project."

**ROBERT HUPMAN**  
(WARREN COUNTY)

# How much does it cost to protect my land?

Costs to protect a property with a conservation easement vary based on the complexity of your easement and the specifics of your land. Associated costs include:

- Your attorney's fees for drafting and reviewing your easement,
- An appraisal in order to claim the tax benefits for protecting your property,
- A 60-year title search, and
- A one-time donation to Valley Conservation Council's Conservation Easement Stewardship and Defense Fund. Contributing to this fund means that we can commit to having the staff, travel budget, and technology to monitor your land into the future.

VCC advises landowners to budget a total of \$15,000-\$20,000 for these expenses, though your costs may be more or less than this amount depending on the complexity of your easement or if issues arise during the title search. While this is no small expense, the financial benefits of donating a conservation easement can total hundreds of thousands of dollars in sellable tax credits and non-transferrable tax deductions.

If upfront costs are prohibitive to protecting your property, talk with VCC staff about several funds that exist to provide no-interest loans to cover the cost of completing a conservation easement that are reimbursed after your tax benefits are realized. We've provided a Cost Worksheet below to help you to help you estimate the costs of completing an easement.<sup>1</sup>

Item	Cost
Legal Representation	
Financial Advisor	
Preliminary Appraisal	
Final Appraisal	
Stewardship and Defense Contribution to VCC	
Baseline Documentation Report	
Survey (if applicable)	
Resolution of Title Encumbrances (if applicable)	
<b>Total:</b>	

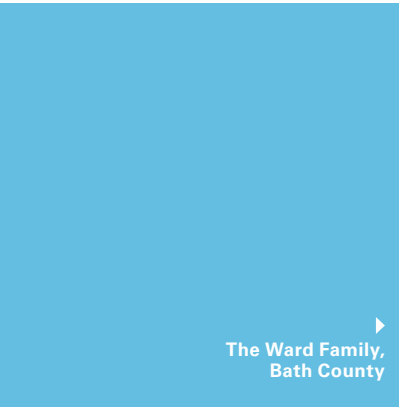
<sup>1</sup>While there may be long-term financial benefits to your gift of easement, the easement donation process has several up-front costs. VCC recommends that you ask each of your service providers for a quote in advance so that you can plan for these costs, but you should also be aware that unexpected steps can add unexpected costs throughout the process. Several of the items listed below may not be necessary depending on your situation and requested timeline. For example, a request for an expedited timelines to meet yearly filing deadlines may require the use of outside contractors to complete the Baseline Documentation Report, resulting in additional costs.

Before closing on your easement, VCC will need to identify a source of funding for our Conservation Easement Stewardship and Defense Fund. These funds ensure that VCC will have the resources necessary to steward and defend your easement every year, in perpetuity. VCC determines the amount needed based on several factors, including the number of divisions permitted on your property (if any). VCC will provide you with the amount needed once easement terms have been agreed upon.

# Basic Terms of an Easement

VCC aims to protect property from development while allowing for the traditional uses which define the Shenandoah Valley, such as forestry and farming. **As an accredited land trust, we must ensure that the terms within an easement protect each property and its conservation values.**

We also understand that each property is unique, and that certain restrictions may or may not be applicable for a given property. VCC staff can walk through each of the following terms and answer any questions you may have on how they apply to your particular property, your vision for the future, and VCC's policies. Here are some broad categories of terminology you will see addressed in a conservation easement:



