

Conservation Easements in Virginia

by The Honorable Timothy M. Kaine, Governor of Virginia

Article XI of the Constitution of Virginia declares:

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.

I have sworn to uphold the Constitution, and Article XI speaks directly to an issue that I am particularly passionate about: safeguarding Virginia's precious natural heritage. I have made setting measurable goals a priority for my administration, and the area of conservation is no exception. I chose as the centerpiece of my environmental agenda a goal to conserve 400,000 acres by 2010. In order to achieve this very aggressive goal, we must double the rate at which we conserve land statewide (about 56,000 acres annually in the years before I took office).

Attorneys have a crucial role to play in making attainment of the goal possible. The tool most often used to protect land is conservation easements, an interest in land that the landowner gives away or sells to permanently prevent development. Accelerating the rate at which we place land under conservation easements depends, first and foremost, on willing landowners. I believe that Virginia is blessed with many landowners whose love of their land translates into a desire to preserve its bucolic character for future generations.

But landowners must have sound legal advice from attorneys knowledgeable about conservation easements to make informed decisions about conserving land. Some landowners report difficulty finding attorneys with experience work-

ing with land trusts and government agencies that can hold easements. Conservation easement work may therefore be an area of significant growth potential for attorneys in Virginia, particularly in rural parts of the state.

Lawyers are also needed to help landowners understand the tax incentives that are available for conservation easement donations. Virginia has the most generous land preservation tax credit in the nation. This tax credit is worth 40 percent of the value of a conservation easement, and an easement donor who cannot use the credits himself can sell them to other taxpayers. Many landowners who once believed that selling their land for development was the only way to recover value from their property have learned that the land



Photo by Michael White, courtesy of the Office of the Governor

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preservation tax credit makes permanent conservation affordable. Since 2000, more than 263,000 acres of land have been conserved under this extremely successful program.

The Virginia State Bar has launched an initiative to work with my Secretary of Natural Resources, L. Preston Bryant Jr., and the Virginia Outdoors Foundation (VOF) to promote a broader and deeper understanding of conservation easements among Virginia's attorneys. Through this initiative, lawyers who are interested in learning more about conservation easements can take advantage of an increasing number of continuing

legal education offerings on the subject. For those who prefer to begin with individual research, the VSB Web site provides a link to the VOF Web site, which contains VOF's easement guidelines and an easement template that can be tailored to an individual piece of property.

Conserving land protects air and water quality, ensures the availability of habitat for wildlife, preserves the working landscapes that provide our food and wood products, and sustains Virginia's abundant historic and scenic beauty. In short, land conservation is important for our quality of life. It is also one of the few things we can do that we know will

benefit future generations. I encourage all lawyers whose practice includes real estate, estate planning, or tax work to become familiar with conservation easements, the federal income tax deduction for charitable donations and Virginia's land preservation tax credit.