

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

**Calendar Years 2009 and 2010 Land
Preservation Tax Credit Conservation Value
Summary**

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



**COMMONWEALTH OF VIRGINIA
RICHMOND
May 2012**

Douglas W. Domenech
Secretary of Natural Resources



David A. Johnson
Director

COMMONWEALTH of VIRGINIA
DEPARTMENT OF CONSERVATION AND RECREATION

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May 23, 2012

The Honorable Robert F. McDonnell, Governor of Virginia
The Honorable Walter A. Stosch, Chairman, Senate Finance Committee
The Honorable Lacey E. Putney, Chairman of the House Committee on Appropriations
The Honorable Harry R. Purkey, Chairman, House Committee on Finance

Dear Governor McDonnell, Senator Stosch, Delegate Putney, and Delegate Purkey:

We are pleased to provide you with this report prepared in accordance with § 58.1-512.C.2. of the Code of Virginia (Virginia's Land Conservation Incentives Act). This Act requires the Department of Conservation and Recreation (DCR) to compile an annual report on qualified tax credit donations of less-than-fee interests in land accepted by any public or private conservation agency. This report focuses on those donations made over a two-year period between January 1, 2009 and December 31, 2010, for which a taxpayer requested a Land Preservation Tax Credit (LPTC), within the \$106.6 million cap for tax year 2009 and the \$106.8 million cap for tax year 2010 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 to date. 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 of \$1 million or more is sought, have significant conservation value and that the natural and historical resources they contain will be adequately protected into the future.

The Honorable Robert F. McDonnell, Governor of Virginia
Members of the Virginia General Assembly
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DCR's review of tax credit applications utilizes conservation review criteria adopted by the Virginia Land Conservation Foundation (VLCF). This review ensures that the conservation easements will require, where applicable: a forest management plan, development and implementation of an agricultural conservation plan, visual public access to scenic resources, establishment of riparian buffer areas to protect water quality, protection of resources listed on the Virginia Landmarks Register or the National Register of Historic Places from demolition and alteration, and that known natural heritage resources are also protected. Additionally, DCR's review has helped to ensure that deeds meet 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 conservation quality of the donations made under the tax credit program.

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

Respectfully submitted,

A handwritten signature in cursive script that reads "David A. Johnson". The signature is written in black ink and is positioned to the left of a vertical line.

David A. Johnson

Attachment

cc: Virginia Land Conservation Foundation Board of Trustees
The Honorable Douglas W. Domenech, Secretary of Natural Resources
Daniel Timberlake, Director, Department of Planning and Budget
Craig M. Burns, 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 covers those donations for which taxpayers claimed Land Preservation Tax Credits within the period of January 1, 2009 and December 31, 2010, within the 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, 2009 and December 31, 2010.

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EXECUTIVE SUMMARY

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

Virginia's Land Preservation Tax Credit Program continues to excel and to advance the preservation of important lands across the Commonwealth. TAX's records indicate that 549,751 acres appraised at about \$3.1 billion have been permanently protected through 2,687 donations represented by \$1.24 billion in tax credits between January 1, 2000 and January 23, 2012.

DCR's 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 have worthy conservation values 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 two-year period of January 1, 2009 through December 31, 2010, within the \$106.6 million cap for 2009 and the \$106.8 million cap for 2010 established by § 58.1- 512.D.4.a of the Code of Virginia. Based on information provided to DCR, 228 applications were filed for the \$106.6 million in tax credits available in 2009 protecting 63,485 total acres. In 2010, 144 applications were filed for the \$106.8 million in tax credits, which protected 41,776 acres. Clearly, the LPTC provides a critical incentive for Virginia to utilize to reach its land conservation goals.

In calendar year 2009, taxpayers in 63 localities claimed a LPTC. The largest number of individual donations was in Fauquier County, the most total acreage preserved was in Rockbridge County, and the largest amount of total tax credit dollars was requested by applicants in Culpeper County. Of the eight conservation purposes that a landowner can claim to be eligible for a LPTC, and understanding that an acre of land can meet multiple purposes, approximately 26 percent or 51,921 acres were claimed to be in the Scenic Open Space category. Forestal Use (35,493 acres) and Watershed Preservation (33,460 acres) were also prominent categories as each represents approximately 17 percent of the total. The remaining purposes in order of rank were: Agricultural Use; Natural Habitat and Biological Diversity; Lands Designated by the Federal, State, or Local Government; Natural Resource Based Outdoor Education and Recreation; and Historic Preservation. Applications may claim more than one conservation purpose, even though it is not necessary in order to request or qualify for the LPTC Program.

