

**REPORT OF THE VIRGINIA DEPARTMENT OF
CONSERVATION AND RECREATION**

**Calendar Year 2008 Land Preservation
Tax Credit Conservation Value
Summary**

**TO THE GOVERNOR AND
THE CHAIRMEN OF THE HOUSE COMMITTEE ON
APPROPRIATIONS, HOUSE COMMITTEE ON FINANCE, AND
SENATE COMMITTEE ON FINANCE**



**COMMONWEALTH OF VIRGINIA
RICHMOND
DECEMBER 2009**



COMMONWEALTH of VIRGINIA
DEPARTMENT OF CONSERVATION AND RECREATION

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December 22, 2009

The Honorable Timothy M. Kaine, Governor of Virginia
The Honorable Lacey E. Putney, Chairman of the House Committee on Appropriations
The Honorable Harry R. Purkey, Chairman, House Committee on Finance
The Honorable Charles J. Colgan, Chairman, Senate Committee on Finance

Dear Governor Kaine, Delegate Putney, Delegate Purkey, and Senator Colgan:

We are pleased to provide you this report, which has been prepared in accordance with §58.1-512.C.2. of the Code of Virginia (Virginia's Land Conservation Incentives Act) which requires the Department of Conservation and Recreation (DCR) to compile an annual report on qualified tax credit donations of less-than-fee interests accepted by any public or private conservation agency. This report focuses on those donations made between January 1, 2008 and December 31, 2008, for which a taxpayer has requested a Land Preservation Tax Credit (LPTC), within the \$102 million cap for tax year 2008 established pursuant to Virginia Code §58.1-512.D.4.a.

The Virginia Land Preservation Tax Credit (LPTC) Program remains a key factor behind the land conservation successes the Commonwealth has realized. The transferability of the LPTC has proven to be a valuable incentive to persons voluntarily protecting working farms and forests, recreational lands, scenic viewsheds, historic sites, and natural areas. DCR's review of Land Preservation Tax Credits, instituted in 2007, has been both responsive and timely and has served as an important oversight tool for the Commonwealth to ensure that the lands protected for which a tax credit is issued of \$1 million or more have significant conservation value and that the natural and historical resources they contain will be adequately protected in the future.

DCR's review of tax credit applications utilizes criteria adopted by the Virginia Land Conservation Foundation that ensures, where applicable, that the deeds require a forest management plan, that the public has visual access to scenic resources, that a conservation plan on farmlands will be developed and implemented, that riparian buffer areas to protect water quality are established, that resources listed on the Virginia Landmarks Register or the National Register of Historic Places are protected from demolition and alteration, and that known natural heritage resources are protected. Additionally, DCR's review has helped

The Honorable Timothy M. Kaine, Governor of Virginia
Members of the Virginia General Assembly
December 22, 2009
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to ensure that deeds met VLCF criteria aimed at safeguarding long-term conservation values of the property, prohibiting intentional harm to the conservation values of the property, and insuring that the conservation value of the property will not be adversely affected by future development. Such alterations to the deeds significantly improved the quality of the donations made under the tax credit program.

We trust that this report fulfills the required statutory obligations and demonstrates anew the importance of the Land Preservation Tax credit Program.

Respectfully submitted,

A handwritten signature in black ink that reads "Joseph H. Maroon". The signature is written in a cursive style with a large, prominent initial "J".

Joseph H. Maroon
Director

Attachment

cc: Virginia Land Conservation Foundation Board of Trustees
The Honorable L. Preston Bryant, Jr., Secretary of Natural Resources
Daniel S. Timberlake, Director, Department of Planning and Budget
Janie E. Bowen, Commissioner, Department of Taxation
Clyde Cristman, Legislative Analyst, Senate Finance Committee
Paul Van Lenten, Jr., Legislative Fiscal Analyst, House Appropriations Committee

PREFACE

This report has been prepared in accordance with and fulfills the requirements of:

- §58.1-512.C.2. of the Code of Virginia (Virginia's Land Conservation Incentives Act), which requires the Department of Conservation and Recreation (DCR) to compile an annual report on qualified tax credit donations of less-than-fee interests accepted by any public or private conservation agency. This report is on those donations for which taxpayers claimed Land Preservation Tax Credits within the period of January 1, 2008 and December 31, 2008 (LPTC), within the \$102 million cap established by Virginia Code §58.1-512.D.4.a.

The following pages will provide a status report on donations for which taxpayers claimed Land Preservation Tax Credits within the period of January 1, 2008 and December 31, 2008.

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EXECUTIVE SUMMARY

The Virginia Land Preservation Tax Credit (LPTC) Program has proven to be a valuable incentive for landowners interested in voluntarily conserving their property through perpetual conservation easements or fee-simple donations. The LPTC's transferability feature is especially important to persons with little or no state income tax liability. Responsibilities for oversight of the program are shared by the Virginia Department of Taxation and the Department of Conservation and Recreation.

Virginia's Land Preservation Tax Credit Program has continued to excel and to advance the preservation of important lands across the Commonwealth. The Virginia Department of Taxation's records indicate that between January 1, 2000 and December 1, 2009, 456,654 acres, appraised at slightly over \$2.15 billion, had been protected through 2,181 donations represented by \$1 billion in tax credits.

The Department of Conservation and Recreation's (DCR) review of Land Preservation Tax Credits (LPTC), begun in January of 2007, has served as an important tool utilized by the Commonwealth to ensure that the lands protected for which a tax credit is issued of \$1 million or more are worthy of protection and that the natural and historical resources they contain are adequately protected in perpetuity. The tax credit report contained herein summarizes the donations for which taxpayers claimed Land Preservation Tax Credits within the period of January 1, 2008 and December 31, 2008 (LPTC), within the \$102 million cap established by §58.1- 512.D.4.a of the Code of Virginia. Based on the information provided to DCR, 224 applications were filed for the \$102 million in tax credits available in 2008. The appraised value of these donations was approximately \$256 million. These 224 applications requested LPTC for easements and donations on 56,000 total acres, which means that up to 61% of the total acres protected in 2008 (easement or fee-simple) could have received a tax credit counted against the 2008 cap. Clearly, the LPTC is an important incentive for Virginia to utilize to reach its land conservation goals.

Taxpayers in 65 localities claimed a LPTC in calendar year 2008. The largest number of donations and acreage preserved was in Rockbridge County and the largest amount of tax credit dollars was requested by Loudoun County applicants.

Of the eight conservation purposes that a landowner can apply under, approximately 77% or 43,475.64 acres were in the Scenic Open Space category. Forestal Use (30,298 acres) and Watershed Preservation (25,964 acres) were also prominent categories as each represents approximately 54% and 46% of the total respectively. The remaining purposes in rank order were Agricultural Use; Lands Designated by the Federal, State, or Local Government; Natural Habitat and Biological Diversity; Historic Preservation; and Natural Resource Based Outdoor Education and Recreation. Applications may claim more than one conservation purpose, even though it is not necessary in order to request the LPTC.

In addition to the responsibility to prepare an annual report, DCR was also charged beginning in 2007 with conducting reviews of the Conservation Value of LPTC requests of \$1 million or more (based on a 40% credit for a donation valued at \$2.5 million or greater) and with verifying the conservation value of these donations in advance of the Virginia Department of Taxation issuing the tax credit. This review is in accordance with criteria adopted by the Virginia Land Conservation Foundation for this purpose.

