

A Guidance Document: Consistently Accounting for Conservation Easements within Your Jurisdiction



Virginia Coastal Zone
MANAGEMENT PROGRAM

This report was funded in whole by the Virginia Coastal Zone Management Program at the Department of Environmental Quality through Grant # NA10NOS4190205 Task 97.01 and Task 95 of the U.S. Department of Commerce, National Oceanic and Atmospheric Administration, under the Coastal Zone Management Act of 1972, as amended. The views expressed are those of the author(s) and do not necessarily reflect the views of the U.S. Department of Commerce, NOAA, or any of its subagencies.

As a legal agreement made between a landowner (grantor) and a public body (grantee), conservation easements place restrictions on both the present and the future use of a property, which helps to preserve the rural quality of the region in perpetuity. However as conservation easements become a more popular land use tool in the Middle Peninsula, there are fiscal impacts to localities. In order to reduce these fiscal impacts, the Middle Peninsula Planning District Commission (MPPDC), funded through the Virginia Coastal Zone Management Program, has been working with local Commissioners of Revenue, Conservation Entities, and County Planners to understand the fiscal impacts, while at the same time taking advantage of the composite index benefits (ie. receiving the proper amount of State aid for county education).

This document will assist counties participating within the Virginia Use Value Assessment Program (ie. land-use counties), and those counties that are not (ie. non-land use counties), in accounting for conservation easements within their jurisdiction – connecting the Commonwealth’s legislative requirements to the County’s role in meeting those requirements.

As the Virginia Conservation Easement Act, Section §10.1-1011 Taxation, provides legislative guidance to properly assess conservation easements within the Commonwealth of Virginia, below is a simplified outline of how one may approach adjusting the fair market value of conservation easements which is authorized by VA Conservation Easement Act.

NON LAND-USE counties-

1. **The Commissioner of Revenue, or a qualified assessor, may reduce the fair market value of conservation easements based on the encumbrances placed on the property.** According to Code (Section §10.1-1011 Part B), *Assessments of the fee interest in land that is subject to a perpetual conservation easement held pursuant to this chapter or the Open Space Land Act shall reflect their reduction in the fair market value of the land that results from the inability of the owner of the fee to use such property for uses terminated by the easement.*
2. Specifically, **reduce the fair market value of lands with conservation easements based on only the uses of the land remaining after the easement and not on the uses or potential uses of the land that have been terminated by the easement.** Directly from the Code, *the fair market value of such land [lands with conservation easements] (i) shall be based only on uses of the land that are permitted under the terms of the easement and (ii) shall not include any value attributable to the uses or potential uses of the land that have been terminated by the easement.*
3. With the reduced fair market value, the Commissioner of Revenue is to **record the reduced value of the property with the conservation easement in the County Landbook and therefore report this reduced value to the Virginia Department of Taxation.** Reporting the reduced value will ultimately lower the total landbook value and benefit the county through the composite index.
4. The County may tax the reduced fair market value of the land with the conservation easement. As conservation easements are take exempt, the County may only tax those property right that remain.

LAND-USE counties-

1. **The Commissioner of Revenue, or a qualified assessor, may reduce the fair market value of conservation easements based on the encumbrances placed on the property.** According to Code (Section §10.1-1011 Part B), *Assessments of the fee interest in land that is subject to a perpetual conservation easement held pursuant to this chapter or the Open Space Land Act shall reflect their reduction in the fair market value of the land that results from the inability of the owner of the fee to use such property for uses terminated by the easement.*
2. As VA Code provides direct guidance as to how conservation easements are to be addressed. In short, **conservation easements may be valued using the county's adopted land-use values.** According to the legislation, *land which is (i) subject to a perpetual conservation easement held pursuant to this chapter or the Open-Space Land Act (§ 10.1-1700 et seq.), (ii) devoted to open-space use as defined in § 58.1-3230, and (iii) in any county, city or town which has provided for land use assessment and taxation of any class of land within its jurisdiction pursuant to § 58.1-3231 or § 58.1-3232, shall be assessed and taxed at the use value for open space, if the land otherwise qualifies for such assessment at the time the easement is dedicated. If an easement is in existence at the time the locality enacts land use assessment, the easement shall qualify for such assessment. Once the land with the easement qualifies for land use assessment, it shall continue to qualify so long as the locality has land use assessment.*
3. With the reduced fair market value, the Commissioner of Revenue is to **record the reduced value of the property with the conservation easement in the County Landbook and therefore report this reduced value to the Virginia Department of Taxation.** Reporting the reduced value will ultimately lower the total landbook value and benefit the county through the composite index.
4. The County may tax the land-use value of the land with the conservation easement.

FOR THOSE LAND-USE COUNTIES THAT ARE CONCERNED.....

If your locality has adopted a use value assessment program that does not cover forest or open space uses, would land under such easement that is used for forest or open-space purposes qualify for open-space use assessment?

