



# A Conservation Easement Guide

for Virginia Landowners - 2007 Edition



## YOUR LAND, YOUR LEGACY... YOUR CHOICES

### Look inside for...

What's a Conservation Easement?.....	page 3
Frequently Asked Questions .....	page 5
Cash for Conservation .....	page 6
Ten Steps to an Easement .....	page 7
Landowners Testimonials .....	pages 5, 8

## WHAT IS THE WESTERN VIRGINIA LAND TRUST?

### As your local land trust,

WVLT works to preserve our region's unique scenic, historic, agricultural, recreational, and natural features. By educating landowners, elected officials, businesses and the general public, we encourage respect for the environment and arrange voluntary conservation agreements that protect land forever. Our Board of Trustees is a diverse group of men and women — farmers, local government leaders, business people, landowners, hunters and anglers, educators, community activists, and corporate leaders. These committed volunteers, along with WVLT's staff and membership, form a remarkable team for land conservation.

### Board of Trustees

James L. Kermes, President  
Broaddus C. Fitzpatrick, Vice President  
Gary R. Duerk, Treasurer  
Lucy R. Ellett, Secretary  
Elizabeth H. Belcher  
Richard P. Chaffin  
Lynn M. Davis  
William M. Hackworth  
Robert H. Hunt  
Anne M. Jennings  
Karen O. Jones  
George A. Kegley  
Laura B. Logan  
Sarah L. Ludwig  
Gwen W. Mason  
David N. Maxson  
Lynn H. Meyer  
Joe F. Miller  
John W. Rader  
John W. Robinson  
James M. Sawyer  
Janet Scheid  
James M. Turner  
Linda G. Webb  
J. Richard Wells  
James L. Woltz  
Cooper C. Youell, IV

### Advisory Council

Liza T. Field  
Talfourd H. Kemper  
Robert B. Lambeth, Jr.  
Barbara B. Lemon  
Stephen W. Lemon  
Jeanne M. Martin  
Howard C. Packett  
John B. Williamson, Jr.  
James M. Wilson  
Clifton A. Woodrum, III

### Staff

Roger Holnback, Executive Director  
David Perry, Project Manager

[www.westernvirginalandtrust.org](http://www.westernvirginalandtrust.org)

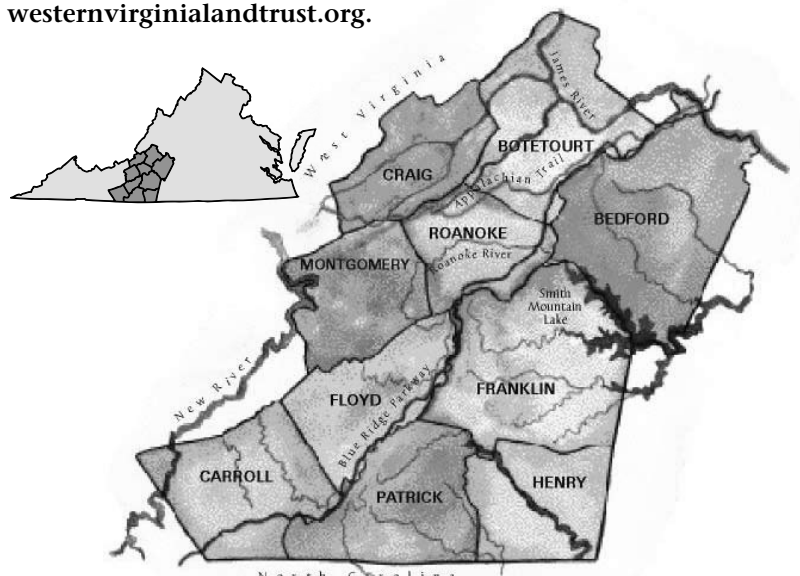
722 First Street, SW, Suite L, Roanoke, VA 24016  
(540) 985-0000

## Do You Know All of Your Land Options?

Decisions you make about your land will shape our landscape for generations to come. The Western Virginia Land Trust hopes that you will be interested in options to conserve our scenic and rural places while meeting your personal goals and potentially enhancing your financial security. The information in this newsletter is of critical importance if any of the following apply to you:

- You can use additional income without selling your land
- You are concerned about estate taxes
- You want to keep your land in the family
- You can use a substantial income tax deduction
- You want to preserve something special about your land