In calendar year 2010, taxpayers in 57 localities claimed a LPTC. The largest number of individual donations, total acreage, and the highest total amount of tax credit dollars requested in 2010 occurred in Albemarle County. Of the eight conservation purposes that a landowner can claim to be eligible for a LPTC, approximately 25 percent or 34,520 acres were claimed to be in the Scenic Open Space category. The next most popular categories claimed were Watershed Preservation (24,759 acres) and Forestal Use (24,348 acres) both at approximately 18 percent, and Agricultural Use (23,638 acres) at 17 percent. The remaining purposes in order of rank were Lands Designated by the Federal, State, or Local Government; Natural Habitat and Biological Diversity; Historic Preservation; and Natural Resource Based Outdoor Education and Recreation.

In addition to the responsibility to prepare an annual LPTC 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 TAX issuing a land preservation tax credit. DCR's review is carried out in accordance with criteria adopted by the Virginia Land Conservation Foundation for this purpose.

In 2009, DCR reviewed and commented on the conservation value associated with 36 LPTC applications for over \$1 million. Of the 36 reviews, 13 final applications were filed with TAX requesting more than \$36 million in LPTC for 15,949 acres. In addition, another seven DCR-approved applications from the previous year were applied to the 2009 LPTC because they had filed with TAX after the 2008 annual cap of \$102 million was met on December 30, 2008. Those 20 DCR-approved donations represented 9 percent of total applications, 34 percent of the LPTC acres preserved, and over 46 percent of the total LPTC dollars claimed in 2009.

In 2010, DCR performed 25 pre-file reviews for the LPTC, with 14 of those applications filed with the Tax Department requesting more than a total of \$65 million. Another three applications from 2009 requesting over \$1 million in tax credits were applied to the 2010 LPTC. Together, those 17 DCR-approved donations represented 12 percent of the year's total applications, 20 percent of the LPTC acres preserved, and 69 percent of the total LPTC in dollar value.

The many potential donations that did not complete the LPTC process and file for a credit with TAX may have been delayed for any number of reasons, including timing issues, fluctuations in the real estate market or difficulties with bank subordinations, but all successfully completed DCR's pre-file review. Applications for tax credits in 2009 met the LPTC cap of \$106.6 million on December 4, 2009. In 2010, requests for LPTCs met the cap of \$106.8 million

much earlier in the year, on July 21, 2010. Subsequent LPTC requests received by TAX in 2010 were carried over to be first in line for the 2011 LPTC program, with a cap of \$108.4 million.

DCR's oversight continued to advance the Commonwealth's efforts to ensure the conservation value of properties applying for \$1 million or more of LPTCs. DCR's review process resolved a number of issues with applications that would have negatively affected the donation's conservation value if the applicants had recorded their deeds as originally submitted during DCR's pre-filing review. 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 protections associated with their conserved lands. Although state law allows DCR 90 [business] days to complete its review, DCR took only 42 business days on average to review a pre-filing application (including a site visit) and less than two weeks to verify the conservation value of final applications.

LAND PRESERVATION TAX CREDIT OVERVIEW FOR CY2009 AND CY2010

Land Conservation Tax Credit Program Overview

Virginia's land preservation tax credit (LPTC) program is considered to be one of the most effective conservation tools available in the Commonwealth. As of January 23, 2012, the Virginia Department of Taxation's (TAX) records indicated that 549,751 acres of land, appraised at almost \$3.1 billion, had been protected through 2,687 donations representing \$1.24 billion in tax credits. Since January 1, 2000, Virginia's tax credit program continues to leverage significant private investment to attain noteworthy land conservation levels every year.

