

The Northern Virginia Conservation Trust

- Five full-time professional staff members
- Non-Profit Land Trust; Founded in 1994; Based in Annandale
- Funded through tax deductible donations and three Public-Private agreements with Fairfax County, Arlington and Alexandria
- Protected over 1800 acres in Northern Virginia: NVCT owns 145 acres in fee; holds perpetual conservation easements on rest

NVCT recognized as “among the best small charities in the Washington, DC region”

CONSERVATION EASEMENTS

What Are Conservation Easements?

- **Conservation Easements**: recorded perpetual restrictions over the use of land donated to a qualified organization exclusively for four categories of conservation purposes: natural, historic, recreational, or open space (“conservation value” test). Landowner still owns property.
- **Tax Benefits** may be claimed if the conservation easement meets the conservation values test and the easement reduces the value of the land as shown by a qualified appraisal (“appraised value” test).

Benefits of Conservation Easements

- ◎ **Public Benefits**: Conservation of important natural and historic resources in perpetuity, such as air quality, water quality, wildlife habitat, and scenic vistas for less money than fee acquisition.
- ◎ **Private Benefits**: Continued ownership of land plus tax incentives, such as income, property, and estate tax benefits.

What Are The Tax Benefits?

- **Income Tax Deduction**. Value of donated easement considered a Charitable Gift and can be deducted from donor’s federal and state income taxes.
- Deduction Limited to 50% (after 12/31/07 only 30%) of the landowner’s adjusted gross income (AGI) in the year that the donation is given.

- Unused portion may be carried forward for an additional fifteen years (after 12/31/07 only five years) subject to AGI limitation.

- **Property Tax Savings**. Property assessed at “Use Valuation” rates. In those areas without use valuation, local assessors required by Virginia Conservation Easement Act to take easement into account in determining the Fair Market Value of the Property. Virginia Code Section 10.1-1011.
- **Amount of savings** runs between 20 – 90% depending on lost value.
- **Estate Tax Savings**. The easement value is excluded from the taxable value of the estate under section 2055(f) of the IRC.
- Section 2031(c) of the Code provides an additional benefit to easement donors, which can further reduce the taxable value of an estate by up to \$500,000.
- Section 2031(c) also provides heirs the opportunity to make a post-mortem donation of a conservation easement.

- **Virginia Land Preservation Tax Credit**. 40% of the easement value can be taken as a tax credit against Virginia Income Tax owed.
- Limited to \$100,000 in any single year; can use in year of easement donation plus 10 consecutive years.

- Can sell unused Credits to other taxpayers; can transfer privately or using facilitators/brokers; available market currently average 77 cents/dollar of credit. Non-profits/Cash poor.
- Total Program Capped at \$100 million/year (State wide) in 2007, inflation adjusted thereafter; first come, first served; others put on list for next year.
- If taxpayer claims more than \$1 million in tax credits (i.e., reduction in land value of \$2.5m), Department of Conservation and Recreation (DCR) must “verify” the conservation value of the easement using VLCF “**Criteria.**”

The Conservation Value Test

- VLCF Criteria sets out a number of “**safe harbors**” that will meet the conservation value test in each category.

What Are The Criteria Safe Harbors?

- Agricultural Use. Land in Ag/Forestal Districts
- Forestal Use. Forested Lands less than 20 acres if certified by State Forester (“urban forests”)
- Natural Habitat. Lands identified in Natural Heritage Program or Wildlife Action Plan
- Historic Preservation. Buildings on National Register or eligible for listing; battlefields in Civil War Sites Report of 1993.

- ▶ Outdoor Recreation. Land identified in Virginia Outdoors Plan
 - ▶ Watershed Preservation. Riparian Buffers of at least 100 feet in width with “substantial frontage” on perennial stream, wetland or tidal waters
 - ▶ Scenic Open Space. Land visible from: scenic highways; scenic rivers; Potomac River; public parks; and hiking trails
- ◎ Open Space Lands Designated by Local Governments. Land designated in a local government’s open space plan, public ordinance or comprehensive plan that find one of the following “worthy of protection”: the specific property; a specific land area; or a “class of land” with specific conservation value.