In 2008, DCR reviewed and commented on the conservation value associated with 40 of the 224 LPTC applications. Of the 40 reviews, 20 final applications were filed requesting over \$42 million in LPTC for 12,969 acres. The potential donations yet to be completed may have been delayed for any number of reasons including changes in the real estate market, but all successfully completed DCR's review. The cap of \$102 million for 2008 was met on December 30, 2008 and all donations submitted after that date were allocated against the 2009 cap. In addition, one applicant chose not to undertake the pre-filing review and submitted a final application. This application was reviewed by DCR and the applicant subsequently withdrew the review once it was determined they could not identify a conservation purpose and failed to a majority of the required restrictions in the deed of easement.

These 20 donations represented 9% of total applications and 21% of the LPTC acres preserved, but over 40% of the total LPTC credits claimed in 2008. DCR's oversight continued to provide benefits to the Commonwealth's efforts to ensure the conservation value of properties applying for the LPTC. DCR's review process resolved a number of problems with applications that would have negatively affected the donation's conservation value if the applicant had completed as submitted. In addition, DCR's review helped to ensure that persons eligible for \$1 million or more in state land preservation tax credits also addressed water quality and forest stewardship issues associated with their conserved lands. Although state law allows DCR 90 days to complete its review, DCR took only 30 business days on average to review a pre-filing application (including a site visit) and 14 business days to verify the conservation value of final applications.

LAND PRESERVATION TAX CREDIT OVERVIEW FOR CY2008

Land Conservation Tax Credit Program Overview

Virginia's land preservation tax credit (LPTC) program is considered to be one of the most important conservation tools available in Virginia. In a state that ranks near the bottom nationally in natural resource spending, a program that leverages significant private investment is all the more important. The Department of Taxation's records indicate that as of December 1, 2009, 456,654 acres, appraised at slightly over \$2.15 billion, had been protected through 2,181 donations represented by \$1 billion in tax credits.

Specifically, the records show that land preservation credits registered for donations made during the first two years of the program (tax years 2000 and 2001) amounted to approximately \$52.7 million. Since, the transferability (or sale) of land preservation credits became available in 2002, credits registered through the December 1, 2009 totaled more than \$954 million. For the period of January 1, 2000 through the December 1, 2009, the Department of Taxation registered credits amounting to over \$1 billion representing 2,181 donations that protected 456,654 acres. This level of tax credits, as well as the level of property easement donations, has exceeded all expectations. Fourteen other states provide income tax credits for donations of conservation easements, and two other states provide for transfer of those credits, but Virginia's tax-credit program is the most generous amongst those that are transferable. In Virginia, this is a program that has enormous land conservation benefits.

As a result of legislative amendments enacted in 2006, effective January 1, 2007, the program was capped at \$100 million per year for LPTC, with donations in excess of the annual cap to be rolled over to subsequent years. The \$100 million was indexed to the Consumer Price Index and increased to \$102 million in calendar year 2008. In addition, the amount of value that can be registered for any conservation easement was limited to 40% of the fair market value of the qualified donation. These compromises represented a diminution in the peak annual tax credit expenditures, which reached \$153 million in tax year 2005, and in the 50% allowance of the fair market value of the qualified donation. In 2008, legislative amendments reduced the amount of credit an individual taxpayer can claim in a single taxable year from \$100,000 to \$50,000 for the years 2009 and 2010.

The amendments passed during the 2006 Special Session also gave a new role to the Virginia Land Conservation Foundation (VLCF) Board. The statute provided that VLCF would adopt a set of criteria to be used by the Director of the Department of Conservation and Recreation (DCR) to verify the conservation value of land or conservation easement donations that result in tax credits of \$1 million or more. To claim \$1 million or more of LPTC, the taxpayer would have to have made a land donation equal to or greater than \$ 2.5 million. A land transaction claiming a tax credit of less than the \$1 million does not require a DCR review.

Benefits of the Land Preservation Tax Credit Review

VLCF Land Preservation Tax Credit Review Criteria involve three factors that taken together are the Conservation Value of donated land. These factors are Conservation Purpose, Public Benefit, and Water Quality and Forest Management. Review Criteria are based on IRS Code § 170(h) and those set out in §58.1-512 of the Code of Virginia, and contain specific requirements that reflect state policy.

The Conservation Purpose factor of the Criteria looks at the donation to determine if the land itself has conservation value to the Commonwealth by determining the purpose for which it is being conserved. There are eight potential Conservation Purposes in the Criteria, but an applicant only needs to satisfy one, however, they are free to select as many as are reflected in their donation. The Conservation Purposes are:

1. Agricultural Use;
2. Forestal Use;
3. Natural Habitat and Biological Diversity;
4. Historic Preservation;
5. Natural-Resource Based Outdoor Recreation or Education;
6. Watershed Preservation;
7. Preservation of Scenic Open Space; and
8. Conservation and Open Space Lands Designated by Federal, State, or Local Governments.

There are multiple options for meeting each Conservation Purpose and designated safe harbors are available for many. If a donation meets a safe harbor then the donation satisfies the specific

Conservation Purpose. For example, within the Conservation Purpose of Agricultural Use, land that a locality has designated as being subject to use value taxation is deemed to have a valid Conservation Purpose. Within the Conservation Purpose of Historical Preservation, a battlefield individually listed in the Virginia Landmarks Register or the National Register of Historic Places is also deemed to have a valid Conservation Purpose.

Some uses of the subject property specifically exclude certain Conservation Purposes. For example, public recreation lands where development covers more than 15% of the site such as with amusement parks or private beaches will not meet the Criteria for the Conservation Purpose of Natural-Resource Based Outdoor Recreation or Education.

The Public Benefit factor of the Criteria ensures that safeguards exist in the deed to protect the conservation values of the land in perpetuity; prohibit intentional destruction or significant alteration of the conservation values of the protected property; and assure that conservation value of the property will not be adversely affected by future division or development of the property. The deed of easement must contain the following restrictions:

1. limits on the number of permitted subdivisions of property;
2. limits on permitted new buildings and structures;
3. restrictions on location of new buildings and structures;
4. restrictions on location of new roads or access ways;
5. limitations on utilities placement and
6. limits on alterations, demolition, or ground-disturbing activity that may impact cultural/historic resources and natural heritage resources.

The Water Quality and Forest Management factor is focused on protection of water quality and the stewardship of agricultural and forest lands. Concerning the protection of water quality, if the property contains wetlands, frontage on perennial stream or river, lakes, or tidal waters, then the deed must provide for a 35-foot riparian buffer that prevents certain activities determined to be harmful to water quality. In addition, if the property contains lands in agricultural use, then the deed must provide for the implementation of a written conservation plan that stipulates the use of best management practices. Additionally, if the property contains 20 acres or more of forest lands, the deed must require that a written forest management plan or Virginia Forest Stewardship Plan be in place prior to the commencement of timber harvesting or other significant forest management activities. This plan is to be

developed by or in consultation with the Virginia Department of Forestry or be consistent with Forest Best Management Practices.

DCR's Review of the Conservation Value of Land Preservation Tax Credits of \$1 Million or More

DCR is responsible for conducting reviews of the Conservation Value of LPTC requests of \$1 million or more (based on a donation valued at \$2.5 million or greater) and with verifying the conservation value of these donations in advance of the Virginia Department of Taxation issuing a LPTC. This review is in accordance with criteria adopted by the Virginia Land Conservation Foundation (VLCF) for this purpose (Appendix A).