The Western Virginia Land Trust (WVLT) is a private nonprofit organization formed to promote the conservation of western Virginia's natural resources- farms, forests, waterways and rural landscapes. We work with property owners to help them find voluntary ways of preserving their land so that all of our descendants will have places available to farm, cut timber, hunt, fish, hike and enjoy the beauty of our special part of Virginia. Conservation easements can be used to accomplish these goals by limiting intensive development while keeping land in private hands and providing landowners with substantial tax benefits and even cash compensation. A conservation easement is a flexible and voluntary tool that lets you determine the legacy of your land. If a conservation easement seems like a natural fit for you, or if you just need more information to see if one might work for you, please call us at (540) 985-0000 or check out our website at [westernvirginalandtrust.org](http://westernvirginalandtrust.org).



WVLT Service Area

# CONSERVATION EASEMENTS

**A conservation easement** is a voluntary, deeded agreement that permanently protects land from subdivision and commercial development. An easement protects your peace of mind by preserving the scenic, agricultural, natural or historic qualities of your land while improving your financial security through tax benefits and tax credit sales.

**Voluntary** Conservation easements are completely voluntary and initiated by landowners who wish to forever protect and preserve the land they love.

**Private** Conservation easements do not require public access, as landowners retain total control of who visits their property.

**Permanent** Conservation easements permanently protect land. You decide what special elements of your land get preserved forever.

**Flexible** Traditional rural land uses such as hunting, fishing, farming and forestry are very compatible with conservation easements. The agreements are

as individual as the lands they protect and the people who own them.

**Financially Beneficial** Donating a conservation easement can provide significant financial benefit to landowners and their heirs:

- Federal income tax deductions
- Virginia state income tax credits
- Estate tax reductions and exclusions
- Reduced real estate taxes

Donating an easement creates a permanent legacy; such a decision should not be made in haste.

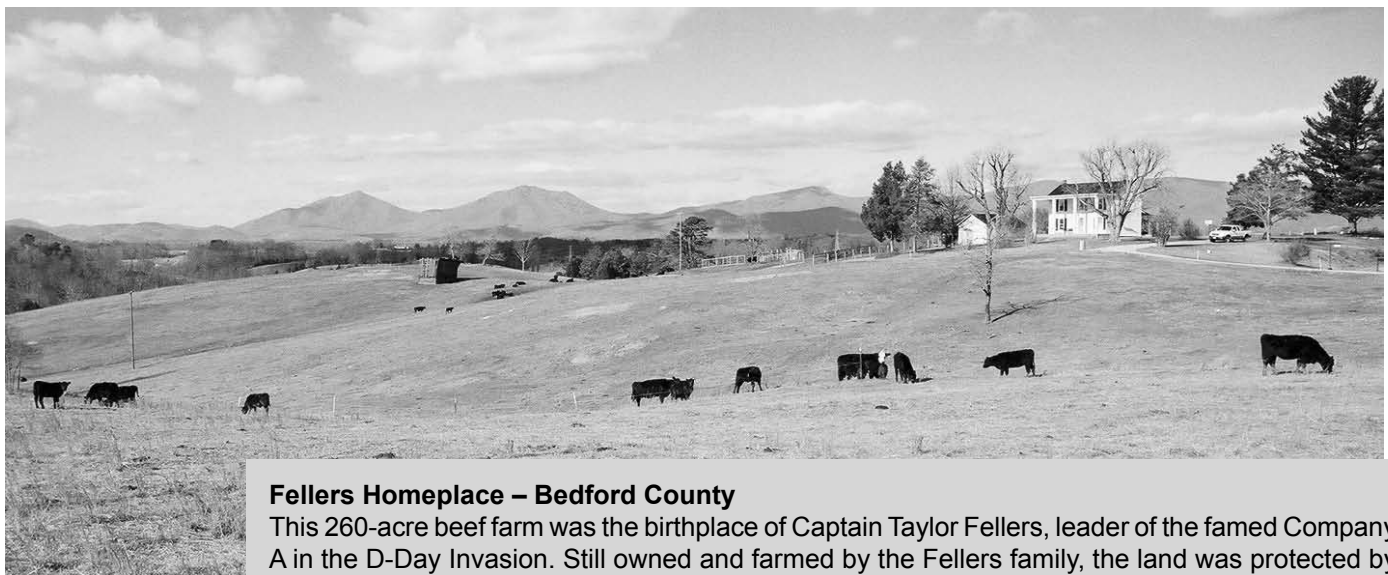
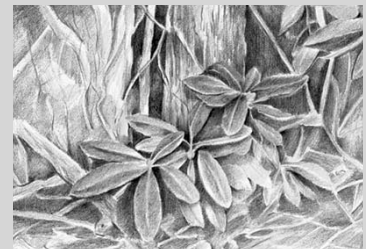
WVLT's experienced staff will be happy to meet with landowners and their families to discuss all aspects of conservation easements.