According to a Attorney General opinion (November 13, 1993):

If a locality has a use value program that does not cover forest and open-space uses, land under conservation or open-space easement used for forest and open space still will qualify for the open space use value assessment. Land encumbered by such a perpetual easement meets the definition requires in §58.1-323- being "preserved for...conservation of land other natural resources...or scenic purposes." Section §10.1-1011 reflects the General Assembly's conclusion that this tax treatment is appropriate, because the owners of land that is subject to such open space or conservation easements permanently have protected open space and thus permanently have given up part of their land's value.

ADDITIONAL PUBLIC POLICY OPTIONS AND RECOMMENDATIONS:

Through a series of meetings with local Conservation entities, County Commissioners of Revenue, as well as County Planning Staff, a list of challenges associated with conservation easements were identified. Therefore to assist localities in dealing with these challenges, MPPDC staff developed a public policy matrix that provides solutions to improve accounting for conservation easements within your jurisdiction.

**Accounting for Conservation Easements within your Locality:
Public Policy Options and Recommendations**

Challenge	Public Policy Recommendation and Description	Components of Public Policy Strategy	Supporting Material	Thoughts/Comments
<p>1 Communication between Conservation Community and Locality</p>	<p>Develop a MOU between conservation entity and locality to provide the locality an opportunity to respond to the placement of conservation easements and its consistency with local land use tools, including the comprehensive plan as well as other county adopted land management plans (ie. Dragon Run Management Plan).</p>	<ol style="list-style-type: none"> 1. Reference to Article XI of Constitution 2. Reference to the Open Space Land Act of 1966 (Chapter 461 of the Assembly (Chapter 17, Title 10.1 Sections 10.1-1700 et seq. of the Code of Virginia, as amended) 3. Reference to Virginia Conservation Easement Act (Section 10.1-1010) 4. A space for citations from the County's Comprehensive Plan indicating consistency with the plan and/or other county adopted land management plans 5. An agreement between the conservation entity and the County/Town 	<p>Please see last page of this document for the MOU template</p>	
<p>2 Disconnect between land use tools and current views of local officials</p>	<p>A. Educate and discuss current local and state policy associated with conservation easements with local elected officials.</p> <p>B. Update/change land use planning tools to match perceptions or policy need of local elected officials.</p>	<p>Develop outreach material (ie. pamphlets, presentations, etc) about policies associated with conservation easements (ie. VA Conservation Act, etc) and facilitate discussions.</p> <p>Update comprehensive plan to denote where CE's are consistent and where they are not consistent; Zoning Ordinances with CE overlay districts; designate areas on future land maps within the Comprehensive Plan or an "Official Map"; or establish location criteria for conservation easements to provide to private property owners as well as conservation entities.</p>		<p>Designating areas to receive conservation easements may help comply with water quality requirements through the TMDL program, (ie. RPA's may be identified as locations for Conservation Easements). Such areas would act as buffers to the waterways and assist in reducing nutrient loads into the Bay.</p> <p>If conservation easements are not consistent at the time of recordation/donation with the comprehensive plan, the easement is not "valid and enforceable" therefore the county has the availability to: (1) Tax land at 100% value and (2) Send a letter to the VA Department of Taxation identifying an inconsistency with the comprehensive plan, to determine the property owners legibility for receiving tax credits.</p>

Challenge	Public Policy Recommendation and Description	Components of Public Policy Strategy	Supporting Material	Thoughts/Comments
<p>3 Commissioners of Revenue and Planning Staff are unable to easily track/search for easements once recorded</p>	<p>A. Recommend the clerk take action to add deed type code to the land transaction list from Supreme Court used in recordation of the conservation easement;</p>	<p>A. The CoR and/or the clerk may submit a Service Request Form to the Supreme Court to add a deed type code to the land transaction list specific to conservation easements.</p>	<p>As an internal document of the VA Supreme Court, the Service Request Form may be obtained from the Department of Accounts. For more information, please contact Ms. Norma Gates, Circuit Court Services Manager at Supreme Court of Virginia, at (804) 786-6455</p>	
	<p>B. Have clerks flag conservation easements on monthly transaction sheets from the Clerk’s office to inform CoR of a recorded conservation easement. The CoR may then improve the searchable of conservation easement within the county database (ie. Either through adding CE at the end of a parcel number or adding CE in the legal description); and</p>	<p>B. For those counties with a CAMA (computer-assisted mass appraisal) system – the “legal description can be search by conservation easement which may also be used by the planning department; the sub lot field is also searchable.</p>		
	<p>C. Localities may identify a staff person responsible to keep an ongoing list of conservation easements within its jurisdiction as well as associated GIS data.</p>	<p>C. MPPDC staff may provide current GIS data to all localities that will be a starting point to identify the location of conservation easements. However updating this data will be the responsibility of county staff.</p>		
<p>4 Consistency in accounting for the reduction of fair market values with conservation easements</p>	<p>Establish a method in which conservation easements are valued within the county that provides consistency.</p>	<p>The Contract may consist of verbiage to: A. Have the assessor reduce the fair market value of the property with conservation easement based on the encumbrances placed on the land; or B. Have the assessor assess lands with conservation easements as if they do have an easement. The assessor will provide a fair market value to CoR, and then the CoR will reduce the fair market value based on the encumbrances placed on the land due to the easement.</p>		