As part of its pre-filing review process, in 2008 DCR reviewed and commented on the conservation value associated with 40 applications. The Agency does this as a service to taxpayers so that any potential issues can be resolved prior to completion of the donation and submission of a final LPTC application. Of the 40 pre-filing reviews, 20 final applications were filed in CY2008 that requested \$42 million in LPTC for 12,969 acres. The potential donations yet to be completed may have been delayed for any number of reasons including changes in the real estate market, but all successfully completed DCR's review. The cap of \$102 million for 2008 was met on December 30, 2008 and all donations submitted after that date were allocated against the 2009 cap. In addition, one applicant chose not to undertake the pre-filing review and submitted a final application. This application was reviewed by DCR and the applicant subsequently withdrew the review once it was determined they could not identify a conservation purpose and failed to a majority of the required restrictions in the deed of easement. These 20 donations represented nearly 9% of the calendar year's total applications, 23% of the LPTC acres preserved, and over 41% of the total LPTC in dollar value.

The objective of DCR's review was to ensure a basic level of protection for all of the known conservation values of the property at the time of the donation. DCR's reviews resulted in substantial changes to over half of the applications submitted to DCR. The pre-filing review process resolved a number of the substantial problems with applications that would have negatively affected the donation's conservation value if the donation had been completed as submitted. Deeds were modified following

DCR's review to ensure the appropriate protection of the conservation values of the properties in perpetuity as follows:

- For Forestland, deeds were modified to require a forest management plan;
- For Scenic Open Space, deeds were modified to require that the public have visual access to the scenic resource;
- For Farmland the deeds were modified to require the development and implementation of a farm conservation plan;
- For Water Quality protection, deeds were modified to ensure the placement of appropriate riparian buffer areas;
- For Historic Resources, deeds were modified to ensure the protection of resources listed on the Virginia Landmarks Register or the National Register of Historic Places from demolition and alteration;
- For Natural Heritage Resources, the deeds were modified to protect known resources documented in state databases.

Additionally, deeds were also often refined to specify building envelopes, amount of the site that may be developed, number of future divisions of the property, limitations on roads and the placement of utilities, and the establishment and limitations on the disturbance of buffers around perennial streams and other specified waterbodies. The reviews also required other minor changes to existing protections for clarification and often required the applicant to provide additional documentation of the conservation purposes they claimed.

Several examples of the conservation values protected through DCR's review are as follows. DCR's review of one application claiming Agricultural Use, Preservation of Scenic Open Space, and preservation of Natural Habitat and Biological Diversity as its conservation purposes resulted in the overall potential development of the property being restricted to protect the identified conservation purposes of the land. Prior to DCR's review, the deed allowed almost unlimited development throughout the property including development along a Virginia Scenic Byway and American Heritage River, and in identified habitat for Natural Heritage resources. In another case, the DCR review protected a Civil War battlefield listed on the Civil War Sites Advisory Commission Report from any ground disturbing activity without the oversight of a professional archaeologist to prescribed standards. DCR's review of another project resulted in an applicant, who chose to record their donation without a pre-filing review, withdrawing their request for over \$1 million tax credits when they were unable to identify

a single conservation purpose. This same conservation easement donation completely failed to limit subdivision or development of the property.

The common factor that ran through almost every single review conducted by DCR was the obvious pride landowners had in their land and the pride they had in their efforts to pass that land on in good condition to subsequent generations. Almost every property DCR reviewed in 2008 had some form of agricultural activity at the time of donation. Whether these were row crops in Loudoun County, cattle farming in the Tidewater Region, or vineyards in Albemarle County. In every single instance where the land was in agricultural use, the donation of a conservation easement was intended to insure the opportunity of future generations to farm the land. One change in the character of donations from 2007 to 2008, that reflected the downturn in the economy, was the increase in the number of properties that were originally slated for residential development and were instead being conserved using the tax credit due to market forces. Some applicants cited the lender as the party suggesting the use of a conservation easement in an effort to recapture some of the properties value and prevent foreclosure.

In addition to improving the conservation value of the donations, DCR sought to complete its reviews in a timely fashion and worked closely with the applicants, their attorneys, and the land trusts. The law allows DCR to take up to 90 days to review an application before taking a final action. On average DCR took 30 business days to review a pre-filing application and 14 business days to verify the conservation value of final application where the applicant had submitted a pre-filing application.

DCR's review of tax credits that claim \$1 million or more has been both responsive and timely and has served as an important tool for the Commonwealth to utilize to ensure that the lands protected for which a Land Preservation Tax Credit is issued are worthy of protection and that the natural and historical resources they contain will be adequately protected in perpetuity.

Discussion of Calendar Year 2008 Land Preservation Tax Credit Program

The Virginia's Land Conservation Incentives Act Virginia Code §58.1-512.C.2., requires the Department of Conservation and Recreation (DCR) to compile an annual report on qualified donations of less-than-fee interests accepted by any public or private conservation agency. This section reports

on those donations made between January 1, 2008 and December 31, 2008, for which a taxpayer has requested a Land Preservation Tax Credit (LPTC), within the \$102 million cap established by Virginia Code §58.1-512.D.4.a.

To apply for a LPTC a taxpayer must submit a form LPC-1 to the Virginia Department of Taxation (TAX) and DCR after completing the donation. DCR has compiled this report from the information provided to the Agency by taxpayers in form LPC-1. Therefore, this section only summarizes the information received as part of the application process and may vary somewhat from the final totals managed by TAX.

Based on the information provided to DCR by taxpayers, taxpayers filed 224 applications for the \$102 million available in 2008. These same properties were appraised at over \$256 million in value. These 224 applications requested LPTC for donations totaling 56,000 acres of the 91,200 total acres were conserved statewide in CY2008. Therefore, 61% of the total acres protected in 2008 (easement or fee-simple) received a tax credit. It is unknown if any of the other 39% were qualified donations eligible to request a LPTC but chose not to or will claim credits under a cap in a future year.

Table 1 highlights that taxpayers made donations in sixty-five localities for which they claimed a LPTC. The largest number of donations per county was in Rockbridge County with twenty-two donations for 5,468 acres total with a total LPTC value of \$6,702,200. Amelia County had the greatest numbers of acres preserved per county at over 7,400 acres. The largest number of credit dollars requested per county was in Loudoun County for \$17,887,360 for 1,671 acres in eighteen donations. The total of all donations in calendar year 2008 was approximately \$102,000,000 for a total of over 56,000 acres. Forty localities containing LPTC credit requests, each contained less than five donations. Where fewer than five donations were made in any locality, the information is aggregated in order to protect tax information confidentiality in accordance with § 58.1-3.A of the Code of Virginia. (DCR is utilizing the same threshold standard utilized by the Department of Taxation associated with their data.) In the forty localities containing between one and five donations each, the total dollar value of credits requested was approximately \$36.4 million and the total acres preserved was 20,978, both totals are approximately 36% of that statewide.

