VALLEY CONSERVATION COUNCIL

Tax Benefits of Conservation Easements

A qualified gift of a conservation easement given in perpetuity may qualify as a non-cash charitable gift that will likely yield a deduction from federal income tax and a credit for Virginia state income tax purposes. There may also be local property tax reductions and federal estate tax exemptions. An independent certified appraiser must establish the value of the conservation easement, which is the difference between the property with and without its development rights. Once that value is established, it is the basis for calculating tax benefits.

A. Federal Charitable gift deduction. Donations of open-space easements that meet federal tax code requirements may entitle the donor to federal income tax deductions. The federal tax deduction for tax year 2016 and subsequent years is 50% of adjusted gross income (AGI) for individual taxpayers, the unused portion of which may be carried forward for a period of fifteen years. In addition, a farmer or rancher who will receive more than 50% of adjusted gross income from the trade or business of farming or ranching is eligible for a tax deduction of 100% of adjusted gross income. IRS Form 8283 must be filed to obtain this deduction. Form 8283 requires attachment of a copy of the appraisal, an appraiser's declaration, and the easement holder's acknowledgement of the gift.

B. Virginia State Tax Credit. A Virginia State tax credit has been established for conservation easements at 40% of the value of the easement. This credit can also be carried forward for ten years and any unused portion may be transferred or sold to another Virginia taxpayer. In Virginia, it is possible for landowners to sell unused tax credits for cash. This means that a landowner who donates a conservation easement and cannot use all of their Virginia tax credits may receive cash for a portion of the value of their easement. The transferred credits are subject to a transfer fee made to the Virginia Department of Taxation.

C. Federal Estate Tax Exemption and Exclusion. Transferring the development rights for a parcel of land through a conservation easement may reduce the value of the land for estate tax purposes, thus reducing the estate taxes, often substantially. In addition, Section 2031(c) of the Internal Revenue Code provides an estate tax exclusion of up to 40% of the remaining encumbered value of the land (but not improvements on the land) protected by a qualified conservation easement. The exclusion is capped at $500,000 and is reduced if the conservation easement reduced the land's value by less than 30% at the time of the contribution. To qualify the easement must prohibit all but "de minimis commercial recreational use."

D. Local Property Taxes may be reduced (see Code of Virginia 10.1-1011 and 58.1-3205), however, if land is already assessed at "use value," in other words, enrolled in a local Land Use Assessment Taxation Program, additional reductions in taxes are unlikely.

VCC does not provide tax advice. Please consult with your tax advisor, financial planner or attorney about qualifying for and using any tax benefits associated with conservation easements.

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