

What Does Land Trust of Virginia Do?

Land Trust of Virginia (LTV) exists to help you make the greatest contribution you can make to our state, our children, and our future: We work with you to protect Virginia's farms, forests, and history.

We assist landowners by:

- Providing information on land conservation to those interested in putting their land into a conservation easement;
- Assessing the conservation values of each property being proposed for a conservation easement;
- Accepting donations of conservation easements, by working closely with each landowner to ensure that their property interests and conservation values are protected by an easement tailored to their specific property; and
- Monitoring conservation easements through perpetual stewardship, to ensure that each landowner's intentions are carried out.

The Land Trust of Virginia has helped 219 landowners put thousands of acres of Virginia's beautiful and historic countryside into conservation easements. We can help you, too.

What Is a Conservation Easement?

A conservation easement is a permanent restriction on your land that protects its conservation values and limits development, now and forever.

What Are Its Benefits?

While preserving your land, you can retain ownership of it, sell it, or pass it on to your heirs with the confidence that no matter who owns the land, your intentions and the easement terms will be enforced in perpetuity. Property owners who put their land into a conservation easement also may qualify for financial benefits, which can include:

- State income tax benefits, including tax credits (which in some cases may be sold)
- Federal income tax deductions
- State and federal estate tax benefits, and
- Lower local property taxes

You should seek advice from your own tax advisor regarding the benefits for which you may qualify. LTV does not provide advice regarding tax benefits.

Does My Land Qualify?

Before a property can be put into conservation easement, you and LTV must determine whether the property has important conservation values that make it eligible for easement status. If you have a piece of land that you would like to conserve, ask yourself the following types of questions:

- Will preserving my land maintain a setting of scenic rural open space (including farmland and forest land) that the public can see?
- Will preserving my land protect important natural resource values, such as wildlife habitat, streams, ponds, or wetlands?
- Will preserving my land preserve a site of historical importance?

If your answer is “yes” to one or more of these questions, your land may meet our criteria for accepting conservation easements. We will be happy to help you evaluate the potential of your property to qualify under LTV’s conservation criteria.

How Do I Put My Land In Easement And What Will It Cost?

Here’s a short sketch of the typical easement process*. We also can send you our Conservation Easement Consent Form and a Letter of Intent if you decide to go forward. Further information is available on our website at www.landtrustva.org.

Deciding to proceed

After you review the information that LTV has provided, consult with your family and/or advisors, especially your tax counsel, and decide whether you would like to pursue a conservation easement on your property. If you are ready, sign the Letter of Intent provided by LTV indicating that you wish to begin the process, and send it to LTV. As that letter indicates, until the final conservation easement is executed and recorded in the land records, you can decide at any stage not to go further.

The Costs

LTV requires payment of a \$2,500 processing fee to cover its expenses in working with you to evaluate and prepare a conservation easement. We ask for \$1,000 of this fee to be paid as a deposit at the beginning of the process; the \$1,500 remainder is not due until you are ready to record your easement. You should also expect to incur costs associated with an appraisal of the property and preparation of a Baseline Documentation Report, as well as any fees charged by your attorney. Finally, LTV must ensure that it has sufficient funds in an endowment to pay for the perpetual monitoring of your easement. LTV staff can provide you with a more detailed analysis of these expenses. You should ask your tax advisor for assistance in weighing these costs against any potential financial and conservation benefits.

Retaining professional advisors

You will need to retain a knowledgeable attorney and an appraiser familiar with conservation easements and the relevant federal and state tax laws. A knowledgeable attorney should be able to provide you with the names of several appraisers who have specific expertise and experience in appraising easements. If you plan to sell any state tax credits that you may be eligible for, you may need a knowledgeable tax credit broker. You also will have to retain a qualified person to prepare a Baseline Documentation Report that documents the current conditions on your property. LTV can prepare the Baseline Documentation Report for a fee, or can give you a list of contractors who can prepare a report that meets LTV’s standards.

Reaching a preliminary agreement

First, LTV staff will meet with you, view your property, and evaluate with you whether your property has conservation values that meet LTV's criteria. Next, you and LTV staff reach a preliminary agreement on the terms of an easement to protect those values and any uses of the property that you wish to retain.

Preparing the necessary documentation

After this preliminary agreement is reached, LTV staff will prepare a draft easement deed for you and your advisors to review. It is your responsibility to have your advisors prepare or arrange for preparation of:

- The Baseline Documentation Report (unless LTV prepares it for you)
- An appraisal of the value of the conservation easement
- A survey (in appropriate cases)
- A title policy or report (in appropriate cases)
- A loan subordination agreement, if there is a loan on the property.