## Virginia Outdoors Foundation

*Helping land trusts and private landowners*

The Virginia Outdoors Foundation, WVLT's primary conservation partner, is a state foundation that holds most conservation easements in Virginia. Though WVLT can and does hold conservation easements, the Virginia Outdoors Foundation (VOF) has the state's resources and authority behind it and provides an extra level of protection for the land with its legal standing against many eminent domain takings. With VOF handling the long-term stewardship of easements, the 26 private land trusts in Virginia such as WVLT are free to use their resources for more conservation outreach and education.



### Fellers Homeplace – Bedford County

This 260-acre beef farm was the birthplace of Captain Taylor Fellers, leader of the famed Company A in the D-Day Invasion. Still owned and farmed by the Fellers family, the land was protected by a conservation easement in 2004.

## WHAT'S THE FINE PRINT IN A CONSERVATION EASEMENT?

**Each agreement is unique**, but all share some general starting points. Following is a summary of what's included in a sample Virginia Outdoors Foundation easement. Remember, some points are negotiable as long as they serve a worthwhile conservation goal, and many landowners request more specific terms to craft a document that will meet their needs and protect some unique resource on their land. Keep in mind that conservation easements only restrict the specific activities mentioned in the document. If you don't see a right or an activity specified in the easement, you aren't giving it up.

**1 Division** - Usually, properties up to 100 acres will be preserved as undivided tracts, those between 100 and 200 may be divided once, and then one division is permitted for every additional hundred acres. Large tracts may also be preserved with no divisions.

**2 Buildings and Structures** - Typically a maximum of one single-family home is permitted on each parcel, along with associated outbuildings such as garages, sheds, barns and other farm structures. Provisions for "secondary dwellings" such as cabins or guest cottages are frequently allowed, often with a limitation in size to 2000 sq. ft. If your easement allows you to divide your land, each parcel can contain a home and associated structures. Easements may also be drafted to preserve land with fewer or no buildings.



**3 Industrial or Commercial Activities** - Agriculture, forestry and equine activities are permitted, along with temporary outdoor activities that do not permanently change the appearance of your land, as well as indoor businesses within permitted buildings (house, barn, etc.). A wide range of agribusiness options are available, such as a winery that uses grapes grown on the property or a produce stand to sell what's grown on the farm. Other commercial or industrial activities are prohibited to protect the character of the land.

**4 Forest Management** - Timber harvests must include best management practices (BMP's) to control erosion and protect water quality, and normally a forest management plan is required before commercial timbering begins. Logging provisions can specify management plans to protect scenic forests, animal habitat, or other specific resources, and personal uses such as firewood cutting are not restricted.

**5 Trash** - There are no restrictions against brush piles, composting, farm machinery storage or other agriculture or wildlife management practices, but trash, refuse or junk will not be permitted on your land. You will not be responsible for cleaning trash brought in by floodwaters or other situations beyond your control.

**6 Signs** - You can still post your land and have signs to show your address, advertise the sale or lease of your land or goods or services produced there or direct visitors, but billboards and other large signs are not permitted. No sign can be larger than nine square feet.

**7 Grading, Blasting, Mining** - You can still construct private roads and utilities to serve permitted structures. Farm roads and ponds are also allowed, but mining and other earth removal is prohibited. This does not in any way restrict cultivation.

**8 Inspection** - The easement holder (usually the Virginia Outdoors Foundation) may visit your property annually after giving reasonable notice. Inspections only deal with the terms specified in the easement — things that are simple and obvious to monitor.

**9 Notification** - You or your estate will need to notify the easement holder within 60 days of any transfer or sale of the land, so the easement holder can contact the new owners.