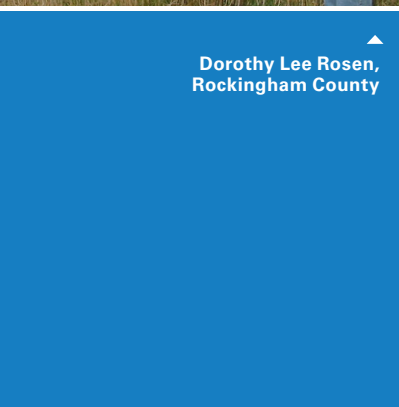
The Ward Family, Bath County



Asher and Laura Jean Brand, Augusta County



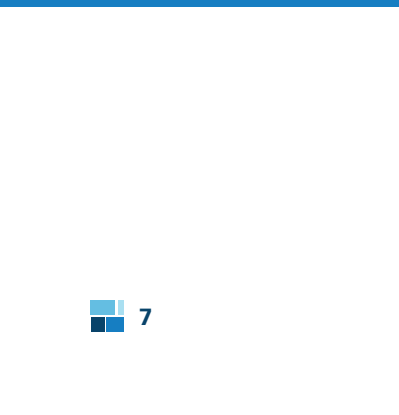
John and Caryl Cowden, Bath County



Dorothy Lee Rosen, Rockingham County



The Johnson Family, Rockingham County



Charlie and Donna Patterson, Augusta County



### Division

Your property may be composed of multiple parcels. A conservation easement covers all of these parcels and treats them as one property subject to the terms of the easement. Division rights allow you to divide a portion of the property, while still requiring that the new parcel be subject to the terms of the easement. Typical easements permit one division of the property per 100 acres of land (e.g., a property with 200 acres could be divided once into two parcels, a 300-acre property could be divided twice, into three parcels).

### Houses, Barns, and Other Buildings

Typically, easements allow one single-family home on each parcel along with associated outbuildings such as garages and sheds. Barns and other farm structures vary widely in their size and VCC staff will work with you to discuss future improvements to the property and how they fit into the terms of the easement. Restrictions may also be placed on building size and placement to protect important agricultural lands and viewsheds.

### Industrial or Commercial Activities

Agriculture, forestry, equine activities, and other natural resource-based activities are permitted. VCC holds easements on a number of working farms and forests and we encourage you to speak with our staff on current uses and future plans for your property.

### Forest Management

You may harvest timber for personal use and commercial sale. If timbering exceeds a certain acreage (generally 2-5 acres), the harvest plan must include best management practices (BMPs) to control erosion and protect water quality. Logging provisions can specify the preservation of wildlife habitat, ecological diversity, or other resources unique to your property. Typical easements permit the removal of dead, dying, diseased, invasive, or hazardous trees.

### Riparian Buffer

An area of trees, shrubs, and other vegetation alongside creeks, rivers, and streams may be required to protect water quality. This may require fencing to exclude livestock from the waterways.

### Trash

Brush piles, composting, and storage of farm machinery and equipment are permitted. VCC cannot agree to hold easements with large piles of trash, refuse, or junk.

### Signs

Signs posting your property, advertising your business or the sale/lease of land are permitted. Billboards, or other signs larger than 32 square feet, are not allowed.

### Alternative Energy Structures

Easements generally allow for the construction of solar panels, wind turbines, or other alternative energy structures for personal use. Restrictions may be applied to limit the size and placement of these installations.

### Roads, Excavation, Grading, Blasting, and Mining

Easements typically allow for private gravel road construction, installation of utilities to serve permitted structures on the property, and grading for construction of permitted structures. Excavation to build farm ponds or restore ecosystem services is also allowed. Mining is prohibited.

Remember, an easement is landowner driven – your conversation with VCC staff will help craft an easement that protects the farm and forestland, water quality, and natural habitat while also allowing for the future use and enjoyment of your property. Placing your property under easement can give you the peace of mind of knowing that your land will be protected into the future, no matter who owns it.

You can also expect to see the following provisions in your conservation easement:

### Inspection

VCC staff are responsible for inspecting each of our easements annually. Staff will give notice of an upcoming inspection to monitor the terms outlined in the easement protecting the property. Though it is not required, landowners are always invited to join the annual inspection and are encouraged to do so when possible.

### Notification

Several provisions within the deed of easement require that landowners notify VCC before completing certain activities, such as sale or transfer of the property, beginning timber harvest, or adding permitted dwellings. This ensures clear communication between VCC and the landowner and saves time during and after easement inspections.

### Enforcement

VCC has a legal obligation to enforce the terms in your conservation easement to protect your property. If there are any violations of the easement, they must be addressed and corrected within a reasonable timeframe determined by VCC and the landowner. VCC may also enforce the terms of easement in a court of law if violations cannot be resolved.

## FAQ

# Your Easement Questions Answered

## Q: Do I still own my land after completing a conservation easement?

A: Yes – a conservation easement only limits the development of the property as outlined in the deed of easement.

## Q: Does a conservation easement give the public access to my land?

A: No – not unless you specifically request it. Eased properties can still be posted as well.

## Q: Can I leave the land to my children? Can I sell my land?

A: Yes – you still retain ownership of your land and are welcome to transfer or sell your property.

## Q: What if there is a mortgage on my property?

A: You may still place an easement on your property, but your lender must also agree to the easement in a process called “subordination.” Contact your lender for more information on the subordination process.