Approval by the LTV Easement Committee and Board of Directors

After the LTV staff works with you to define the terms of the proposed easement, LTV's Easement Committee must review and submit a recommendation to the LTV Board of Directors regarding your proposed easement, and LTV's Board of Directors must approve any final agreement. All required documentation needs to be submitted at least one week in advance of the Easement Committee meeting in which your easement is reviewed. LTV staff can provide you with the dates of upcoming meetings. The Easement Committee may recommend that the proposed easement be accepted, rejected, or accepted with changes. The Board of Directors, in turn, may accept the easement, accept it with changes, or reject it, perhaps with suggestions for changes.

Completing the final easement and the Baseline Documentation Report

The final easement is drawn up by LTV staff, including any board-approved changes, and submitted to you for final review and approval. You must ensure completion and delivery to the LTV Staff of a Baseline Documentation Report that meets LTV standards. LTV staff also will notify you of the amount that LTV estimates will be needed to endow the perpetual care and monitoring of your easement. This amount normally must be received by LTV before an LTV officer can sign the easement for recording.

Executing the easement

You sign the completed easement before a notary public, have it signed by any lender of record to subordinate the lender to the conservation easement, and send it to LTV for signature by an LTV officer. LTV staff then will record the easement with the appropriate county office. LTV will not sign your easement unless LTV has:

- a signed final easement that includes language agreed upon by the landowner and the LTV Board,
- a Baseline Documentation Report that meets LTV standards,
- a preliminary appraisal valuing the conservation easement,
- adequate provision for a stewardship endowment, and
- other required documentation as necessary, such as a title search, survey, or statement of title insurance for the benefit of LTV.

Obtaining Tax Benefits

While LTV takes no responsibility for tax matters and is not involved with this step, you will need to present LTV with a copy of the preliminary appraisal before the Land Trust signs the easement if you wish to have LTV subsequently sign the IRS Form 8283 (which is necessary for a federal income tax deduction). You must also submit the final full appraisal to LTV staff one week before you wish to have LTV sign the IRS Form 8283. LTV will not knowingly participate in projects where it has significant questions about the donor's conformance with tax laws.

Stewardship of the Easement

When LTV accepts your easement, it is taking on the important responsibility of protecting the conservation values on your property forever. LTV's Director of Stewardship will conduct annual visits to the property to monitor the easement and ensure that the terms of the easement are being met.

*While these steps show the typical procedure, there are some situations where the order may differ. The process may take anywhere from a few months to more than a year to complete, so it is important to start early and meet the various deadlines involved in the process.



Tax Incentives for Conservation Easement Donations

In addition to the knowledge that you have taken an important action in the name of conservation, there are a number of tax benefits for the donation of a conservation easement on your property. The following is a brief summary of those benefits.

Federal and State Tax Incentive

The donation of a conservation easement is treated as a non-cash charitable donation. Typically, the value of the donation is calculated as the difference in the fair market value (FMV) of the property before the conservation easement and the FMV of the property after the easement has been recorded. An appraiser qualified to make such a valuation prepares an appraisal report that satisfies specific IRS requirements.

The IRS allows easement donors to use the value of their donation as a deduction against up to 50% of their adjusted gross income (AGI). Taxpayers are allowed to use this deduction in the year of the easement donation and may carry forward any remaining balance of the donation amount for up to 15 years. Qualified farmers (those making more than 50% of their income from farming) are allowed to take a deduction of 100% of their AGI in the year of the donation, and are allowed to carry forward the unused balance of the donation amount for up to 15 years.

Virginia offers one of the strongest incentives in the nation for the donation of conservation easements. The Virginia Land Preservation Tax Credit program provides easement donors with tax credits against their Virginia state income tax liability. The amount of credits issued to a taxpayer is equal to 40% of the value of the easement donation, as determined by a qualified appraisal. Virginia issues only \$75 million in land preservation tax credits each year, and those credits are issued on a first-come, first-serve basis.

Taxpayers may use the tax credits in the year in which they are issued and may carry forward unused credits for up to 10 years. There is currently a \$20,000 limit on credits that a taxpayer may use in any year. You may also transfer (sell) any tax credits that you do not use to another individual or business with a Virginia income tax liability. There are fees associated with the transfer of tax credits. Transferred tax credits may be used for up to 11 years.