**10 Enforcement** - When you sign a conservation easement, the easement holder (usually the Virginia Outdoors Foundation) has the obligation to enforce its terms to protect your property. If there are violations of the easement at any time in the future, they must be stopped and corrected and, if need be, enforced in a court of law.

Essentially, easement terms assure that your land will always stay pretty much the way it is now. The only rights you give up are those specifically listed in your easement. If your general goal is to preserve your land but you don't like a specific provision listed above, don't assume that an easement can't work. When a landowner and a land trust have mutual goals to protect the land, easement terms can often be arranged to preserve what is special about the property.

## FREQUENTLY ASKED QUESTIONS

### **Does a conservation easement give the public access to my land?**

No. You still own your land after you protect it with a conservation easement and still decide who visits the property. You can welcome anyone you wish or post the property, just as you can today.

### **Can I still leave the land to my children?**

Yes. In fact, a conservation easement may reduce or eliminate inheritance taxes, and keep your heirs from having to sell the land to pay the taxes on it.

### **What if there is a mortgage on my land?**

You can still place a conservation easement on the property, but the lender must agree.

### **What size properties qualify for conservation easements?**

It depends. Some very small properties qualify for conservation easements if they protect an important resource, such as a wetland, Blue Ridge Parkway viewshed, or endangered species habitat. But most properties need to be 100 acres or larger to qualify for an open space conservation easement.

### **Can I change my mind after calling about a conservation easement?**

Yes. Though conservation easements are permanent once you sign and record the agreement, you are free to change your mind at any point before then.

### **What kind of expenses will I have when protecting my land with a conservation easement?**

The specialized appraisal that is re-

quired to claim any tax benefits is usually the most costly expense for landowners who donate conservation easements. Since a conservation easement appraisal is really two appraisals in one (to determine the values before and after the easement) and requires special expertise, the fees can run into several thousand dollars. Landowners must also provide a simple title opinion and are strongly encouraged to have their own attorney review the easement. The good news is that the tax benefits from the easement will almost always dwarf the cost of the easement. Additionally, the Virginia Outdoors Foundation manages a state fund (the Virginia Land Conservation Foundation) that can assist landowners with direct conservation easement expenses, with priority given to family farms and based on financial need.

### **How long does it take to complete a conservation easement?**

Usually a few months and sometimes a year or more. Don't panic—this doesn't mean months of hard work. Many landowners want to proceed slowly and deliberately with such a major decision, and there can be a wait between some of the steps in the process (see "Ten Steps to a Conservation Easement" on page 7).

### **How do I get started or find answers to more questions?**

Call WVLT at (540) 985-0000. We'll provide confidential assistance with no pressure — just the facts to help you make the best choice for your family and your land. Remember we make no money from assisting you—just the satisfaction of helping local landowners make educated decisions.

**"In April of 2006, I bought 120 acres of land in Craig County that contain the spring and headwaters of Sinking Creek, a tributary of the New River. With the help of the Virginia Outdoors Foundation and the Western Virginia Land Trust, I placed the entire property under a conservation easement. It is a great sense of comfort to me that my easement in its own small way will help serve to protect a headwater spring and stream of the New River watershed. Watershed protection is just one of the many positive benefits that can result from easements."**

**- Bruce Ingram,  
local outdoorsman and author  
who has protected nearly  
400 acres of his own lands with  
conservation easements**



Bruce Ingram after a successful hunt on his Craig County property.

# CASH FOR CONSERVATION

## Virginia tax credit sales offer landowners new options

**The primary reason** landowners donate conservation easements is to preserve some natural, scenic, agricultural or historic resource of their land forever. Many want to establish a legacy for their children and grandchildren. Most value the peace of mind from knowing that their land will always be protected from development. However, landowners can't ignore the value of their property. For many rural landowners, real estate is their primary asset and permanent reduction in its value can't be taken lightly. Fortunately, there are many financial benefits to donating conservation easements. A certified appraiser must determine an easement's value (the basis of all tax advantages) by showing the difference between what land is worth before being conserved and what it's worth after being placed under easement. For example, if a \$500,000 farm were worth \$300,000 if the owner gives up the right to turn it into a subdivision, the easement value would be \$200,000.

