Abstract

Natural lands in Virginia are under constant threat from development and climate change (Anderson et al. 2014). Undeveloped lands provide an estimated $21.8 billion in ecosystem services annually in Virginia and are vital to the survival of the state’s wildlife (Paul 2011, VOCIF 2009). Conserving these lands will play a major role in protecting the environment itself, biodiversity, and economic interests as the climate changes in coming decades. Conservation easements—established when a public or private organization buys or receives a donation of select land rights such as development or subdivision rights—have become the most popular means of protecting privately owned lands (Kerngold 2007).

Virginia has a well-established easement program which offers landowners a state income tax credit in return for donating land rights such as development and subdivision rights. Currently, there are inefficiencies with easements which could be lessened with reform (Ockey 2011, Rosman 2011). This paper proposes that Virginia establish statewide conservation priorities and matches a public or private credit for easement donations to a tiered system which provides greater incentives for easements on land with high conservation value (McLaughlin and Pilot 2013). Additionally, this paper proposes that Virginia require adaptive language in easement terms and standardizes monitoring procedures.

Improve Conservation Efficiency

Although already a powerful tool for conservation, reform to Virginia’s conservation easement program would improve the efficiency of conservation and use of public money.

Establish Statewide Priorities & Use a Tiered Incentive System

• The current tax credit system provides a flat rate state tax credit for donations. The incentive is the same for easements of equal market value, though they might now be equal in conservation value.
• Easements on high value lands often have higher lost opportunity costs, so owners of these lands can be less willing to give up perpetual rights than owners of land with lower conservation value (Rosman 2011). Consequently, easements are often established in areas of lower conservation value.
• Easements form a patchwork across the state and are vulnerable to becoming habitat fragments (Fig. 1). While these patches can act as refuges for some species, their effects on the remaining climate changes. Caused by this phenomenon, climate change is a new threat to the survival of wildlife. It is caused by the burning of fossil fuels and the release of greenhouse gases, such as carbon dioxide and methane, into the atmosphere.
• A tiered system which provides greater incentives for easements on land with high conservation value should increase the likelihood of landowners creating easements on high value land.
• A statewide plan which ranks and prioritizes land based on its conservation value will facilitate the tiered incentive system. However, variables such as biodiversity, land resilience, threat of development, and proximity to other protected lands.
• Together, these recommended changes will hopefully influence the decision making processes to increase the likelihood of easements being established in clumps on high quality land, maximizing the ecological and public benefit.

Require Adaptive Management Plans in Easement Deeds

• To protect the conservation purposes, easement deeds must be highly detailed to ensure that it is clear which activities are acceptable.
• Some easement holders and landowners desire strict language which clearly defines responsibilities to ensure non-debatable by the current or future owners. T. Smith, personal communication.
• Static agreements greatly limit adaptation in response to climate change. This can result in inefficient behaviors and burdens on future generations. (Greene 2005, Richardson 2010).
•Require adaptive management plans in all easements to avoid this inefficiency.
• Adaptive management plans place emphasis on the conservation purpose rather than mandating a certain means of achieving it.
• Various state agencies already incorporate adaptive plans into deeds, but this is not yet universal.

Establish a Minimum Monitoring Requirement

• The success of easements as a conservation tool is dependent on agreeing parties following the terms of their agreement. Monitoring is necessary to ensure compliance.
• Most easement-holding organizations do regularly monitor their holdings. However, Maine is the only state with a monitoring requirement (McLaughlin and Pilot 2013).
• To ensure responsible stewardship, a minimum monitoring requirement which requires monitoring at least once per period of time.
• Monitoring for compliance brings some level of financial burden. This may have some positive effect and force landowners to limit their holdings so that they can provide proper stewardship to them, causing a selective pressure away from low value easements.

Recommendations for Conservation Easement Reform

The author thanks Tom Smith, Natural Heritage Director at the Virginia Department of Conservation and Recreation; Nancy McLaughlin, J.D., professor of law the University of Utah College of Law; and James McLaughlin, J.D., Policy Director at Conservation Partners, LLC for their guidance throughout this project.

References

Anderson, M, A Barnett, M Clark, C Ferree, A Sheldon, and J Prince. 2014. Resilient Sites and Other Conserved Land such as Shenandoah National Park will Play a large role in facilitating migration in response to climate change. Photo credit: Shane Lin, shanelin on flickr.

Figure 1: Currently conserved lands in Virginia form a patchwork across the state. "Other" includes lands in public and private protection other than conservation easements such as state and national parks.

Figure 2: Easements and other conserved land such as Shenandoah National Park will Play a large role in facilitating migration in response to climate change. Photo credit: Shane Lin, shanelin on flickr.