



VIRGINIA DEPARTMENT OF HISTORIC RESOURCES

Historic Preservation Easement Program

POLICY #11

APPRAISALS

The Virginia Board of Historic Resources (the “Board”) and the Virginia Department of Historic Resources (“DHR”) will work diligently to ensure that every easement meets federal and state tax law requirements. In accepting an easement, the Board and DHR confirm that the enumerated conservation values are present at the property and are appropriately protected by the restrictions set forth in the conservation easement, and that a public benefit arises from the perpetual protection and preservation of these resources.

The gift of a qualified conservation easement in perpetuity may yield a deduction for federal income tax purposes and a credit for state income tax purposes. Only the Internal Revenue Service (“IRS”) and the Virginia Department of Taxation possess the necessary expertise and responsibility to approve or deny any tax benefits sought or claimed by the donor of a conservation easement as a charitable gift. DHR does not provide tax advice and recommends that donors consult their attorney, accountant, and/or tax advisors regarding the tax implications of a gift of easement. By accepting an easement, the Board and DHR make no claims or representations concerning the tax consequences of that conveyance. Ultimately the donor is responsible for ensuring the transaction meets applicable federal and state requirements for claiming tax benefits.

FEDERAL TAX BENEFITS

A charitable contribution of a conservation easement is not deductible unless properly substantiated in accordance with the Internal Revenue Code (“IRC”) and applicable regulations, which include, among other items, a qualified appraisal. *See* 26 U.S.C. §§ 170(a)(1), 170(f)(8), 170(f)(11) and 170(f)(13) (2011) and Treasury Regulations 26 C.F.R. §§1.170A-13 and 1.170A-14 (2011). The burden is on the taxpayer to demonstrate that the easement donation is a deductible contribution that meets the requirements of the IRC and applicable IRS Regulations.

IRS Form 8283

The IRS requires donors seeking tax deductions to file IRS Form 8283 for all non-cash charitable contributions valued at greater than \$5,000.00. If a federal tax deduction is sought, the taxpayer

must complete IRS Form 8283 and provide it to DHR for signature on behalf of the Board. In signing Form 8283, DHR acknowledges acceptance of the conveyance of the easement on behalf of the Board and confirms its status as a qualified organization under 26 U.S.C. §170(h). Form 8283 includes a disclaimer provision stating that acknowledgment by the donee (easement holder) does not constitute agreement with the claimed fair market value.

STATE TAX BENEFITS

To be eligible for state tax credits, the easement must qualify as a charitable deduction under the IRC and applicable IRS regulations and meet additional requirements under the Virginia Land Conservation Incentives Act. Pursuant to Virginia Code § 58.1-512(D)(1), the taxpayer must provide a completed Land Preservation Credit (LPC-1) tax form with supporting documentation to the Virginia Department of Taxation for all donations of land or conservation easements for which tax credits are claimed. A copy of the completed LPC form must also be provided to the Virginia Department of Conservation and Recreation (DCR).

The burden is on the taxpayer to demonstrate that the easement donation is a deductible contribution that meets the requirements of the IRC and applicable IRS Regulations as well as the requirements of the Virginia Department of Taxation. The Board and DHR are not required to sign the LPC tax form.

APPRAISAL POLICY

To ensure a sound transaction, the Board has adopted the following policy regarding easement appraisals:

- A. The Board and DHR do not participate in or provide recommendations regarding appraisers, the appraisal process, or analysis of the easement valuation. *Property owners are strongly advised to engage an independent qualified appraiser with extensive and credible experience with conservation easements in Virginia to determine the value of the gift.*
- B. In the case of a “qualified conservation contribution,” as defined in 26 U.S.C. §170(h), the donor must complete Form 8283 with all of the required information, including the identification of the property to be conveyed, the physical description of the condition of the property conveyed, the appraised fair market value both before and after conveyance of the easement, the contribution purpose furthered by the conveyance, the declaration of the appraiser and the donor's social security or taxpayer identification number, and provide the completed form to DHR for its review.
- C. DHR will review each 8283 Form for completeness where a charitable donation is being claimed under federal law.
- D. The donor must provide DHR with a copy of the Appraisal Summary (Section B) of Form 8283 at least thirty (30) business days in advance of execution of the easement by

the donee. This requirement may be waived or modified by DHR as deemed appropriate in its discretion.

- E. DHR will assess the appraised values set forth in the appraisal according to the following criteria:
 - a. an easement value of \$2.5 million dollars or more; and/or
 - b. an easement value of 50% or more of the appraised fee simple value of the property; and/or
 - c. an appraised fee simple value of the property of one and one-half (1-1/2) times more than the assessed fee simple value of the property.

DHR in its discretion may bring to the attention of the Virginia Department of Taxation any Form 8283 with claimed values meeting or exceeding any or all of the criteria set forth above.

- F. If the Board or DHR have a concern about the credibility of the charitable donation being claimed, the Board or DHR may disclose those concerns to the donor and may take other steps to evaluate and document the validity and credibility of the appraisal, including the fair market value of the gift of conservation land or easement being made by the donor. These other steps may include, among other activities, consultation with real estate appraisal professionals, consultation with the Virginia Department of Taxation, review of the full Appraisal Report from the donor, and/or comparison of the appraisal to other similarly situated appraisals.
- G. The Board's acceptance of a gift of conservation easement and DHR's subsequent signing of a Form 8283 on behalf of the Board does not represent agreement with the appraisal or any claims made in the appraisal or on the Form 8283 including the fair market value.
- H. The Board reserves the right, in its discretion as the proposed recipient of a gift of conservation easement, to decline to accept the conservation easement due to concerns regarding the appraisal and/or the Form 8283.
- I. The Board hereby authorizes DHR to decline to execute the easement and/or sign the Form 8283 if DHR has concerns regarding the validity or credibility of the appraisal or the information provided on the Form 8283, including but not limited to the claimed fair market value of the easement. The donor may appear before the Board at its next regularly scheduled meeting and request its review and final determination regarding such execution and/or signature.

SUMMARY

The Board and DHR will not knowingly participate in projects where there are significant concerns about the claimed fair market value or potential federal tax deduction or state tax credit that may be claimed by the donor. As an agency of the Commonwealth of Virginia, the Board and DHR will employ all reasonable measures and effort to avoid participating in fraudulent transactions.

The Board and DHR must seek to protect themselves, landowners, easement donors, and the public from any form of excessive or fraudulent appraisals of conservation easements. Excessive appraisals may lead to tax audits and the disallowance of tax benefits by federal and state tax agencies. DHR will refer any appraisals or claimed deductions or credits that it finds, in its exclusive opinion, to be unusual or suspicious for review by the appropriate state or federal taxing authority.

[Adopted by the Virginia Board of Historic Resources on December 15, 2011; revised December 11, 2014]