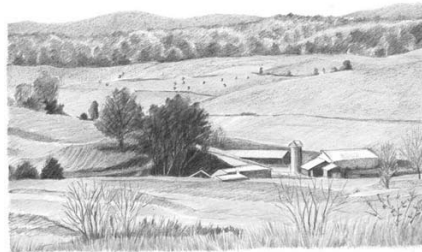
### 1 Federal Income Tax Deduction

The donation of an easement is treated as a charitable gift and the value of the easement may be deducted from the donor's income for purposes of calculating income taxes. For tax years 2006 and 2007 only, Congress increased the deduction to 50% of the landowner's adjusted gross income (AGI) in the year the donation is given, and the unused portion of the gift may be carried forward to be used as a deduction for an additional fifteen years, subject to the 50% limit each year. After Dec. 31, 2007, the deduction and carry-forward will revert to the 2005 levels of 30% deductibility with a 5-year carry forward. ***Those landowners who wish to have their easements recorded in 2007 should act quickly as VOF is expecting a record year due to these enhanced tax incentives.*** Congress is now considering legislation to make the enhanced tax incentives permanent.

In addition to the 50% deductibility, all easement donors who make over 50% of their income from agricultural production in the year of the gift may be able to deduct 100% of their income from income taxes.

### 2 Estate Tax Reduction

Estate taxes often surprise heirs as land values increase. In some cases, a landowner's heirs must sell the property just to pay estate taxes. By donating an easement, landowners can reduce these taxes in two ways:



- The estate will have been reduced by the value of the easement (smaller estate value means less — or perhaps no — estate tax due).
- The American Farm and Ranch Protection Act of 1997 allows heirs to exclude up to an additional 40% of the remaining value of their land from estate taxes up to \$500,000.

### 3 Reduced Real Estate Taxes

The Code of Virginia requires local jurisdictions to assess land protected by a conservation easement only for the value of its permitted uses. In other words, if your land values are going up due to residential subdivisions, your land assessments should not go up if an easement prevents such use. In addition, if your county offers land-use taxation, a conservation easement guarantees that your property qualifies. If you now qualify for land-use taxation, a conservation easement probably won't make any more difference in your real estate tax bill today. But as times and land

values change, it could mean big savings in the future.

### 4 State Tax Credit

Virginia offers easement donors a tax credit for 40% of their easement value. This credit can be applied against state income tax for up to ten years. In effect, many easement donors won't have to pay state income tax for ten years. However, even after eliminating state taxes for ten years, many easement donors would have to leave significant tax credit value unused. Since 2003, the unused tax credit can be sold. Any owner of Virginia land who donates land or an easement for conservation purposes is entitled to a tax credit worth 40% of their gift. Any portion of the tax credit may be sold or given to other Virginia taxpayers. This credit may even be sold by out-of-state residents who donate conservation easements on Virginia property. WVLT is not directly involved in the sale of conservation tax credits, but can provide a list of brokers upon request. Prospective easement donors should also consult their own financial and legal advisors.

### Saving Land Through Wills

Requiring a conservation easement to be placed on a property can be stipulated as a term of the landowner's will.

Though this seems like an easy provision to make, it's critical that a knowledgeable attorney and the receiving land trust help craft such language. Conservation easements granted through wills can help reduce or eliminate inheritance taxes, but do not provide any benefits to heirs through other federal or state tax incentives.

Before considering this option, please contact WVLT for more resources.

# TEN STEPS TO COMPLETING A CONSERVATION EASEMENT

(Modified from Virginia Outdoors Foundation documents. For a copy of the full text, check online at [www.virginiaoutdoorsfoundation.org](http://www.virginiaoutdoorsfoundation.org))

## These are the typical steps

involved in conveying a conservation easement to the Virginia Outdoors Foundation. The landowner can change his or her mind about the easement at any time until the easement deed is signed and recorded at the courthouse. While these steps show the typical procedure, there are some situations where the order of these steps varies. The process may take anywhere from a few months to more than a year to complete.

### Step 1 Consideration of Easement

The landowner and land trust (WVLT, Virginia Outdoors Foundation or others) discuss general easement guidelines and possibilities. Landowner consults with family and/or legal and tax advisors. Landowner and staff discuss possible easement provisions and questions particular to the landowner's parcel and situation.

### Step 2 Site Visit

Land trust and landowner meet and view the property, where staff analyzes the land's features and resources and works with owner on easement terms that will meet the landowner's goals, protect the resources, and meet the standards of the VOF.