What Are The Criteria “Rocky Reefs”?

- ▣ Criteria disallows tax credit for the following: lands already dedicated as open space or as a quid pro quo for zoning approval; land where development covers more than 15% of the site; golf courses; amusement parks; private pools or beaches.
- ▣ If neither a “safe harbor” nor a “rocky reef,” Donor permitted to demonstrate how land meets the conservation values test.

The Appraised Value Test

- Easement Value must be substantiated by a “**qualified appraisal**” done by a “**qualified appraiser**”
- Last fall IRS issued “**Guidance Regarding Appraisal Requirements for Noncash Charitable Contributions.**” IRS received comments on the Guidance and is drafting more detailed regulations.
- This Guidance governs the requirements of a “qualified appraisal” as well as a “qualified appraiser” until regulations issued.

Valuation of Easement

- ◎ **Valuation Methods:** Comparable Sales Method (using government purchases of easements; few comparisons); Subdivision Method of Analysis (danger of inflated appraisals); and **Before and After Method** (most common) = Difference between Fair Market Value (FMV) of unrestricted property and the FMV of restricted property. Treas. Reg. Section 1.170A-14(h)(3)(i)

Valuation Issues

- ◎ **Timing:** appraisal must be completed no more than 60 days before recordation and no later than tax filing

date.

- ⊙ **One Year Rule.** (FMV=purchase price)
- ⊙ **Enhancement Issues.** Easement value lessened if it enhances value of nearby lands owned by donor or related parties.
- ⊙ **Bargain Sale.** Donor's deduction must be reduced by amount of any financial or economic benefit received.

Easement Process

- Landowner/Lawyer Contacts NVCT
- Site Visit/Staff Determination of Interest
- Title Search
- Negotiation of Conservation Easement: identification of conservation values; drafting language to protect those values; limiting donor's reserved rights, such as building envelopes; addition of boilerplate provisions for monitoring and enforcement.
- Discussion of Stewardship Gift
- Presentation to NVCT Land Stewardship
- Baseline Study done by NVCT
- Final Negotiation of Easement
- Presentation to NVCT Board of Directors
- Appraisal Completed
- Involvement of Broker (if needed)
- Subordination Agreement (if needed)
- DCR pre-filing review if over \$1 million

Execution and Recordation

- IRS Form 8283 and copy of appraisal given to NVCT
- Forms filed with broker/DCR/Department of Taxation for state tax credits
- Tax Returns filed
- Request to local jurisdiction for lower real estate assessment

SOME NVCT PROPERTIES and OUTREACH ACTIVITIES

Arch Hall on Belmont Bay, Mason Neck

- 9 Acres overlooking Belmont Bay
- Protects important viewshed from State Park and greatly used water recreation area
- RPA and EQC protections
- Historic house, relocated from Old Town Alexandria

**70 acre Great Blue Heronry
Fee Ownership. Potomac Creek, Stafford**

Glebe House Easement

- Key Arlington Property
- National Register Site

- Acre of Grounds Containing Mature Trees Conserved
- Viewshed From Street Protected
- Public Access One Day a Year

Kust Easement in Alexandria

- 3 acres adjacent to Monticello Park in Alexandria
- Identified in Alexandria Open Space Plan
- Important Habitat For Migrating Warblers
- Public Access During Bird Migration Season

Eagle Easements in McLean

- 70-acre Property located off of Georgetown Pike near Madeira School
- Easements protect Potomac River Gorge, trees, stream valley and viewshed from Potomac River
- Historic Gold Mine site on property

“FLOATING CLASSROOMS” BALD EAGLE VIEWING TREE PLANTING IN CLIFTON

Questions and Answers