

## OPEN SPACE LAND CONSERVATION: NEW FEDERAL AND STATE FINANCIAL INCENTIVES

**Tamara Vance and Sherry Buttrick**

Everyone enjoys open spaces and scenic views. Outdoor recreation such as hiking, fishing, boating, and camping is a favorite of many people, and many people come to Virginia to use its state parks, rivers, and lakes. As more and more people move to Virginia or move from Virginia's cities to more suburban or rural areas, pressure is put on the owners of the open space to sell it for development. The increasing land values that result from this pressure increase the inheritance tax for heirs, and some of the land is sold to pay the estate taxes. As development expands, it encroaches on historical sites—one of Virginia's big attractions.

As land development continues to reduce Virginia's open space lands, some landowners have chosen to voluntarily restrict certain types of intensive development on their land to preserve the land for future generations. The legal mechanism for this action is a conservation (or open space) easement. The Virginia Outdoors Foundation (VOF), an independent state agency created in 1996, is often the recipient of gifts of easements. The value of the development rights given up in an easement may be considered a charitable gift generating a tax benefit to the donor. In 1997, two new financial incentive programs were developed for encouraging further donations. One is a new state fund to reimburse landowners for legal fees and other costs of donations, and the other is a federal estate tax incentive offering up to a 40 percent reduction in inheritance tax for land under conservation easement.

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### **The Virginia Outdoors Foundation**

The idea for the creation of VOF came from the recommendations of the 1964 Virginia Outdoor Recreation Study Commission. At the same time that the Commission suggested VOF, it also suggested, among its many recommendations, the creation of an Historic Landmarks Commission, a system of scenic byways, and an enlarged state park system.

VOF's Board of Trustees consists of six members appointed by the Governor and the State Treasurer. VOF's purpose under law is to "promote the preservation of open space lands and to encourage private gifts of money, securities, land or other property to preserve the natural, scenic, historic, scientific, open space and recreational areas of the Commonwealth" (Code of Virginia, Sec. 10.1-1800). The primary mechanism for accomplishing this mission is through the use of conservation easements.

### **What Is a Conservation Easement ?**

A conservation easement is a voluntary legal agreement between a landowner and a public body or conservation group in which the parties agree to protect the open space and natural resource value of the land. Conservation easements held by VOF typically restrict mining, industrial, commercial, and high density residential uses while providing for continued farming and forestry activities. Public access continues to be controlled by the landowner. Each easement is tailored to reflect the conservation value of the individual property and is

recorded in the local courthouse as a permanent part of the property records.

Statewide easements protect a variety of natural resources, watershed areas, settings of historic houses, highly visible scenic resources such as mountain peaks and ridges, views from scenic roads and rivers, farms, lands adjacent to parks and game preserves, and more. VOF holds easements on 615 properties, covering nearly 112,000 acres in 48 jurisdictions (Table 1).

**Table 1. Number of acres under easement, by county and city, Dec. 31, 1997.**

County	Acres	County	Acres
Accomack	656	Louisa	1,658
Albemarle	17,741	Madison	1,085
Augusta	1,793	Middlesex	241
Bath	2,988	Montgomery	145
Buckingham	122	Nelson	1,267
Caroline	293	New Kent	258
Chesterfield	95	Northampton	1,073
Clarke	7,807	Northumberland	46
Craig	1,695	Orange	8,189
Culpeper	1,575	Pittsylvania	55
Cumberland	260	Price Edward	223
Essex	1,203	Prince William	20
Fairfax	120	Rappahannock	6,836
Fauquier	31,948	Richmond	1,168
Fluvanna	525	Rockbridge	1,906
Franklin	122	Rockingham	39
Gloucester	377	Russell/Wise	214
Goochland	102	Shenandoah	584
Greene	277	Spotsylvania	130
Henry	76	Stafford	389
Highland	10	Suffolk	56
King George	1,031	Virginia Beach	305
King & Queen	398	Warren	2,083
King William	2,571	Westmoreland	375
Loudoun	9,666	<b>Total</b>	<b>111,796</b>

Source: Virginia Outdoors Foundation

Private conservation organizations such as The Nature Conservancy, Chesapeake Bay Foundation, Piedmont Environmental Council, Friends of Dragon Run, James River Association, Williamsburg Land Conservancy, Valley Conservation Council, and Western Virginia Land Trust have aided VOF in spreading the word about land conservation through easements. As a result, landowners in areas where these groups have been active are becoming particularly aware of the benefits of easements as conservation and estate planning tools, and the protected acreage in these areas is increasing. Public agencies such as the Cooperative Extension Service, Game Department, Department of Forestry, and the Soil and Water Conservation Districts have also been helpful

in informing landowners about easements and the new Open Space Lands Preservation Trust Fund.