Table 1: Calendar Year 2008 Land Preservation Tax Credits by Locality (dollars and acres)

Locality	# of Donations	\$ Value of Credits Requested	% of Total \$ Value Requested State Wide	Acres Preserved	% of Acres Preserved State Wide
ALBEMARLE	14	\$5,891,877.00	5.76%	3,918.60	6.99%
AMELIA	6	\$6,042,890.00	5.91%	7,428.79	13.26%
AUGUSTA	5	\$983,800.00	0.96%	1,304.17	2.33%
BATH	12	\$3,763,920.00	3.68%	4,109.85	7.34%
BEDFORD COUNTY	6	\$1,071,400.00	1.05%	1,437.56	2.57%
CLARKE	5	\$574,000.00	0.56%	200.98	0.36%
FAUQUIER	17	\$11,765,000.00	11.51%	3,798.53	6.78%
FREDERICK	6	\$2,535,000.00	2.48%	1,557.14	2.78%
LOUDOUN	18	\$17,887,360.00	17.50%	1,671.34	2.98%
MONTGOMERY	6	\$908,800.00	0.89%	1,416.99	2.53%
ORANGE	7	\$2,082,560.00	2.04%	1,104.68	1.97%
RAPPAHANNOCK	7	\$2,295,640.00	2.25%	973.13	1.74%
ROCKBRIDGE	22	\$6,702,200.00	6.56%	5,467.98	9.76%
SPOTSYLVANIA	5	\$3,267,240.00	3.20%	652.88	1.17%
SUBTOTAL	136	\$65,771,687.00	64.35%	35,042.63	62.55%
OTHER*	88	\$36,435,394.00	35.65%	20,978.04	37.45%
TOTAL	224	\$102,207,081.00	100.00%	56,020.67	100.00%

* Note: Localities with between one and five donations were: NELSON, CRAIG, ESSEX, GOOCHLAND, GRAYSON, LOUISA, MADISON, RICHMOND COUNTY, SHENANDOAH, ACCOMACK, ALLEGHANY, BEDFORD CITY, CAMPBELL, CHESAPEAKE, CULPEPER, FAIRFAX COUNTY, FLOYD, FLUVANNA, FRANKLIN COUNTY, HALIFAX, KING WILLIAM, LANCASTER, NORTHAMPTON, NORTHUMBERLAND, PRINCE GEORGE, STAFFORD, WASHINGTON, APPOMATTOX, BRUNSWICK, CAROLINE, CARROLL, CHARLOTTE, FALLS CHURCH, FREDERICKSBURG, GREENE, GREENSVILLE, HANOVER, HENRICO, HENRY, HIGHLAND, KING & QUEEN, KING GEORGE, MECKLENBURG, PATRICK, PITTSYLVANIA, PRINCE WILLIAM, ROANOKE COUNTY, SCOTT, SOUTHAMPTON, and SUFFOLK SUSSEX

Of the eight conservation purposes that a landowner can apply under, approximately 77% or 43,475.64 acres were in the Scenic Open Space category. Forestal Use (30,298 acres) and Watershed Preservation (25,964 acres) were also prominent categories as each represents approximately 54% and 46% of the total respectively. The remaining purposes in rank order were Agricultural Use; Lands Designated by the Federal, State, or Local Government; Natural Habitat and Biological Diversity; Historic Preservation; and Natural Resource Based Outdoor Education and Recreation. Applications may claim more than one conservation purpose, even though it is not necessary in order to request the LPTC.

Table 2: Acreages of Land Preserved by Conservation Value

Locality	Agric. Use	Forestral Use	Natural Habitat and Biological Diversity	Historic Preserv.	Natural-Resource Based Outdoor Education and Recreation	Watershed Preserv	Preserv. of Scenic Open Space .	Conservation of Open Space Lands Designated by Fed., State, or Local Government
ROCKBRIDGE	3,652.76	1,938.55	2,332.76	628.00	118.00	2,289.76	5,287.14	84.59
LOUDOUN	1,083.04	461.64	312.00	743.23	20.69	972.32	1,143.17	972.98
FAUQUIER	1,063.94	915.72	793.29	1.00	0.00	674.02	2,701.68	1,097.57
ALBEMARLE	532.18	2,706.59	212.23	0.00	1,112.00	1,482.87	2,929.91	2,091.63
BATH	1,179.00	3,102.00	1,345.05	583.00	0.00	823.77	3,153.05	66.92
RAPPAHANNOCK	253.13	437.57	121.00	16.57	0.00	130.53	774.01	536.95
ORANGE	674.95	395.37	164.37	0.00	0.00	175.47	665.90	144.37
AMELIA	2,036.23	6,646.87	0.00	1,613.16	0.00	7,061.41	7,061.41	7,061.41
FREDERICK	318.00	1,206.23	787.00	420.87	0.00	855.83	1,557.59	150.00
BEDFORD COUNTY	358.00	937.78	812.33	0.00	0.00	823.31	1,333.42	25.00
MONTGOMERY	693.00	479.00	398.50	3.50	0.00	148.50	859.10	552.50
SPOTSYLVANIA	280.89	372.00	0.00	91.15	0.00	158.15	91.15	0.00
AUGUSTA	740.00	563.00	586.00	0.00	0.00	586.00	1,303.00	205.00
CLARKE	53.98	77.41	53.98	53.90	0.00	55.98	145.81	52.63
NELSON	125.00	193.00	1,519.00	0.00	1,422.00	97.00	2,252.00	0.00
GOOCHLAND	323.00	429.00	0.00	47.00	0.00	105.00	156.00	0.00
MADISON	206.00	546.27	405.68	0.00	0.00	405.68	548.41	0.00
RICHMOND COUNTY	607.00	370.00	606.00	170.00	0.00	606.00	606.00	0.00
LOUISA	99.00	195.40	0.00	388.40	0.00	234.40	0.00	218.40
SHENANDOAH	364.57	300.00	252.00	180.57	0.00	296.00	675.57	0.00
ESSEX	640.10	623.10	0.00	163.50	0.00	433.10	830.10	0.00
GRAYSON	98.00	148.00	74.00	0.00	0.00	149.94	233.94	0.00
CRAIG	297.42	352.42	191.00	0.00	0.00	191.00	420.42	0.00
CULPEPER	0.00	0.00	187.79	187.79	0.00	187.79	187.79	187.79
NORTHUMBERLAND	235.00	61.00	0.00	0.00	0.00	358.00	325.00	200.00
KING WILLIAM	0.00	488.00	0.00	0.00	0.00	538.00	325.00	0.00
PRINCE GEORGE	157.00	232.00	0.00	6.98	0.00	389.00	389.00	389.00
LANCASTER	36.00	557.00	585.12	0.00	0.00	604.12	230.12	574.00
ALLEGHANY	340.00	730.00	0.00	0.00	0.00	0.00	1,070.49	0.00
FRANKLIN COUNTY	172.92	48.00	64.00	0.00	0.00	224.42	224.42	0.00
CHESAPEAKE	2.00	263.65	230.72	0.00	265.65	265.65	265.65	34.93