As an example of how these tax incentives work, assume that the FMV of a property is \$1,000,000 and that the landowner wishes to restrict development of the property with a conservation easement that lowers its FMV to \$600,000. According to federal and state tax codes, this reduction of the value of the property, through the voluntary imposition of restrictions on its use, is considered to be a tax-deductible non-cash charitable contribution of \$400,000.

Assuming an adjusted gross income of \$100,000 a year, that landowner who in this example is not a qualified farmer, can take a tax deduction of \$50,000 a year for eight years (equal to \$400,000 donation value). Based on a marginal tax rate of 25%, the tax savings over eight years will total \$100,000.

Given the \$400,000 easement valuation, Virginia will issue to the landowner \$160,000 in land preservation tax credits (40% of the appraised value). Assuming the same \$100,000 AGI each year and an approximately \$5,200 state income tax liability, the landowner will not have to pay state income taxes for the full 10 years and will only use up to \$52,000 of the allotted \$160,000 in credits. In this example, the easement donor could transfer or sell the remaining \$108,000 in tax credits. Recent sellers of land preservation tax credits have received a net of about 90 cents on the dollar. Therefore, the proceeds from the sale of the \$108,000 of unused tax credits would net the landowner about \$97,200.

The total of the federal income tax savings (\$100,000), the Virginia state income tax savings (\$52,000) and the net proceeds from the sale of the state income tax credits (\$97,200) is almost \$250,000. Note: there is proposed change to the treasury regulation that could significantly impact benefits associated with state tax credit programs (known as the "quid pro quo" rule change). Contact LTV or your tax advisor for more information.

Real Estate Taxes

Once the conservation easement is recorded in the county land records, the easement donor's property is qualified for a permanent reduction in the real estate tax rate. The tax rate varies from county to county, but it is typically a considerable savings from the regular tax rate.

Estate Taxes

For estate tax purposes, the value of the conservation easement property is reduced by the restrictions of the easement. In addition, the executor of the estate is allowed to exclude 40% of the value of the easement property from the estate, up to a maximum of \$500,000.

Please note that this summary is a simplified example of the tax benefits available for the donation of a conservation easement and does not fully provide the details of the tax codes. LTV does not offer tax advice and recommends that you seek the advice of a tax professional.

Landowner's estimated costs

The following three scenarios present what the landowner's costs might be for their own work with their appraiser and attorney PLUS an estimate of what LTV would charge the landowner in each scenario. The varying LTV cost is the stewardship fee. The stewardship fee is the biggest cost of doing an easement. It is a fee that goes into an endowment fund to guarantee that LTV will have the resources, in the future, to provide the required annual monitoring visit plus any legal costs that may be needed in the defense of an easement. The stewardship fee calculation is based on a number of factors including how many future divisions will need to be monitored, complexity of the easement itself, estimated staff and travel time. The estimated legal fees and appraisal fees were provided by two separate attorneys and two separate appraisers. All four of these people are well versed in conservation easements.

	<u>Low End</u>	<u>High End</u>
Scenario #1- 85 acre parcel that would allow 8 divisions but easement eliminates any future divisions		
Landowner's preliminary appraiser's fee	\$1,000	\$1,500
Landowner's full appraiser's fee	\$6,000	\$7,000
Landowner's attorney fee	\$1,500	\$2,500
LTV's processing fee	\$2,500	\$2,500
LTV's baseline documentation fee	\$2,500	\$2,500
LTV's Stewardship fee	\$10,000	\$10,000
Total	\$23,500	\$26,000

Scenario #2- 25 acre parcel that would allow 2 divisions but easement eliminates any future divisions		
Landowner's preliminary appraiser's fee	\$500	\$1,000
Landowner's full appraiser's fee	\$4,000	\$4,500
Landowner's attorney fee	\$1,500	\$2,500
LTV's processing fee	\$2,500	\$2,500
LTV's baseline documentation fee	\$2,500	\$2,500
LTV's Stewardship fee	\$8,000	\$8,000
Total	\$19,000	\$21,000

Scenario #3- 170 acre parcel that would allow 15 divisions (with cluster option) but easement reduces it to 1 future division (for a total of 2 future properties)		
Landowner's preliminary appraiser's fee	\$1,000	\$1,500
Landowner's full appraiser's fee	\$8,000	\$9,000
Landowner's attorney fee	\$1,500	\$2,500
LTV's processing fee	\$2,500	\$2,500
LTV's baseline documentation fee	\$2,500	\$2,500
LTV's Stewardship fee	\$24,000	\$24,000
Total	\$39,500	\$42,000

Note: The quotes above for legal and appraisal fees are from two attorneys and two appraisers we repeatedly work with in Loudoun County. LTV's Stewardship Fee is a one-time fee that enables LTV to provide the resources to ensure future compliance with the landowner's wishes and provide legal resources if a future landowner violates the conditions of the easement. The Stewardship Fee varies by characteristics of each individual property.