Specifically, the records show that land preservation tax credits registered for donations made during the first two years of the program (tax years 2000 and 2001) amounted to approximately \$53.0 million. Since the transferability, or sale, of land preservation tax credits became available in 2002 in the Commonwealth, credits registered through the end of 2010 totaled more than \$1.10 billion. Since the beginning of the program, from 2000 through 2010, the end of this reporting period, TAX registered credits amounting to more than \$1.15 billion, representing 2,406 donations that protected 516,583 acres in perpetuity. This extensive level of tax credits, as well as the number of property easement donations and acres conserved, demonstrates great public interest and participation in this valued tax credit program.

Fourteen other states currently provide income tax credits for donations of conservation easements (Arkansas, California, Colorado, Connecticut, Delaware, Georgia, Iowa, Maryland, Massachusetts, Mississippi, New York, North Carolina, New Mexico, and South Carolina). Four of those states also provide for transfer of those credits (Colorado, Georgia, New Mexico, South Carolina), but Virginia's tax-credit program is by far the largest in dollar value of property conserved. 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 LPTC program was capped at \$100 million per year, with donations in excess of the annual cap to be rolled over to subsequent years. The amount of the tax credit cap is adjusted annually to the Consumer Price Index, so in calendar year 2008 it increased to \$102.3 million, in 2009 it was \$106.6 million, and in 2010 the program was capped at \$106.8 million. In addition, the amount of value that can be registered for any conservation easement was limited to 40 percent of the fair market value of the qualified donation - reduced from the previously allowed 50 percent. These compromises represented a diminution in the state's peak annual tax credit expenditures, which reached \$155.9 million in tax year 2005 and \$247.8 million in 2006, but still allowed for an exemplary program that the state could budget for in future fiscal years.

Other legislative amendments passed during the 2006 Special Session gave a new role to the Virginia Land Conservation Foundation (VLCF) Board and DCR. The Board was directed to adopt a set of criteria to be used by the Director of DCR to review and verify the conservation value of land or conservation easement donations that resulted in tax credits of \$1 million or more (Appendix A). Because the tax credits are limited to 40 percent of the fair market value of a qualified donation, to claim \$1 million or more of tax credits 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 DCR review.

In 2009, the Virginia General Assembly amended the LPTC program by reducing the amount of tax credit that could be claimed annually by a participant on their tax returns from \$100,000 to \$50,000 for tax years 2009 and 2010. Any taxpayers affected by the credit reduction would be allowed two additional taxable years in which to claim their tax credits. These provisions were extended during the 2010 Session of the General Assembly, with another year extension added for a total of 13 years for taxpayers to claim credits for donations made in 2009, 2010 and 2011.

The LPTC program saw further changes in the 2010 Session of the General Assembly. Most significant to land owners looking to sell prospective preservation tax credits was the removal of the existing \$10,000 maximum amount payable on the two percent fee collected for transfers of Land Preservation Tax Credits. The \$10,000 cap, however, still applies to land conservation donations recorded before July 1, 2010. The revenue generated from these transfer fees is now directed to be used for implementing the LPTC programs at TAX and DCR and for stewardship efforts by land conservation organizations holding easements that generated tax credits. Starting in 2011, the Virginia Land Conservation Foundation will annually disburse the stewardship funds to land conservation agencies and land trusts to be used for monitoring and enforcing the conservation provisions of the easements they hold.

Another 2010 amendment to the LPTC program requires the Director of DCR to now verify the conservation value of donations made from the same overall parcel of land even if the total amount of tax credits sought is less than \$1 million. This provision applies to situations where the real property that is the subject of the current LPTC application was part of a larger parcel of land that had been partitioned. If any portion of the original parcel has been allowed a tax credit within the past three years and the tax credit sought by the current applicant is at least \$250,000, then the application must be submitted to DCR for verification of its conservation value. As of December 2011, no applications had been submitted to DCR for such review.

Additional LPTC reporting requirements were also enacted in 2010. DCR is required to include in its annual report: (i) an estimate of the number of acres of land currently being used for production agriculture and forestry that have been protected by qualified donations of

conservation easements; and (ii) information, when available, on land being used for production agriculture and forestry that have onsite best management practices designed to reduce the amount of nutrients and sediment entering public waters. These reporting requirements went into effect on July 1, 2010. However, for calendar year 2010, the \$106.8 million LPTC cap was reached prior to July 1, so this data was not collected for the sites included in this 2010 report. Accordingly, this information is now requested of all LPTC applicants and will be included in future reports.