ACCOMACK	128.00	81.00	167.76	0.00	0.00	87.00	247.76	86.76
STAFFORD	0.00	100.00	0.00	0.00	0.00	20.00	218.00	1,988.30
CAMPBELL	215.13	10.00	0.00	0.00	0.00	0.00	217.69	0.00
FLUVANNA	228.00	270.00	64.00	2.00	0.00	3.30	498.00	0.00
BEDFORD CITY	284.84	39.01	0.00	0.00	0.00	0.00	284.84	0.00
NORTHAMPTON	161.00	69.00	169.68	0.00	0.00	240.68	240.68	0.00
FAIRFAX COUNTY	0.00	0.00	0.83	0.83	0.00	0.83	4.00	0.83
HALIFAX	100.00	630.00	0.00	0.00	0.00	701.00	701.00	0.00
FLOYD	214.26	188.26	1.00	0.00	0.00	0.00	190.26	135.26
WASHINGTON	23.00	2.00	59.94	0.00	0.00	14.00	25.00	0.00
HENRICO	0.00	85.00	108.10	108.10	0.00	108.10	108.10	0.00
SOUTHAMPTON	200.00	370.00	0.00	0.00	0.00	125.00	0.00	0.00
SUSSEX	783.00	783.00	0.00	0.00	0.00	783.00	783.00	0.00
SUFFOLK	26.40	0.00	24.80	0.00	0.00	0.00	0.00	0.00
HANOVER	70.00	36.00	0.00	0.00	0.00	106.65	106.65	0.00
KING GEORGE	0.00	51.50	51.50	0.00	0.00	0.00	0.00	0.00
CARROLL	113.10	0.00	0.00	0.00	0.00	0.00	113.10	113.10
HENRY	0.00	0.00	0.00	0.00	0.00	0.00	0.00	250.00
FALLS CHURCH	0.00	0.00	0.00	0.00	0.00	0.00	1.10	0.00
PATRICK	162.00	162.00	162.00	0.00	0.00	162.00	162.00	0.00
CAROLINE	98.80	21.00	182.00	0.00	0.00	182.00	0.00	0.00
PRINCE WILLIAM	0.00	0.00	0.00	0.00	0.00	0.00	35.84	0.00
ROANOKE COUNTY	0.00	0.00	0.00	0.00	0.00	0.00	0.00	89.82
SCOTT	130.00	108.00	0.00	0.00	0.00	0.00	238.00	0.00
MECKLENBURG	120.00	185.00	305.00	0.00	0.00	305.00	305.00	0.00
KING & QUEEN	373.93	373.93	0.00	0.00	0.00	373.93	373.93	0.00
CHARLOTTE	44.00	245.00	289.75	289.75	0.00	289.75	289.75	0.00
PITTSYLVANIA	116.00	70.00	279.46	0.00	0.00	279.46	279.46	0.00
GREENSVILLE	55.00	400.00	746.20	15.00	0.00	746.20	0.00	0.00
APPOMATTOX	0.00	0.00	0.00	0.00	0.00	0.00	0.00	187.19
HIGHLAND	75.00	15.00	0.00	0.00	4.68	0.00	0.00	0.00
GREENE	5.00	188.48	0.00	0.00	0.00	0.00	193.48	0.00
BRUNSWICK	45.00	38.00	30.00	0.00	0.00	112.75	112.75	0.00
FREDERICKSBURG	0.00	0.00	0.00	18.85	0.00	0.00	0.00	0.00
TOTAL STATE WIDE	20,393.57	30,297.76	14,675.84	5,733.14	2,943.02	25,963.67	43,475.64	17,496.92
PERCENTAGE	36.42%	54.10%	26.21%	10.24%	5.26%	46.36%	77.64%	31.24%

Background on the Development of the Criteria

Although the statute exempted the development of the criteria from the Administrative Process Act, it stipulated that adequate public participation should be provided. To that end, the VLCF Board, at its August 9, 2006, meeting, appointed a subcommittee to work with the DCR Director Joseph Maroon and his staff. The subcommittee held two work sessions on September 8 and October 3, 2006. Upon completion of a draft by the subcommittee, Secretary of Natural Resources L. Preston Bryant, Jr. as VLCF Chairman, authorized a 30-day public comment period for the Conservation Value Review Criteria that ended on November 10, 2006. During that period, four public meetings were held across the state to receive comment: two meetings were held in Charlottesville on October 18, 2006; one meeting was held in Richmond on November 1, 2006; and the fourth meeting was held in Blacksburg on November 2, 2006. Approximately 30 individuals offered comments at the four meetings, and 38 written comments also were received during the comment period from various stakeholders including conservation and historic organizations, local governments, professional or industry associations, individual landowners, tax consultants, elected officials, and state agencies.

As a result of the public comments received, significant revisions to the earlier draft criteria were made and presented to the VLCF Board for consideration at their November 21, 2006 meeting, at which time the Board amended and adopted the criteria. The final criteria adopted by the Board garnered the support of a wide range of interests from across the Commonwealth as a reasonable and balanced approach to achieving greater accountability and ensuring that donations are serving conservation purposes.

Upon passage of the criteria, DCR worked with the Department of Taxation to complete the development of tax forms and instructions and implemented an MOU between the two agencies and developed a procedures document for the review of tax credit applications. DCR hired a land conservation analyst within DCR's Office of Land Conservation to perform the required tax credit assessments.

From the beginning, DCR had expected that the Land Preservation Tax Credit Review Criteria would need to be revised in an iterative process that responded to issues and questions raised by the projects being reviewed. At the August 7, 2008 Board meeting, the Board approved a set of amendments to the criteria that incorporated guidance decisions made over the first year of the program. These changes were considered non-controversial and technical in nature and were widely supported by the interested public. The Board recognizing that additional changes to the criteria might be warranted, charged DCR with assembling a stakeholders' committee to discuss additional clarifications and modifications to the criteria that would benefit from group discussions. Two meetings of this stakeholder group were held during the Fall of 2008 and the draft criteria were released in late 2008 and early 2009 for public comment. At the March 27, 2009 Board meeting, the Board considered the recommendations of the stakeholders groups and comments made by the public. The Board amended the Criteria to reflect the desired changes and authorized DCR to begin utilizing the amended criteria in its review (Appendix A).

APPENDICES

Appendix A - Land Preservation Tax Credits – Conservation Value Review Criteria

VIRGINIA LAND CONSERVATION FOUNDATION Land Preservation Tax Credits – Conservation Value Review Criteria Adopted November 21, 2006 and amended August 7, 2008 and March 27, 2009

As of January 1, 2007, the Department of Conservation and Recreation (DCR) became responsible for conducting reviews of the conservation value of applications requesting \$1 million or more in state Land Preservation Tax Credits (LPC). This responsibility was given to DCR by the Governor and the Virginia General Assembly pursuant to the 2006 amendments to the Virginia Land Conservation Incentives Act of 1999 (Virginia Code § 58.1-512).

This document sets out the Land Preservation Tax Credit Criteria (criteria) adopted by the Virginia Land Conservation Foundation (VLCF) in November of 2006 and amended in August of 2008 and March of 2009, pursuant to Virginia Code § 58.1-512(D)(3), that the Director of the Department of Conservation and Recreation (DCR) will use to verify to the Department of Taxation in advance of Taxation issuing a LPC, the conservation value of donated land or conservation easements or other less-than-fee interests in land that result in tax credit applications that claim \$1 million or more in credits from a donation equal to or greater than \$2.5 million. Any land transaction claiming less than the \$1 million tax credit does not require a DCR review.

Donors whose applications for tax credits are verified for conservation value by DCR should be aware that they remain responsible for full compliance with applicable federal and state requirements. Donations certified as compliant with the criteria will remain subject to later audit by the Virginia Department of Taxation. In addition, donors claiming federal tax incentives will remain subject to audit by the Internal Revenue Service.

Donations of land in fee simple

To qualify for a tax credit, any donation of a fee simple interest in real property to a public or private conservation agency (including a bargain sale) that involves a tax credit application for \$1 million or more must be documented with adequate information demonstrating that the agency's ownership of the land provides conservation value to the Commonwealth in accordance with the requirements of Va. Code § 58.1-512.

