

CONSERVATION EASEMENTS

A Guide for Real Estate Professionals



Corratock

About this guide

This document explores the basics of conservation easements, including many of the restrictions an easement places on real property. The intended audience is real estate professionals representing buyers and sellers of property subject to a conservation easement. Because conservation easements can be complex, involve multiple parties with perpetual interests in the land, and frequently involve the Federal Tax Code, this guide can only provide an overview of an easement. It is strongly recommended that parties involved in the sale or purchase of a property subject to a conservation easement first contact the Virginia Eastern Shore Land Trust (VES Land Trust) for specific information about the easement.

Please note that this document does not provide specific legal or tax advice. Vested parties should always seek legal and financial advice from a qualified professional.



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What is a conservation easement?

A conservation easement is a voluntary deeded agreement between a landowner and a qualified conservation organization, such as the VES Land Trust. A conservation easement is designed to permanently protect specific natural, scenic or historic features of the land by limiting future development and simultaneously respecting private property rights. Conservation easements benefit the whole community by protecting and restoring our waters, preserving farm and forestland, and conserving habitat for wildlife.



Hunting Creek from Swain Farm



Historic Home at Wharton Place

Voluntary

Conservation easements are completely voluntary and are initiated by landowners who wish to protect and preserve the heritage and natural resources of the Eastern Shore including farms, forests, wetlands, and waters.

Permanent

Donating an easement creates a permanent legacy. Conservation easements protect the land forever. They are a deeded agreement recorded in the county that stays with the property when sold or transferred. Future owners are bound by the terms of the easement.

A CONSERVATION EASEMENT PERMANENTLY PROTECTS SPECIFIC NATURAL, SCENIC OR HISTORIC FEATURES OF THE LAND.

VOLUNTARY. PERMANENT. UNIQUE.

Unique

Conservation easements are as individual and varied as the lands they protect. Conservation easements are drafted in a detailed legal agreement that outlines the rights and restrictions on the uses of the property and the responsibilities of the landowner and the VES Land Trust. Conservation easements can be used to protect a wide variety of land including farms, forests, wildlife habitat, properties which protect water quality, and those with scenic views. VES Land Trust has basic terms for all easements. However, the landowner and the VES Land Trust tailor the easement terms to protect the property-specific conservation benefits and to meet the plans of the landowner. For example, while many landowners choose to retain timber harvest rights, some wish to restrict this activity and protect the forest primarily as wildlife habitat.



Perennial Stream on Jacobus

Benefits of Protected Land

- Preserve open space and rural character of the community
- Conserve farmland
- Protect forestland
- Preserve continuous tracks of wildlife habitat
- Restore and protect our waters for drinking, playing, and working by preserving vegetated buffers and reducing development
- Build resilience against storms, coastal flooding, and heavy rainfall by buffering more developed areas with open space, allowing marsh room to migrate landward, and absorbing rainfall

farms



forests



wildlife



water quality



resilience



Photo of quail from USFWS

Permitted and Restricted Uses

In general easements favor conservation benefits and traditional land uses over development but allow for some residential and associated uses. Some generally permitted and restricted uses are listed below. However, each easement is unique; and the specific terms in the recorded easement should always be consulted. For questions about a specific easement protecting a property listed for sale, contact VES Land Trust.

Permitted Uses

- Residential use and accessory structures (size limits or limits on impervious surface may apply and newer easements restrict structures to a building envelope)
- Recreation (such as hunting and fishing)
- Agriculture and agricultural buildings (size limits or limits on impervious surface may apply and new easements restrict structures to a building envelope)
- Forestry with a Forest Management Plan
- Habitat creation/restoration
- Invasive species management
- Alternative energy structures to serve the Protected Property
- Utilities to service the Protected Property
- Home-based businesses

"IT'S GOOD TO KNOW THAT THE PROPERTY WILL BE PROTECTED AND PRESERVED IN PERPETUITY, BUT WITH ENOUGH FLEXIBILITY TO ALLOW FUTURE GENERATIONS TO MAKE SOME PREDETERMINED ADDITIONS AND ALTERATIONS."

John Graham, Easement Donor



PROPERTY OWNERS' RIGHTS

When you own land, you own a bundle of rights associated with the land. These property rights include the right to build structures, harvest timber, grow crops, etc. These rights are subject to various restrictions such as county zoning. When you donate a conservation easement, you permanently give up some of these rights while retaining others. However, you maintain ownership of the property and any rights not restricted in the recorded easement.

Restricted Uses

- Limits on number and size of residences and other structures
- Limits on impervious surface
- No clearing of vegetation, soil disturbance, or use by livestock within the 100-foot waterfront buffer (Accomack and Northampton counties also regulate use and activity within the buffer under the Chesapeake Bay Preservation Act)
- Industrial and commercial uses including intensive animal agriculture and utility scale energy generation
- No ditching, draining, diking, blasting, grading, filling, excavating, dredging, removal of topsoil, sand, gravel, rock, minerals or other materials, drilling or removal of minerals or petroleum
- No use of biocides that could harm the conservation benefits (generally allowed to control invasive species, for agriculture, and around residences)
- No accumulation, storage or dumping of trash, garbage, or other unsightly or offensive material, hazardous substance, or toxic waste, nor any placement of underground storage tanks in, on, or under the Protected Property

DONOR PERSPECTIVES



Eric, Madison, Ruth, Taylor, and Lee Acra

"Knowing this property will maintain its natural beauty for many generations to follow is truly extraordinary. I look forward to continuing the tradition, created by my grandfather, of belonging to a special landscape - our home on the shore." - Madison Acra, daughter of Ruth and Eric Acra, Easement Donors

"A conservation easement guarantees that when the property conveys to a new owner the conservation benefits of the land will be protected." - David Turner, Easement Donor



David Turner

About VES Land Trust

A group of local landowners organized in 2003 to protect the Eastern Shore's prime farm and forestland, scenic creeks and bays, critical wildlife habitat, and historic resources by forming the Virginia Eastern Shore Land Trust (see Our Story on our website).

"HARRY HOLCOMB HAD THE IDEA AND PLANS TO ASSIST LANDOWNERS IN PROTECTING THEIR PROPERTY FOR FUTURE GENERATIONS BY STARTING A LOCAL LAND TRUST. THANKS TO HIS EFFORTS AND LEADERSHIP, THE VIRGINIA EASTERN SHORE LAND TRUST WAS FORMED IN 2003." -JEFF WALKER, FORMER BOARD MEMBER AND EASEMENT DONOR.



Chesapeake Bayfront on Cherry Grove



Wildlife Impoundment on Nickawampus

The VES Land Trust is an accredited land trust with the Land Trust Accreditation Commission, has preserved more than 14,000 acres on the Eastern Shore, and holds 79 donated conservation easements.

The VES Land Trust operates independently as a 501(c)3 tax-exempt organization governed by a volunteer board. The organization is supported financially by the generosity of private donors and local, state, and national foundations.

THE VIRGINIA EASTERN SHORE LAND TRUST SEEKS TO CONSERVE RURAL LANDS WHICH WILL BEST PRESERVE THE FARMS, FORESTS, WETLANDS, WATERS, AND HERITAGE OF THE VIRGINIA EASTERN SHORE FOR THE BENEFIT OF FUTURE GENERATIONS.