Benefits of the Land Preservation Tax Credit Review

The VLCF Board adopted the LPTC Conservation Value Review Criteria in November 2006, and amended them on August 7, 2008 and March 27, 2009 (Appendix A). DCR follows these criteria to verify that sites in the LPTC program seeking over \$1 million in tax credits have Conservation Value to the Commonwealth. The Review Criteria encompass three factors, which taken together make up the Conservation Value of the donated land. The three factors are (i) Conservation Purpose, (ii) Public Benefit, and (iii) Water Quality and Forest Management. The 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 first factor of the criteria is Conservation Purpose. DCR looks at the land being conserved and the legal documents submitted to verify the purpose for which it is being conserved; i.e., what conservation purposes are being protected by the conservation easement that will be of value to the Commonwealth. Applicants only need to satisfy one of the eight potential Conservation Purposes; however, many select more than one to reflect the multiple attributes of their donated land. The eight 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 Local Governments.

There are several options for meeting each Conservation Purpose and designated safe harbors are provided to satisfy each purpose. If a donation meets a safe harbor then the donation fulfills 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 Agricultural Use 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 Historic Preservation Conservation Purpose.

Conversely, some land uses may be specifically ruled out of certain Conservation Purposes. For example, public recreation lands where development covers more than 15 percent of the site, such as with amusement parks or private beaches, will not meet the Conservation Purpose of Natural-Resource Based Outdoor Recreation or Education.

The second factor of the criteria, Public Benefit, ensures that safeguards exist in the proposed deed to protect the conservation values of the donated land in perpetuity, prohibit intentional destruction or significant alteration of the conservation values of the protected property, and ensure that the conservation value of the property will not be adversely affected by future division or development. 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; and
5. Limits on alterations, demolition, or ground-disturbing activity that may impact cultural or historic resources and natural heritage resources.

The final factor of the Conservation Value Review Criteria is Water Quality and Forest Management. This factor focuses 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 a 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 for LPTC requests of \$1 million or more (based on 40 percent of the fair market value of a land donation valued at

\$2.5 million or greater) and for verifying the conservation value of these donations in advance of TAX issuing a land preservation tax credit. This review is performed in accordance with Conservation Value Review Criteria adopted by the VLCF for this purpose.

As part of its pre-filing review process, in 2009 DCR reviewed and commented on the conservation value associated with 36 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 36 pre-filing reviews, 13 final applications were filed with TAX in 2009 requesting \$36,495,142 in LPTCs for 15,949 acres. In addition, one applicant chose not to undertake the pre-filing review and submitted a final application. This application was reviewed by DCR in 2010 and the applicant subsequently amended that easement to include the recommended restrictions. Another seven applications from 2008 that came in after the annual cap was met in 2008 were given tax credits in 2009, resulting in a total of 20 LPTC applications over \$1 million in 2009. Those 20 donations represented 8.7 percent of the calendar year's total applications, 33.5 percent of the LPTC acres preserved, and 46 percent of the total 2009 LPTC in dollar value.

In 2010, DCR processed 25 applications for pre-filing reviews. Of the 25 pre-filing reviews, 14 final applications were filed with TAX in 2010 requesting \$65,205,880 in LPTCs for 6,329 acres. Another three applications from 2009 that came in after the annual cap was met in 2009 were given tax credits in 2010, resulting in a total of 17 LPTC applications over \$1 million in 2010. Those 17 donations represented 11.8 percent of the calendar year's total applications, 19.8 percent of the LPTC acres preserved, and 68.7 percent of the total LPTC in dollar value. Four of the 25 pre-filing reviews were later filed with TAX in 2011. Seven of the sites reviewed in 2010 have not yet filed for tax credits due to a variety of reasons, including difficulties with bank subordinations and issues with land appraisal values.