### Step 3 Preliminary Agreement

After consulting with advisors, landowner reaches a preliminary agreement with VOF on the proposed terms of the easement and property description. Landowner or their attorney contacts the lender, if any, to arrange for subordination of mortgage, then landowner's attorney and VOF staff develop draft easement for landowner's review and subsequent VOF Board review.

### Step 4 Requirement for Title Opinion and Letter of Intent

Landowner provides a preliminary 20-year title opinion ("certification of title" or "title report") in favor of VOF prior to the VOF board meeting

at which the easement is considered. In addition, the landowner submits a letter to VOF stating a desire to donate the easement.

### Step 5 Staff Research

Staff completes research on the property, including:

- Determining the Comprehensive Plan designation and zoning classification;
- Reviewing statewide planning documents, such as the Virginia Department of Transportation six-year plans, the Virginia Outdoors Plan, Chesapeake Bay Preservation Area Maps, and Division of Natural Heritage database;
- Collecting maps of the property (USGS topographic maps, aerial maps and tax maps) and survey plats if available for baseline documentation.



### Step 6 Board Approval

Each easement proposal must be approved by VOF's Board of Trustees, which meets quarterly with a deadline for proposals one month prior to the meeting. The Board may accept the proposed easement, accept it subject to changes, or reject it. Following the meeting, VOF staff will inform the landowner of the Board's action. If the Board conditions approval on modifications to the proposed terms of the easement, the landowner must consider and agree to the changes in order to proceed. Board approval does not obligate the landowner to complete the easement. From the date of approval, the landowner may finalize and record the easement within two years. However, if the landowner proposes a change in any terms of the easement that would

result in a less restrictive easement than that approved previously, the easement will need to be reapproved by the Board.

### Step 7 Follow-up site visit

VOF staff makes a return visit for documentation of the property, photographing key features and natural and open-space resources, as well as all structures and any areas of particular mention in the draft deed. VOF staff labels all photos and completes photo point map showing all key property features, roads and structures.

### Step 8 Baseline Documentation Report

VOF staff details the features of the property at the time of the easement. The report may include: a summary sheet, topographic map showing the boundary of the property, aerial map, county tax maps, available survey plats and photographs keyed to a map. Landowner reviews the information, then signs and returns an acknowledgment attesting to its accuracy.

### Step 9 Finalizing Easement Draft

Attorney sends final easement to VOF staff. VOF staff suggests edits if any, and returns to attorney. Attorney produces the final signature-ready deed and sends final 20-year title opinion to VOF office. The landowner then signs the easement, sends it to the lender, if any, for signatures of the lender and its Trustees, and delivers it to VOF for signature.

### Step 10 Recordation

VOF Deputy Director verifies that the final 20-year title opinion and the Baseline Documentation Acknowledgement Form are in the files of VOF. Director signs easement. VOF records the easement in the Clerk's Office of the County Circuit Court. A copy of the recorded easement is sent to the landowner and/or their attorney.



*“The good Lord made this old country just about perfect, and when man came along, he messed up everything he got a hold of. We’re planning on our easement to protect the land when we’re gone.”*

**- Ray and Faye Hundley**

protected 2.5 miles of Sinking Creek in Botetourt County with a riparian easement

*“This land is very attractive to developers and in a fast changing part of Franklin County, but it’s important to me to make sure these pastures will be around long after I’m gone. I treasure this land and am so happy that a state tax credit sale let me afford to preserve it.”*

**- Ms. Gary Goodale**

retired teacher, owner and operator of Camlach Farm, a horse farm near Boones Mill. With WVLT’s help, she protected her land with a conservation easement and sold the tax credits to secure a retirement nest egg.

*“Land preservation is everybody’s business. I decided to put my deed where my mouth was by preserving my family farm... to preserve the scenic beauty of this valley.”*

**- Madison Marye**

Montgomery County cattle farmer and former Virginia state senator, and his wife, Charlotte, preserved 562 acres along a scenic and historic stretch of U.S. 11/460 known as the Elliston Straightaway



*“A conservation easement allowed us to preserve our land for future generations and to honor our forefathers who labored so hard to preserve it for us... With the tax advantages from our easement donation, I feel like we sold part of our land and got to keep it all. The easement doesn’t restrict any of the plans we had for the land and it protects it from the things that we’d hate to see happen.”*

**- Arnold Hurt**

donated a 169-acre easement in Franklin County to WVLT and the Virginia Outdoors Foundation