

# How to Protect Your Land With a Conservation Easement

The steps to create a conservation easement are outlined below. The process takes 3 to 6 months at minimum and can go on for over a year. It is wise to start early if you want to finish by a particular date or take advantage of tax benefits in a given year. There are additional time considerations for those wishing to sell Virginia income tax credits.

## Easement Process:

1. Consider Goals & Resources
2. Consult with Attorney & Accountant
3. Negotiate Terms
4. Title Search & Subordinations
5. Survey
6. Appraisal
7. Baseline Documentation
8. Finalize Conservation Easement
9. Sign & Record

### 1. Consider Goals & Resources

First, think about your long-term plans, goals, and dreams for your property. What do you want to see? What do you want to prevent? Then, Potomac Conservancy staff will meet with you on your property to learn your goals, identify resources to protect with an easement, and provide you with options to reach your goals.

### 2. Consult with your Attorney & Accountant

You should consult your attorney and accountant or financial advisor early in the process for tax advice and review of the legal documents. The time and resources spent on this advising are well worth it. In the end, you will create a permanent legacy to be enjoyed for generations to come.

### 3. Negotiate Terms of Easement

Once you've decided to place an easement on your property, you and Conservancy staff will work out the specifics. Together we will decide how many houses to allow, how wide to make stream buffers, whether roads may be paved, etc. Conservancy staff will write a draft easement, and we will work together until a final, mutually agreed-upon document is created.

### 4. Title Search & Subordinations

A title report is needed early on in the process. It provides a legal description, explains who owns the property, and identifies any liens, mortgages, rights-of-way, or other easements. Mortgages and leases are examined, and if necessary, a consent agreement is developed with the mortgage company or party to the lease. Subordination of leases or mortgages to the terms of the conservation easement may be required to satisfy IRS regulations. Some companies charge a service fee, generally around \$150, to subordinate a mortgage.

*Costs for title work and mortgage subordination are generally a landowner's responsibility, though the Conservancy may be able to cover costs in certain situations.*

## 5. Survey

Sometimes a survey is needed to delineate property boundaries or special use, development, or management areas that are referenced in the easement. If you already have a survey on-hand, this may suffice; or you may need to get a new survey. Often, a previous surveyor will update your survey for little cost. *Survey costs are a landowner's responsibility and range from \$200 to \$5,000. A survey may count as a tax-deductible expense associated with donating an easement, but please consult a tax attorney or accountant if you plan to claim an easement as a charitable donation.*

## 6. Appraisal

Landowners wishing to take advantage of conservation tax benefits must obtain a special type of appraisal from a qualified appraiser to determine the easement value. *Consult with a tax attorney or accountant if you plan to claim the value of an easement as a charitable donation.*

## 7. Baseline Documentation

A Baseline Documentation Report is developed to document the condition of the property at the time the conservation easement is donated, as required by the IRS regulations. Conservation values—such as streams, springs, and forest resources— and man-made features will be documented and photographed. Conservancy staff will create the report with your direction.

## 8. Finalize Conservation Easement

Conservancy staff will review with you and your legal advisor the final easement document and obtain your approval. Any attached documents, maps, or exhibits will be included with the final easement document.

## 9. Sign and Record Easement

The easement signing is similar to other real estate closings. You and a Conservancy representative will sign the final Deed of Conservation Easement, and a notary public will notarize all signatures. You and the Conservancy will sign an affidavit certifying the accuracy of the Baseline Documentation Report. The Conservancy will ensure that the easement and mortgage subordination (if applicable) are recorded in the county land records. You and the Conservancy will each keep a copy of the signed conservation easement and baseline report. *Recording costs (~ \$50) are the landowner's responsibility, though the Conservancy can occasionally cover them. Some counties do not charge recording fees for donated conservation easements.*