The objective of DCR's review is to ensure a basic level of protection for all of the known conservation values of the property at the time of the donation in accordance with the VLCF Review Criteria. DCR's reviews resulted in considerable modifications to over half of the applications submitted to the Agency. Through the collaborative pre-filing review process DCR and the applicants were able to resolve a number of substantial issues with the applications that could have negatively affected the land donation's conservation value if the donation had been recorded as submitted. Applicants modified their draft deeds following the DCR review process 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 public visual access to the scenic resource;

- For Farmland, 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; and
- For Natural Heritage Resources, the deeds were modified to protect known resources documented in state databases.

Additionally, deeds were often refined to specify building envelopes, amount of the site that may be developed, number of future divisions of the property, limitations on paved roads and the placement of utilities, and the establishment and limitations on the disturbance of buffers around perennial streams and other specified water bodies. The reviews also led to other minor changes for clarification and often required the applicant to provide additional documentation of the conservation purposes they claimed. In several cases, the review required additional language in the deeds of easement to protect prime agricultural soils.

The common factor that ran through every single review conducted by DCR was the obvious pride landowners have in their land and the fulfillment they achieve in ensuring that land will be in good condition for generations to come. Most properties DCR reviewed in 2009 and 2010 had some form of agricultural activity at the time of donation, whether they were horse farms in Loudoun County, cattle farming in the Tidewater Region, or row crops in Orange County. In at least one instance, the applicant's stated goal in preserving their property and requesting the tax credit was to ease the transition of the next generation of the family into the management of the agricultural operation. In every instance where the land was in agricultural use, the donation of a conservation easement was intended to ensure the opportunity of future generations to farm the land.

In addition to improving the conservation value of the donations, DCR sought to complete its reviews in a timely fashion and worked closely with applicants, their attorneys and land trusts. The law, Virginia Code § 58.1-512.D.3., allows DCR to take up to 90 [business] days to review an application before taking a final action. On average in 2009 and 2010, DCR took 42 business days (about eight weeks) to review a pre-filing application and no more than two weeks to verify the conservation value of final applications 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 serves as an important tool for the Commonwealth 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 CY2009 and CY2010 Land Preservation Tax Credit Program

The Virginia's Land Conservation Incentives Act, Virginia Code § 58.1-512.C.2., requires DCR to compile an annual report on qualified donations of less-than-fee interests accepted by any public or private conservation agency. The following sections of this report detail those land conservation donations for which a taxpayer has requested a LPTC between January 1, 2009 and December 31, 2009, and January 1, 2010 through December 31, 2010, within the annual cap established by Virginia Code § 58.1-512.D.4.a.

To apply for a LPTC a taxpayer must have successfully recorded a conservation easement or donated land to a qualified conservation organization. The taxpayer must then submit a form LPC-1 to TAX and DCR after completing the land donation. DCR has compiled this report from the information provided to the Agency by taxpayers in form LPC-1 and confirmed this initial data with TAX. This section only summarizes the information submitted as part of the application process and may vary somewhat from the final totals managed by TAX.

2009 Calendar Year

Based on the information provided by taxpayers, taxpayers filed 228 applications for the \$106.6 million available in tax credits for 2009. Those applications, which represent almost \$267 million in easement value, requested LPTC for donations totaling 63,485 acres of the 96,266 total acres that were conserved statewide in 2009. Therefore, 66 percent of the total acres protected in 2009 (easement or fee-simple) received a tax credit. It is unknown if any of the remaining 34 percent were qualified donations eligible to request a LPTC but chose not to, or delayed their applications for a LPTC to another year.

Statewide, taxpayers conserved land in 63 localities for which they claimed a LPTC. Table 1 highlights the 12 counties where tax-payers claimed five or more LPTCs. The largest number of donations per county was in Fauquier County with 23 donations for 3,667 acres total with a total LPTC value of \$10.4 million. Rockbridge County had the greatest numbers of acres preserved per county, at 8,095 acres. The largest number of credit dollars requested per county was in Culpeper County for \$14.1 million for 2,042 acres in eight donations. The total of all donations in calendar year 2009 was \$106,647,000 for a total of 63,485 acres. Fifty-one localities each had less than five donations with requests for LPTC credits. Where fewer than five requests 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. (We are utilizing the same threshold standard utilized by the Department of Taxation associated with

their data.) In the 51 localities the total dollar value of credits requested was approximately \$50.5 million, or 47 percent of the statewide total. The total acreage preserved in those localities was 40,069, more than 63 percent of the statewide total.