The donee or holder must provide documentation that subsequent conveyances of the fee interest in the property shall protect the conservation values of the property in perpetuity.

Donations of less-than-fee interests in land

To qualify for a tax credit under Virginia Code § 58.1-512, any donation of a less-than-fee interest in real property (known more commonly as a "conservation easement") that involves a tax credit application for \$1 million or more must meet the conservation values criteria set out in Sections A, B, and C below:

- Conservation purpose [The primary purpose(s) for which the conservation easement is being donated];
- Public benefit; and
- General water quality and forest management.

A. **Conservation Purpose:** The donated land or conservation easement must be conveyed for at least one of the following eight Conservation Purposes, pursuant to Virginia Code § 58.1-512(A) and in part to Federal Code [26 U.S.C. § 170(h)(4)] and attendant Internal Revenue Regulations § 1.170A-14. The applicant can select as many Conservation Purposes as they wish to have evaluated, but is only required to have one verifiable Conservation Purpose to meet the DCR review. Each category within this section includes "safe

harbors” that are characteristics of the land or uses of the land that will automatically meet the conservation purpose for that category.

Donations of land or conservation easements expressly given for one or more conservation purposes outlined in this section of the Criteria (as listed below in A.1 through A.8) that are accepted or approved by the Virginia Outdoors Foundation, the Department of Historic Resources, the Department of Forestry, the Department of Conservation and Recreation, or the Department of Game and Inland Fisheries will be presumed to meet the conservation purpose contained in this section.

Easements must protect the conservation purpose indicated in perpetuity. Lands indicated to have a conservation purpose of either agricultural or forestal use are not required to remain in agricultural or forestal production, however the easement must ensure that agricultural or forestal use remains a viable option in perpetuity.

1. Agricultural Use. A land area of five contiguous acres or more devoted to production for sale of plants or animals under standards prescribed by the Commissioner of Agriculture and Consumer Services, or land devoted to a soil conservation program under an agreement with an agency of the federal government.¹

a. The following lands will meet the safe harbors for conservation purpose for the agricultural use category.

(1) Land that a county, city or town has designated as real estate devoted to agricultural or horticultural use for purposes of use value assessment and taxation pursuant to Virginia Code § 58.1-3230.

(2) Land that is part of an agricultural or agricultural and forestal district pursuant to Virginia Code § 15.2-4300 or § 15.2-4400.

(3) Land that the governing body of any county, city or town, with the cooperation of the United States Department of Agriculture, has designated as important farmland within its jurisdiction pursuant to Virginia Code § 3.1-18.5(B).

b. Other lands will meet the criteria for this category, if the taxpayer demonstrates the conservation purpose of the land for agricultural uses by, for example, demonstrating significant income derived from agricultural activities conducted on property as set forth on Schedule F of the taxpayer’s federal income tax return.

2. Forestal Use. Land used for tree growth and maintained as a forest area.

a. For the purposes of this category, “land used for tree growth” means an area that meets one of the following conditions:²

(1) The land contains existing, well distributed, and commercially valuable trees. Land used for tree growth that has been recently harvested of merchantable timber, is regenerating into a new forest, and has not been developed for non-forest use will qualify.

(2) The land has trees but is not capable of growing a commercial timber crop because of inaccessibility or adverse site conditions such as steep outcrops of rock, shallow soil on steep mountainsides, excessive steepness, heavily eroded areas, coastal beach sand, tidal marsh and other site or environmental conditions.

1 2 VAC 5-20

2 4VAC10-20

- b. The following lands, if used for tree growth, will meet the safe harbors for conservation purpose for the forestal use category.
 - (1) Land that contains 20 acres or more and that a county, city or town has designated as real estate devoted to forestal use for purposes of use value assessment and taxation pursuant to Virginia Code § 58.1-3230 et seq.
 - (2) Land that is part of a forestal or agricultural and forestal district pursuant to Virginia Code § 15.2-4301 or §15.2-4401.
 - (3) Land that contains 20 acres or more of forest area and that is adjacent to lands owned or managed by the United States Forest Service or the Virginia Department of Forestry.
 - (4) Land that contains less than 20 acres of forest area, provided that the land has greater than 50% canopy coverage and has been certified by the State Forester in consultation with the local city or county arborist, if such a position exists within the locality, as important to the establishment and preservation of urban forests, pursuant to Va. Code § 10.1-1105.
 - c. Other lands will meet the criteria for this category, if the applicant demonstrates the conservation purpose of the land for forestal use.
3. Natural Habitat and Biological Diversity. Land that contains significant natural habitats and/or ecosystems that support native plant and animal species and protect a relatively natural habitat of fish, wildlife, plants, or similar ecosystems, including natural areas and natural heritage resources as defined below.
- a. For the purposes of this category, the following definitions apply.
 - (1) Natural area – any area of land, water, or a combination thereof, that retains or has reestablished its natural character, though it need not be completely natural and undisturbed; or which is important in preserving rare or vanishing flora, fauna, native ecological systems, geological, natural historical, scenic or similar features of scientific or educational value benefiting the citizens of the Commonwealth.³
 - (2) Natural heritage resource – The habitat of rare, threatened, or endangered plant and animal species, rare or state significant natural communities or geologic sites (including karst), and similar features of scientific interest, as identified by the Department of Conservation and Recreation’s Virginia Natural Heritage Program.⁴
 - (3) Significant natural habitat– Areas that represent high quality examples of a terrestrial community or aquatic community; caves, or areas which are included in, adjacent to, or which contribute to the ecological viability of a local, regional, state, or national park, nature preserve, wildlife refuge, wilderness area or other similar conservation area.
 - b. The following lands will meet the safe harbors for conservation purpose for the natural habitat and biological diversity conservation category.
 - (1) Lands identified in writing by the Department of Conservation and Recreation’s Virginia Natural Heritage Program as either containing or necessary to protect natural heritage resources.
 - (2) Lands identified in writing by the Department of Game and Inland Fisheries as significant wildlife habitat, the protection of which would further implementation of the Comprehensive Wildlife Conservation Strategy (also known as Virginia’s Wildlife Action Plan).

³ Virginia Code § 10.1-209

⁴ Virginia Code §10.1-209

- (3) Undeveloped lands located within or adjacent to local, regional, state or federal lands managed primarily for their natural habitat and biological diversity.
- c. Other lands will meet the criteria for this category, if the applicant demonstrates the conservation purpose of the land for natural habitat and biological diversity.
- 4. Historic Preservation. Land that contains historic landmarks, including buildings, structures, objects, sites, and landscapes, that constitute historic, archaeological, and cultural resources of significance as determined by the Virginia Department of Historic Resources. Visual or other access by the general public on a periodic basis is required to qualify under this category.⁵
 - a. The following properties will meet the safe harbors for conservation purpose for the historic preservation category.
 - (1) Properties individually listed in the Virginia Landmarks Register or the National Register of Historic Places.
 - (2) Properties that have been determined by the Virginia Department of Historic Resources to be eligible for listing in the Virginia Landmarks Register and/or recommended for listing in the National Register of Historic Places.
 - (3) Properties that are contributing resources within historic districts that are listed in the Virginia Landmarks Register and/or National Register of Historic Places.
 - (4) Any battlefield that meets the above standards and/or is listed by the Civil War Sites Advisory Commission Report of 1993, as amended.
 - b. Other properties will meet the criteria for this category if the applicant demonstrates the conservation purpose of the resource for historic preservation and provides documentation from the Virginia Department of Historic Resources to support such a claim.
- 5. Natural-Resource Based Outdoor Recreation or Education. Lands primarily devoted to and used for natural-resource based outdoor recreation by, or education of, the general public. Access for substantial and regular use by the general public is required to qualify under this category.⁶
 - a. For the purposes of this category, land primarily devoted to and used for natural-resource based outdoor recreation or education means parks, trails, greenways or similar recreational areas, open for public use, except any use operated primarily as a business with intent for profit.⁷ Examples include a water area for the use of the public for boating or fishing, or a nature or hiking trail for the use of the public.⁸
 - b. Lands will meet the criteria for this category if the applicant demonstrates the conservation purpose of the land for natural-resource based outdoor recreation or education, such as lands identified in the Virginia Outdoors Plan.
 - c. The following lands will not meet the conservation purpose for natural-resource based outdoor recreation or education:

5 26 CFR §1.170A-14(d)(5)

6 26 CFR §1.170A-14(d)(2)

7 4VAC5-20-20(A)

8 26 CFR §1.170A-14(d)(2)

- (1) Lands where development (for example, buildings, roads, or parking lots) covers more than 15% of the land protected by the conservation easement (paved trails and boardwalks are excluded from this calculation).
 - (2) Lands used for commercial recreational or amusement places, such as athletic fields or stadiums, driving ranges, golf courses, private beaches or pools, marinas, motor speedways, drag strips, or amusement parks.
 - (3) Private membership clubs, including golf or country clubs, private beaches or pools, or lands available for use only for residents of an associated development or subdivision (that is, not the general public).⁹
6. Watershed Preservation. Substantially undeveloped land that, by virtue of its size or by virtue of its location adjacent to rivers, streams, or other waterways, serves to protect water quality and/or quantity, hydrological integrity, riparian and/or aquatic habitat, or public drinking-water supplies. Examples, defined below, include floodplains, wetlands, vegetated buffers, sinking streams, and groundwater recharge areas.
- a. For the purposes of this category, the following definitions apply.
 - (1) Floodplains – Lands that are used for the passage or containment of waters, including the floodplains or valleys/side slopes of streams that are or may be subject to periodic or occasional overflow, such as floodplains identified by engineering surveys by the U.S. Corps of Engineers, the Federal Emergency Management Agency, or others. Floodplains also include coastal lowlands, such as bays, estuaries or ocean shores, subject to inundation by storms or high tides.¹⁰
 - (2) Wetlands – Lands with characteristic hydric soils that are inundated or saturated by surface or ground water at a frequency or duration sufficient to support, and that under normal conditions does support, a prevalence of vegetation typically adapted for life in saturated soil conditions.¹¹
 - (3) Vegetated buffers – An area of land along a river, perennial stream, wetland, or other waterway where natural vegetation is maintained and degradation by livestock is prevented.
 - (4) Groundwater recharge areas – Lands that, by virtue of a combination of topography, soils, and underlying geology are important to the recharge of local or regional groundwater supply and have been identified as such by local, state, or federal agencies.
 - (5) Sinking streams – Perennial or intermittent streams that sink into the underlying karst features.
 - b. The following lands will meet the safe harbors for conservation purpose for the watershed preservation category.
 - (1) Lands containing significant wetland acreage mapped on the U.S. Fish and Wildlife Service's National Wetland Inventory or other wetlands with delineations approved by the U.S. Army Corps of Engineers and/or the Virginia Department of Environmental Quality.
 - (2) Lands containing vegetated buffers of at least 100 feet in width with substantial frontage on all perennial streams or rivers, wetlands, lakes, or tidal waters.

9 4VAC5-20-20(A)

10 4VAC5-20-20(C)

11 Virginia Code § 58.1-3666

- (3) Lands adjacent to reservoirs used for public drinking water supplies with a vegetated buffer of at least 100 feet in width.
- (4) Lands within 1,000 feet of a public drinking water well.
- c. Other lands will meet the criteria for this category if the applicant demonstrates the conservation purpose of the land for watershed preservation. For example, lands identified by a local, state, or federal agency as important groundwater recharge areas, sinkholes receiving channelized surface flow, sinking streams and springs, each with vegetated buffers of at least 35 feet, or lands located within an identified Special Flood Hazard Area mapped by the Federal Emergency Management Agency¹² may meet the conservation purpose for this category.
- d. Properties where livestock are allowed to graze within the buffer pursuant to a waiver granted in accordance with C.1.c will not meet the conservation purpose for watershed preservation.

NOTE: Lands containing wetlands created, restored, or protected for the purposes of providing compensation pursuant to a regulatory requirement may not be eligible for a tax credit. When noted, DCR will refer this matter to the Department of Taxation.

- 7. Preservation of Scenic Open Space. Lands that contain views, vistas, or characteristics that provide scenic enjoyment to the general public or that contribute to, and are compatible with, the scenic character or enjoyment by the general public of the surrounding landscape. Visual access to or across the property from public lands or publicly accessible water bodies or lands, including roads or trails, is required to qualify under this category.
 - a. The following lands will meet the safe harbors for conservation purpose for the scenic preservation category.
 - (1) Lands visible from a State Scenic Highway, pursuant to Virginia Code § 33.1-64, or a Virginia Byway, pursuant to Virginia Code § 33.1-63.
 - (2) Lands visible from a federally designated Wild and Scenic River or American Heritage River in or adjacent to Virginia, or a State Scenic River pursuant to Virginia Code § 10.1-400.
 - (3) Lands visible from public parks or public hiking, biking, or riding trails.
 - (4) Lands officially designated as scenic by a local, state or federal agency, provided that in each case the designating agency supplies a specific description of the lands or area so designated or recommended.¹³
 - b. Other lands will meet the criteria for this category if the applicant demonstrates the conservation purpose of the land for preservation of scenic open space. For example, lands visible from public lands, publicly accessible water bodies, public roads, or permanently protected lands provided that there is visual access for the public may meet the conservation purpose for this category. Where there is no visual access to the property, physical access may be used to demonstrate the value of the land for preservation of scenic open space.
- 8. Conservation and Open Space Lands Designated by Federal, State, or Local Governments. Lands that contain features, resources, values, or other attributes that a federal, state, or local government has officially designated as important to protect from inappropriate development so as to help shape the character, direction and timing of development in the area.