### Tax Benefits

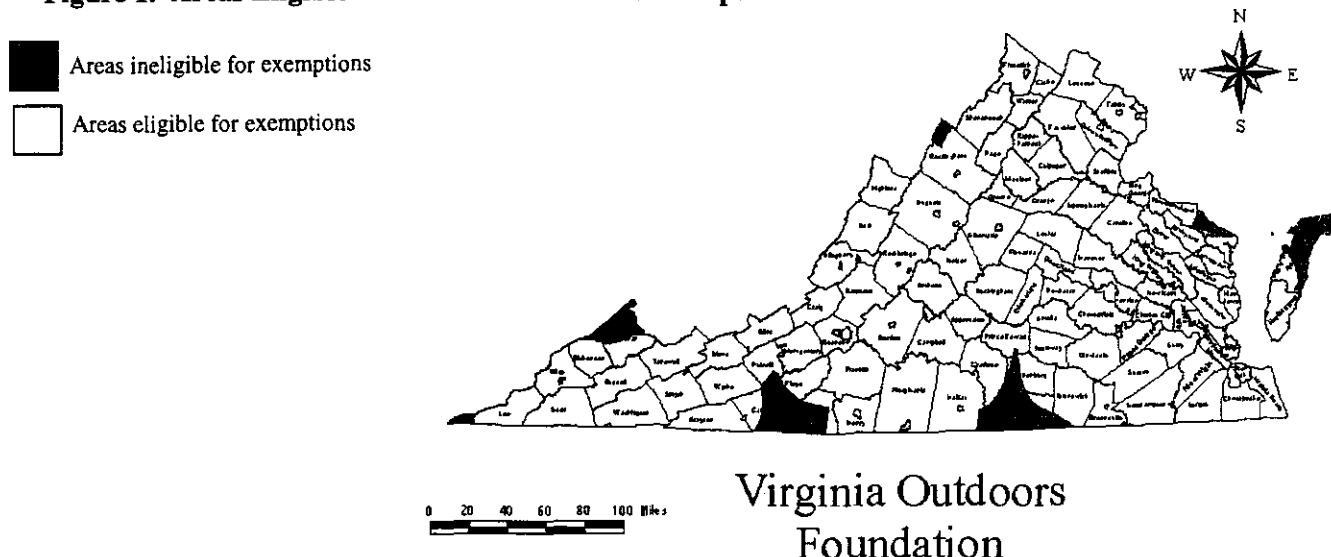
A gift of a qualified conservation easement in perpetuity may qualify as a non-cash charitable gift which may yield a deduction for federal income tax purposes. In jurisdictions which have not adopted land use taxation, an easement can also mean reductions in real estate taxes. In addition, an easement could result in a reduction in federal estate taxes since it may reduce the value of the land as an asset in the landowner's portfolio. In addition, a new federal program allows up to 40 percent of the value of the land in an estate to be exempted from estate taxes if the landowners or heirs donate an easement on the land.

### New Federal Estate Tax Exemptions

Many farms have been sold out of the family because of estate tax burdens, and many of those farms have been sold for development. August 5, 1997 was a good day for both family farms and land conservation. While many of us were on summer vacation, Congress enacted "The Farm and Ranch Protection Act" Subsection 2031(c) of the Internal Revenue Code. This provision allows up to 40 percent of the value of land in an estate to be exempt from federal estate taxes if the land meets certain conservation easement requirements. These requirements include: (1) the land must be within 25 miles of a Metropolitan Statistical Area, a national park or wilderness area or within 10 miles of a national urban forest—as designated by the United States Forest Service (Figure 1 shows eligible and ineligible areas in Virginia); (2) the easement must be perpetual in duration; (3) the easement must qualify as meeting the conservation purposes of Sec. 170(h) of the IRS Code of 1986, except that historic structures and land areas are specifically excluded from this exemption; and (4) the easement must prohibit all but minimal commercial recreational uses. In addition, the easement must have been donated by the decedent or family members and must have been owned by the decedent or family members for at least three years.