## Q: Does Valley Conservation Council have a minimum size to qualify for an easement?

A: There is no minimum size for an easement with VCC; smaller properties that protect important ecosystems, scenic views, or other important resources may make excellent candidates for a conservation easement. The tax benefits for properties under 50 acres may not fully balance out the costs of completing an easement, and we recommend consulting with a qualified appraiser to determine a preliminary easement value.

## Q: What if I change my mind during the easement process?

A: Not a problem – an easement is only permanent after it has been recorded in the courthouse. You may change your mind at any point before then.

## Q: Are there other organizations that can hold my conservation easement?

A: Virginia has a number of other private land trusts and public agencies that are able to hold conservation easements, including:

- Virginia Outdoors Foundation
- VA Department of Forestry
- VA Department of Conservation and Recreation
- The Nature Conservancy
- The Potomac Conservancy
- Blue Ridge Land Conservancy

While we would love for you to choose VCC as your easement holder, VCC staff can help you identify the best conservation easement holder based on your goals for your property, its size, and location, among many other factors.

## Q: How long does it take to complete a conservation easement?

A: Most easements can be completed within six months to one year after first contacting VCC depending on the complexity of the easement and the presence of any issues uncovered during the title search.



"Protecting my land from development and preserving the huge trees on my property was important to me. The process of getting a conservation easement may seem complicated, but VCC staff guided me smoothly through the process. I went with VCC because of their focus on the Shenandoah Valley, their helpful staff, and a board that has members from across the region."

LEE TAPLINGER  
(HIGHLAND COUNTY)

# Steps to Donate an Easement

## 1 CONTACT VALLEY CONSERVATION COUNCIL

If you're reading this, it's likely you've already started this step! This is where you contact us to discuss options to conserve your property. We'll provide you with both verbal and written information about easements in general and also specific considerations for your property. At this point you will want to have a conversation with your family or anyone else with a stake in the future of your land to make sure everyone agrees to exploring further. This is also a good opportunity to have an initial conversation with legal and financial advisors.

## 2 SITE VISIT AND LANDOWNER INTERVIEW

Next, we'll arrange to meet up with you and view your property. On site, we are looking at the property's features and evaluating which conservation values are present that would warrant protection such as wildlife habitat, waterways, and landscape visibility or what we sometimes call “viewshed.” We'll talk with you about your goals for the property and get a sense of potential easement terms. We will also take preliminary pictures to present to VCC's Board of Directors during their initial review of the project.

At this point, if you are still interested in moving forward, you will need to provide us with a signed consent form and a letter of intent describing why you are seeking to place your property in a conservation easement. You can find copies of these forms at the end of this guide.

## 3 STAFF RESEARCH

Next, VCC staff or designees will complete research on your property including:

- Determining whether the easement will conform to the comprehensive plan of the locality in which the property is located and the zoning classification of the property.

- Reviewing relevant government plans and programs that might affect the property and checking with state agencies to confirm conservation values.
- Collecting maps of the property (U.S. Geological Survey topographic maps, aerial maps and tax maps) and survey plats if available for baseline documentation of the condition and character of the property.
- Making an early, informed and independent determination of the legal owner of the property. If the land is owned by an LLC, general partnership, or other type of pass-thru entity we will need to make sure we comply with provisions set out by the Land Trust Alliance, our accrediting agency. (See *Appendix A form*)

**4 PRELIMINARY EASEMENT REVIEW**  
Now that we have done our due diligence and you have sent in your initial paperwork, it's time to work together to determine the core easement terms based on VCC's Easement Guidelines and the conservation values of the property.

When we've reached an initial agreement, VCC staff will present this information to our Board or Land Protection Committee for consideration. After review, the Board or Committee may suggest modifications to the easement terms and will vote on whether to proceed with the easement project. You will be notified as soon as they decide. If the project is cleared to proceed, we will work with you to create a timeline for next steps.

**5 LEGAL RESEARCH ON PROPERTY TITLE**  
The next step is to work with an attorney or title company to provide a 60-year title opinion or title insurance policy in favor VCC. This helps identify

any issues in the chain of title, or potential issues to the conservation values you are trying to protect, that may need to be resolved before an easement can be put in place.

**6 DRAFTING THE EASEMENT AND LEGAL REVIEW**  
Next, you will work with your legal counsel to prepare a draft conservation easement using VCC's sample deed of easement and the approved core easement terms. Once complete, you'll provide us with a copy of the draft easement including full legal description with redlines to identify any changes made to our easement template. If there is a mortgage on your property, you should contact your lender to arrange for subordination of the mortgage. VCC's legal counsel will review both the draft deed of easement and title work. VCC staff will work with you and your attorney to resolve any issues.