12 12 CFR § 339.2

13 4VAC5-20-20(F)(3)

- a. To qualify under this category, a federal, state, or local government must have adopted, by statute, regulation, in an official public ordinance, or in a comprehensive or other officially designated plan, one of the following as worthy of protection:
 - (1) the specific property in question;
 - (2) a specific land area that contains the property in question;
 - (3) a designated class of land with specific, identified conservation value, defined by use, location, and attributes; or
 - (4) land that is used as a public garden such as a shared green space for the use of the entire community for raising flowers, vegetables, fruit, or other produce.
- b. A general statement of conservation goals may support verification of this conservation purpose, but is not sufficient on its own to qualify under this category.¹⁴

B. Public Benefit

1. The terms of every deed of conservation easement submitted for DCR review must contain terms and restrictions that protect the conservation values of the land in perpetuity.
2. The terms of every deed of conservation easement submitted for DCR review must prohibit intentional destruction or significant alteration of the conservation values of the protected property other than for general maintenance or restoration, or for activities deemed necessary for safety considerations.
3. The terms of every deed of conservation easement submitted for DCR review must ensure that the conservation value of the property will not be adversely affected by future division or development of the property. To ensure the protection of conservation value, the easement must include the following provisions:
 - a. limitations on the number of permitted divisions of the property;
 - b. limitations on the amount of permitted new buildings and structures, either by placing a limit on the number of new buildings or structures and placing individual limits on the size of those buildings or structures, or by placing a limit on the collective footprint of all buildings and structures; or by some combination of those approaches [limitations above approximately 1% imperviousness (excluding roads) must be explained in the application package];
 - c. restrictions on the location of permitted new buildings and structures, either through the use of building envelopes, no-build zones, or through required review and approval by the easement holder of the location of new buildings and structures prior to construction;
 - d. restrictions on the location of permitted new roads or access ways, either through use of pre-approved routes, no-road zones, or through required review and approval by the easement holder of new roads or access ways prior to construction [however, paved residential driveways or graveled or pervious-surface roads or access ways may be constructed and maintained without review and approval, provided that such roads or access ways are (1) to serve permitted buildings or structures, (2) for public safety needs, or (3) for permitted uses such as farming or forestry];
 - e. limitations on alterations, demolition, and ground-disturbing activity that may impact historic, cultural, or natural heritage resources; and

¹⁴ 26 CFR §1.170A-14(d)(4)

- f. limitations on utilities placement to ensure that such placement does not have significant impacts on the conservation value. Utilities that serve permitted structures on the subject property are allowed. Utilities that do not serve permitted structures on the subject property require the grantee's review and prior written determination that the construction and maintenance of such utilities will not impair the conservation value of the property.

NOTE: Under § 58.1-512(C)(3) of the Code of Virginia, properties dedicated as open space in association with certain types of development are not eligible for tax credits. When noted, DCR will refer this matter to the Department of Taxation.

C. General Water Quality and Forest Management

For tax-credit applications submitted to DCR, the deed of conservation easement must ensure the protection of water quality and forest resources through the inclusion of the following terms and restrictions, where applicable.

1. Rivers, Streams, Wetlands, Springs, or Shorelines:

Maintaining proper vegetated buffers is important for water quality protection. Scientific evidence indicates the wider the buffer, the greater the value for nutrient reduction and sediment removal, as well as for wildlife diversity and habitat. Donors are encouraged to work with the easement holders to maximize the water-quality benefits provided by the donated property. A mixture of trees, shrubs, and grasses has been shown to be most effective at protecting water quality, but the criteria do not require the buffer to include all three.

If the property contains or includes wetlands or frontage on a perennial stream or river (as depicted by a solid blue line on the USGS 7.5' topographic map), sinking streams (as defined above in section A.6.a.(5)), tidal waters, or lakes, ponds, or other waterbodies with perennial outflow, the following minimum protections for those resources apply.

- a. Conservation easement terms must require a vegetated buffer (as defined above in section A.6.a.(3)) that is at least 35 feet wide. (NOTE: Beyond the requirements of these criteria and the associated protections set out in the deed, a wider buffer may be required by local, state, or federal law or regulations.) A vegetated buffer is required for a pond or lake only if the pond or lake has a perennial stream flowing from it.
- b. To qualify as a buffer under these criteria, the deed of conservation easement must:
 - (1) prohibit within the buffer construction of new buildings, structures, roads, and other impervious surfaces. However, existing buildings, structures, roads, or other impervious structures located within the buffer (in whole or in part) prior to the recordation of the conservation easement may be maintained (but not enlarged within the buffer.) Reconstruction and maintenance of documented historic buildings and structures within the buffer on historic properties is also permitted. Additionally, and where it does not impair the conservation value of the property, the following are also permissible (provided they are all appropriately limited in size and number): (i) certain water-dependent structures such as docks; (ii) stream crossings for livestock, pedestrians, and/or vehicles; and (iii) access points. [NOTE: Natural Resources Conservation Service design standards are recommended for stream crossings; see <ftp://ftp-fc.sc.egov.usda.gov/NHQ/practice-standards/standards/578.pdf>]
 - (2) prohibit dumping and restrict other soil disturbance within the buffer, including plowing (however, tree planting; streambank restoration; forest management in accordance with Virginia's Forestry Best Management Practices for Water Quality Guide; archaeological investigations; and restoration, reconstruction, and maintenance of documented historic landscapes on historic properties are permissible);

- (3) require a buffer of vegetative cover that includes, but is not limited to, forest, shrubs, or warm-season grasses. Lawns or grazed pastures shall not constitute vegetative cover for the purposes of this provision. However, the buffer area may be mowed or hayed up to three times in one calendar year. Historic landscapes involving mowed lawns or pastures as verified by the Department of Historic Resources may be restored or reconstructed and maintained. In addition, control of non-native vegetation or removal of diseased trees within the buffer is permissible. Additionally, lawns not exceeding 50 feet of frontage along a waterbody, associated with the primary residence on that property, and which exist on the date of easement within the buffer area, may be maintained provided the site is not subject to severe erosion and the buffer reduction is offset by a substantial increase in buffer width in areas near the site.
 - (4) prohibit livestock grazing within the buffer (however, limited designated points for crossing are permissible in accordance with a written conservation plan that addresses buffer protection pursuant to C2). Methods for excluding livestock by fencing must be effective; however, they do not need to conform to NRCS standards. If fencing is utilized, the deed of easement must require that it shall be established within a period of no more than two years from the date of the recordation of the conservation easement and thereafter maintained.
 - c. The Director of DCR may allow consideration of a request for a partial reduction in the buffer requirements set out in section C 1. The applicant, with the holder's concurrence, must provide evidence in writing to demonstrate why the applicant and holder believe that the special topography or other pre-existing characteristics of the property are such that full compliance with the buffer requirements set out in section C1 may be waived. Such a request must provide the specific areas of the property where a waiver is requested along with proposed mitigation in lieu of full compliance. If the DCR Director finds that the request merits consideration, the Director shall present the request to the Virginia Land Conservation Foundation Board for its review and action at its next scheduled meeting.
2. Land Used for Agricultural Production: If the property contains lands in agricultural use as defined above in section A.1, then the deed of conservation easement shall require that a written conservation plan be developed or in place that stipulates the use of best management practices for water quality protection (such as proper nutrient management, utilization of cover crops, and stabilization of highly erodible lands). This plan shall be developed in consultation with the local Soil and Water Conservation District or the Natural Resources Conservation Service representative and shall be periodically updated, and implemented, by the landowner as long as at least five acres of the property remains in agricultural production. [More information on conservation plans may be found at the Natural Resources Conservation Service's website <http://www.nrcs.usda.gov/> including a brochure at <http://www.ri.nrcs.usda.gov/conservation.html>, and contact information for the Soil and Water Conservation Districts is available on DCR's website at http://www.dcr.virginia.gov/soil_&_water/swcds.shtml.]
3. Management Plans for Forestlands: If the property contains 20 acres or more of forest lands, as defined above in section A.2.a, then the deed of conservation easement shall require that the landowner has a current written forest management plan or Virginia Forest Stewardship Plan in place prior to the commencement of timber harvesting or other significant forest management activities. The deed of conservation easement shall require the forest management plan to include a provision that all forest management and harvesting activities be developed by, or in consultation with, the Virginia Department of Forestry, or be consistent with Virginia's Forestry Best Management Practices for Water Quality Guide.