MEMORANDUM OF UNDERSTANDING AND PROCESS AGREEMENT BETWEEN
[insert name of conservation entity] Authorized Representative AND COUNTY ADMINISTRATOR/TOWN
MANAGER/ COUNTY LIASON FOR [insert name of locality/town], VIRGINIA

WHEREAS, Article XI of the Constitution of Virginia states in pertinent part:

Section 1. Natural resources and historical sites of the Commonwealth

To the end that the people have clean air, pure water, and the use and enjoyment for recreation of adequate public lands, waters, and other natural resources, it shall be the policy of the Commonwealth to conserve, develop, and utilize its natural resources, its public lands, and its historical sites and buildings. Further, it shall be the Commonwealth's policy to protect its atmosphere, lands, and waters from pollution, impairment, or destruction, for the benefit, enjoyment, and general welfare of the people of the Commonwealth.

Section 2. Conservation and development of natural resources and historical sites.

In the furtherance of such policy, the General Assembly may undertake the conservation, development, or utilization of lands or natural resources of the Commonwealth, the acquisition and protection of historical sites and buildings, and the protection of its atmosphere, lands, and waters from pollution, impairment, or destruction, by agencies of the Commonwealth or by the creation of public authorities, or by leases or other contracts with agencies of the United States, with other states, with units of government in the Commonwealth, or with private persons or corporations. Notwithstanding the time limitations of the provisions of Article X, Section 7, of this Constitution, the Commonwealth may participate for any period of years in the cost of projects which shall be the subject of a joint undertaking between the Commonwealth and any agency of the United States or of other states.

WHEREAS, The Open Space Land Act of 1966, Chapter 461 of the 1996 Acts of the Assembly, (Chapter 17, Title 10.1, Sections 10.1-1700 *et seq.* of the Code of Virginia, as amended) declares that the preservation of open-space land serves a public purpose by promoting the health and welfare of the citizens of the Commonwealth by curbing urban sprawl and encouraging more desirable and economical development of natural resources, and authorizes the use of easements in gross to maintain the character of open-space land; and

WHEREAS, the Virginia Conservation Easement Act declares that conservation easements should be designed for the purposes of which include retaining or protecting natural or open-space values of real property, assuring its availability for agricultural, forestal, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural or archaeological aspects of real property.

WHEREAS, the Open Space Land Act of 1966 states the use of the real property for open-space land shall conform to the official comprehensive plan for the area in which the property is located and the Virginia Conservation Easement Act, Section 10.1-1010 of the Code of Virginia declares that no conservation easement shall be valid and enforceable unless the limitations or obligations created thereby conform in all respects to the comprehensive plan at the time the easement is granted for the area in which the real property is located; and

WHEREAS, [citations from the Comprehensive Plan of the locality indicating that preserving property in open-space/cultural heritage use is consistent with said Plan]; and

WHEREAS, land under open-space or conservation easement typically require fewer public service dollars than land that is fully developed as authorized by the county's zoning ordinance and other planning documents; and

WHEREAS, land under open-space or conservation easement benefits the [insert locality/town name] Composite Index formula by reducing the proportionate fair market value of property in the county.

NOW, THEREFORE, BE IT UNDERSTOOD AND AGREED, by the Authorized Representative of the [insert name of conservation entity] and the planning director or other county assigned liaison of County/Town of [insert locality name], Virginia, in recognition of the aforesaid, and in consideration of the mutual covenants and benefits hereinabove stated, that the Authorized Representative of the [insert name of conservation entity] and the planning director or other county assigned liaison of the County/Town [insert locality name], Virginia, do hereby adopt collaborative understandings and process agreements, as follows:

- It shall be the responsibility of the Authorized Representative [insert name of conservation entity] to notify the planning director, or other county assigned liaison, of all [insert name of conservation entity] proposed easements in [insert locality/town name] at an early stage in the easement process, preferably prior to the landowner making a significant financial investment in the process to allow the locality adequate time to review consistency of the easement with the county comprehensive plan.
- It shall be the responsibility of the planning director to advise the [insert name of conservation entity] Authorized Representative of the open-space or conservation easements' consistency, or inconsistency, with the county's comprehensive plan, as per Section 10.1-1010 of the Virginia Conservation Easement Act.