**7 FINAL EASEMENT REVIEW**  
After our legal review is completed, VCC's Board or Land Protection Committee will review your completed draft easement and vote to finalize the project or request further modifications. If any of the terms of the draft conservation easement significantly deviate from VCC's standard template, or the original core easement terms as approved in the first review in a manner that makes the conservation easement significantly less restrictive or creates additional stewardship obligations for us, then those changes may result in additional negotiations or a vote to table the project until issues can be resolved.

Final approval does not obligate the landowner to complete the easement, but you may be expected to cover legal fees and other expenses incurred by VCC if you elect not to proceed with the easement donation at this point in the process.

**8 FOLLOW-UP SITE VISIT AND BASELINE DOCUMENTATION REPORT**  
Once both parties are fully agreed on the terms and language in the deed of easement, we're almost done! VCC's staff will make a return visit to photograph the natural and open-space resources of the property, as well as all structures and any areas specifically addressed in the deed. Photos taken during the visit are mapped along with a narrative description for inclusion in a Baseline Documentation Report. VCC or designees complete this Baseline Documentation Report, which may include: an easement summary, topographic map, aerial map, county tax maps, survey plats of the property if available and photographs of the property keyed to a map. The landowner reviews the information in the Baseline Documentation Report and signs an acknowledgment form attesting to its accuracy prior to the grant of the conservation easement.

This is what we will refer to in the future when stewarding the property to ensure that the terms of the easement are being honored, and we cannot move forward until we receive a signed copy of this report from you.

**9 FINALIZING EASEMENT DRAFT AND RECORDATION**  
Both your attorney and VCC will review a final draft of the deed of easement and make any final corrections. The landowners and any lienholders sign the deed of easement first. VCC signs the deed last. Unless other arrangements have been made in advance, fees payable to VCC, along with any donation to the Conservation Easement Stewardship and Defense Fund (see *Exhibit B form*) are payable at this time.

VCC may record the deed of easement in the Clerk's Office of the County Circuit Court after receiving final title bring down, or the landowner's attorney may complete the title bring down and record the deed of easement. If the landowner's attorney records the deed, then the original must be returned to VCC for recordkeeping purposes. A copy of the recorded

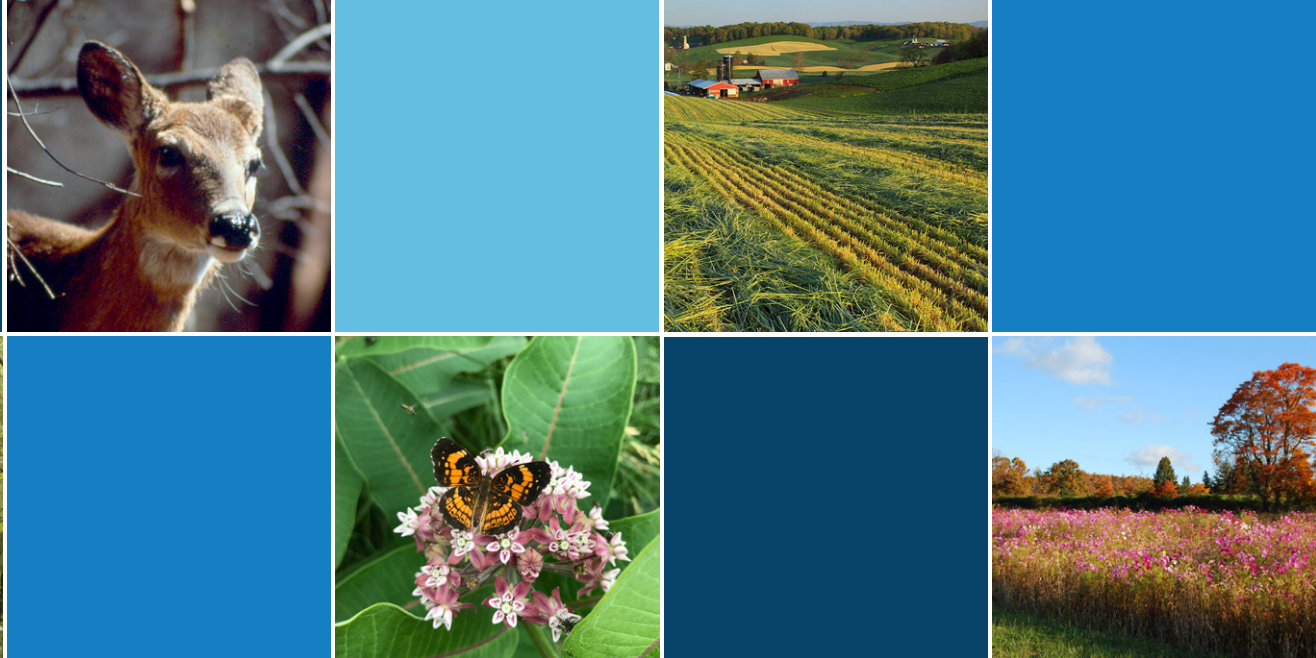
deed of easement is sent by VCC to the landowner, to the County, the Attorney General's office, and to the Virginia Outdoors Foundation.