If you're interested in learning more, contact us at (540) 687-8441 or email Ashton Cole at ashton@landtrustva.org.

APPRAISERS

Land Trust of Virginia (LTV) has compiled a list of people who have completed appraisals on open space easements with LTV. This is not a comprehensive list: other appraisers in Virginia also specialize in conservation easement appraisals.

In order to qualify as a non-cash charitable contribution, the appraiser, the appraisal, and the easement must meet the requirements of the Internal Revenue Code. LTV strongly recommends that the appraiser be a Certified General Real Estate Appraiser; however, LTV is not in a position to certify whether an appraiser is “qualified” or make specific recommendations and is not responsible for the quality or cost of the appraisal.

LTV also strongly encourages potential easement donors to consult their attorney and accountant regarding the tax implications of a gift of easement.

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Wesley Woods
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PO Box 363
Lynchburg, VA 24505
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Harrison Chavis, MAI
Harrison Chavis & Associates, Inc.
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Email: jared@millerlong.com

Lawyers

The following attorneys are known Land Trust of Virginia (LTV) to be familiar with LTV and conservation easements. LTV makes no specific recommendations on the choice to lawyers or accountants but strongly encourages potential easement donors to seek legal and tax advice. LTV cannot give legal or tax advice.

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Georgia Herbert
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PO Box 21
The Plains, VA 20198
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Email: gherbert@georgiaherbertlaw.com

Virginia Tax Credit Brokers

The following people are known to Land Trust of Virginia as providing tax credit brokerage services. LTV does not give tax advice or make specific recommendations on the choice of brokers.

Taylor Cole
Conservation Partners, LLC
P. O. Box 152,
Lexington, VA 24450
Tel: 540- 464-1899
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www.conservationpartnersllc.com

Hank Hartz
Strugar Conservation Services
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Nancy M. Ambler, Esq.
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www.bluelineconservation.net

10 Good Reasons to do a Conservation Easement

1. There is never going to be more land, so we need to protect what we have.
2. Because you will feel a wonderful sense of relief knowing that you have protected your property from future development, while still privately owning the land.
3. Because it doesn't mean no development at all. Development is allowed on properties, within an agreed-upon limit that is unique to each property. However, high density development, is prevented.
4. Because there are excellent federal tax incentives available to you.
5. Because there are excellent state tax incentives available to you.
6. Because the land will be protected forever, regardless of who owns it, and your neighbors will love you for it.
7. Because you are helping to keep the community you love the way it is forever and the community will appreciate what you have done.
8. Because you will be protecting wildlife and the environment.
9. Because you will be helping to protect air and water resources for future generations healthy.
10. Because protecting active farms means protecting our food resources and preserving agricultural traditions.

10 Good Reasons to Work with LTV

1. Because we will defend your easement in the future, if it ever needs defending. (Ask us about our current defense work.)
2. Because we are an accredited land trust. We were one of the first accredited in the U.S. in 2009 and then we were re-accredited in 2014. (There are 28 land trusts in VA and only eight are accredited. To remain accredited, a land trust must meet strict standards and reapply every five years.)
3. Because we will work with you and help you accomplish your goals. While our primary purpose is to protect important conservation values, we understand there are various ways to accomplish this. Every conservation easement is unique to the property and the landowner.
4. Because we work more quickly than most other organizations or agencies and our Board is willing to meet as often as necessary to review and approve your easement.
5. Because when many organizations close their doors for the year, LTV keeps working, trying to help as many landowners as possible reach their year-end goals, see Reason #4.
6. Because after 25 years, we have built a substantial Stewardship Endowment that guarantees our ability to fulfill our stewardship responsibility in perpetuity.
7. Because we work hard to make ourselves available to you and succession landowners, providing interpretations to easements as needed.
8. Because we have the Deborah Whittier Fitts Battlefield Fund, which can help defray the costs of protecting land that was part of historic battles.
9. Because we have expert, knowledgeable, and professional staff.
10. Because we have been doing conservation easements for 25 years and it is all that we do. It is our specialty.

For more information, call Land Trust of Virginia's office at (540) 687-8441, contact us at ashton@landtrustva.org, or visit our website, www.landtrustva.org. Working together, we can protect Virginia's natural beauty and historic legacy forever!