A phase-in period of five years for the full benefits, which are capped at \$500,000, is required. The maximum exclusion for a family can be increased to \$1 million for a husband and wife with proper estate planning. When the

**Figure 1. Areas Eligible for Federal Estate Tax Exemption for Conservation Easements**



easement was donated does not matter, which will please many landowners who have already donated easements; however, the new tax benefits will be available only to the estates of decedents after December 31, 1997. Even though landowners may not have donated an easement during their lifetime, heirs may elect to place an easement on the land when they inherit it, thereby enabling them to benefit from the estate tax exclusion. In Virginia, however, because of laws governing the sequence of events in the execution of wills, this latter provision may not be possible to implement unless a specific provision has been made in the will allowing the heirs to place an easement on the land.

The 40 percent exclusion will be reduced by 2 percent for every 1 percent that an easement is valued at less than 30 percent of the total land value. For example, if an easement reduces (by giving up development rights) the appraised value of the land by 29 percent, then 38 percent of the value of the easement-restricted land could be excluded from the value of the estate for the purposes of calculating estate taxes. Some remaining questions about the implementation will be answered by federal rule-making yet to come. In the meantime, more detailed information can be obtained from the Piedmont Environmental Council, which played a key role in the passage of the new tax provision: PEC, P.O. Box 460, Warrenton, VA 20115 or [www.pec-va.org](http://www.pec-va.org).

### **New Open Space Lands Preservation Trust Fund**

Recognizing that legal fees and other costs of easement donation could be a significant financial hurdle for some landowners, the 1997 Virginia General Assembly established the Open Space Lands Preservation Trust Fund. This new state program provides additional incentives to landowners to protect their land with conservation easements. The Fund can be used to pay legal fees, appraisal fees, survey costs, and other costs of easement donation. The Fund can also be used to fund the purchase of all or part of the value of an easement. However, the first year's funding level, \$225,000, will probably not provide sufficient funds for the purchase of easements. Priority in funding will be for family farms, for landowners establishing financial need, and for those seeking reimbursement for only part of the donation costs.

The new Fund will be administered by the Virginia Outdoors Foundation. Six Regional Boards around the state will make recommendations to the VOF Trustees about priorities for allocations. The Regional Advisory Boards have been established on the same boundaries as the Soil and Water Conservation District Areas, roughly: Tidewater, Southeastern Virginia, The Valley, Southwestern Virginia, Northern Piedmont, and Central/Southcentral Virginia. The members of the Regional Advisory Boards were selected to represent local government, Soil and Water Conservation Districts, sportsman's organizations, farmers, private groups enabled to hold conservation easements, and the real

estate, tourism, and forestry sectors. After a training and orientation workshop, the Regional Advisory Board members will meet to review applications for the Fund. The next deadline for applications is August 1, 1998.

The new law requires easements donated using the Fund to have a local co-holder for the easement. Eligible co-holders are local government entities, Soil and Water Conservation Districts, and private conservation organizations enabled to hold easements under the Virginia Conservation Easement Act.

For brochures and applications for the Open Space Lands Preservation Trust Fund or information on conservation easements, contact the VOF office nearest you: Aldie (Northern Va.) (703) 327-6118, Blacksburg (540) 951-2822, Charlottesville (804) 293-3423, or Richmond (804)225-2147.

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## NOTICES

**\*\*Dr. Wayne Purcell, REAP Coordinator, received the Alumni Distinguished Professor award in November 1997. Only seven faculty at Virginia Tech can hold these awards at any one time; Wayne's award is the only one in the College of Agriculture and Life Sciences. Please join the faculty and staff in the Dept. of Agricultural and Applied Econ. in congratulating him.**

**\*\*HOW TO REACH US:** REAP, Department of Agriculture and Applied Economics, 0401, Virginia Tech, Blacksburg, VA 24061; telephone: (540) 231-9443; fax: (540) 231-7417; email: [reap01@vt.edu](mailto:reap01@vt.edu); or WWW: <http://www.reap.vt.edu/reap/reap.html>.

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