**10 CELEBRATE!**  
You've made it through and successfully donated a conservation easement on your land. We are forever grateful for your partnership in protecting this Valley that we all love so dearly. A great way to celebrate is by sharing your story with other landowners so they can learn about the benefits of donating an easement. Please consider signing our media release form so that we can also celebrate your amazing gift with all the people who support our organization.

**11 COPY OF THE APPRAISAL/SIGNING FORM 8283**  
Now that you've donated your easement, you will likely be thinking about taking advantage of the tax incentives we mentioned earlier. In order to claim a federal tax deduction or to receive a state tax credit for donating a conservation easement, you must obtain a qualified written appraisal of your property from a qualified appraiser. You are responsible for any determination of the value of your donation and should commission your own appraisals when needed. Following the appraisal of the gift, the landowner submits to VCC the IRS Form 8283 signed by the appraiser along with the appraisal showing the value of the property before and after the easement.

After recordation of the easement, VCC signs the form to acknowledge receipt of the gift of easement and returns it to the landowner. While the appraisal and any determined value is the landowner's responsibility, VCC will not knowingly participate in projects where it has significant concerns about the tax deduction and reserves the right to refuse to sign IRS Form 8283 under these circumstances.

Once all this is taken care of, your financial advisor should be able to provide guidance on next steps regarding the sale or use of your tax credits.



## Getting Started

Use this checklist to help you complete the donation process.

- Schedule a site visit** with Valley Conservation Council Staff
- Complete the Letter of Intent and the following forms** and Return to VCC Staff:
  - a. Conservation Easement Consent Form
  - b. Appendix A: Special Requirements for Pass-Through Entities
  - c. Exhibit B: Miscellaneous Information
- Complete a list of preliminary easement terms** with VCC staff for initial review and approval
- Gather a team of professionals** to assist you in the easement process:
  - a. Attorney
  - b. Appraiser (if pursuing tax credits)
  - c. Financial Advisor
- After board approval, **have your attorney complete:**
  - a. A 60-year title opinion or title insurance policy in favor of VCC
  - b. A draft deed of easement using information provided by VCC staff
- Have your attorney **send the draft deed and title work** to VCC staff for their review and feedback
- Work with VCC staff** to make updates to draft and address any title issues (legal descriptions, surveys, etc.) for final review and approval
- After final review, schedule a time with VCC staff to **complete a Baseline Documentation Report** for your easement
- Review, sign, and return** the Baseline Documentation Report to VCC staff
- Review, sign, notarize, and return** the deed of easement to VCC
- Celebrate your commitment to conservation** in the Shenandoah Valley!
- If seeking tax incentives, complete:**
  - a. A final appraisal and send a copy to VCC
  - b. Form 8283 and send to VCC for review and signature

**Need help or have questions?** Contact us at (540) 886-3541 or visit our office at 11 North Central Ave, Suites 19 and 20 | Staunton, VA 24401

# A Lifetime of Thanks

We realize that the easement donation process can be intimidating, and we want to ensure that you understand the process before moving forward. That said, hundreds of landowners in our region have successfully navigated this process and go to sleep every night knowing that property and the resources it provides to the community are protected forever.

We hope we have provided you with the tools to feel confident in pursuing your conservation easement, and we can't wait to begin the process with you. **We thank you for your generosity, vision, and admirable commitment to future generations.**





VALLEY  
CONSERVATION  
COUNCIL

PO BOX 988 ■ STAUNTON, VA 24402-0988