Of the eight conservation purposes (projects may claim multiple purposes), approximately 26 percent or 51,921 acres claimed the Scenic Open Space category (Table 2). Forestal Use (35,493 acres) and Watershed Preservation (33,460 acres) were the next two prominent categories with approximately 17 percent of the total, each. The remaining categories in rank order in 2009 were: Agricultural Use, Natural Habitat and Biological Diversity, Lands Designated by a Federal, State or Local Government, Natural Resource Based Outdoor Education and Recreation, and Historic Preservation.

Table 1: CY 2009 Land Preservation Tax Credits by Locality (dollars and acres)

County	# of Donations	Amount of Tax Credits Requested	Percent of Statewide Total Requested	Acres Preserved	Percent of Acres Preserved Statewide
Albemarle	8	\$1,134,288	1.06%	750	1.18%
Carroll	6	\$1,291,610	1.21%	1,162	1.83%
Clarke	5	\$461,860	0.43%	387	0.61%
Culpeper	8	\$14,130,976	13.25%	2,042	3.21%
Essex	5	\$974,680	0.91%	984	1.55%
Fauquier	23	\$10,401,440	9.75%	3,667	5.78%
Grayson	6	\$2,439,960	2.29%	1,439	2.27%
Highland	5	\$538,200	0.50%	1,021	1.61%
Loudoun	13	\$9,777,948	9.17%	1,445	2.28%
Orange	7	\$8,728,390	8.18%	1,601	2.52%
Rappahannock	12	\$1,815,200	1.70%	823	1.30%
Rockbridge	17	\$4,434,000	4.16%	8,095	12.75%
Subtotal	115	\$56,128,572.00	52.63%	23,416	36.89%
Other*	114	\$50,518,428.00	47.37%	40,069	63.11%
Total	229	\$106,647,000.00	100%	63,485	100%

* Note: Localities containing less than five donations were: The Counties of Accomack, Allegheny, Amelia, Amherst, Augusta, Bath, Bedford, Bland, Botetourt, Brunswick, Buckingham, Campbell, Charlotte, Craig, Floyd, Fluvanna, Franklin, Frederick, Giles, Goochland, Greene, Henry, James City, King and Queen, King George, King William, Lancaster, Louisa, Madison, Middlesex, Montgomery, Nelson, Northampton, Northumberland, Patrick, Pittsylvania, Prince Edward, Prince William, Pulaski, Roanoke, Shenandoah, Smyth, Spotsylvania, Stafford, Suffolk, Warren, Washington, Westmoreland, Wythe, and York, and the City of Danville.

Table 2: 2009 LPTC Acreages of Land Preserved by Conservation Value

	Locality	Agricultural Use	Forestral Use	Natural Habitat and Biological Diversity	Historic Preservation	Watershed Preservation	Preservation of Scenic Open Space	Natural-Resource Based Outdoor Education & Recreation	Conservation of Open Space Lands Designated by Fed., State or Local Gov't
1.	Accomack County	152.50	1,499.50	1,484.09	0.00	2,688.84	2,707.84	1,194.00	1,426.09
2.	Albemarle County	339.30	136.80	409.00	0.00	349.00	459.06	0.00	289.95
3.	Alleghany County	0.00	850.00	918.60	0.00	918.60	918.60	0.00	0.00
4.	Amelia County	4,281.16	4,184.66	0.00	0.00	4,084.66	4,473.91	0.00	4,473.91
5.	Amherst County	603.59	554.18	139.41	0.64	456.00	749.55	0.00	0.00
6.	Augusta County	385.00	52.00	0.00	0.00	0.00	437.00	0.00	0.00
7.	Bath County	131.19	342.22	220.19	66.19	220.19	477.41	0.00	0.00
8.	Bedford County	566.00	290.93	218.93	348.33	304.27	859.95	0.00	218.93
9.	Bland County	467.75	467.75	0.00	0.00	0.00	0.00	0.00	0.00
10.	Botetourt County	340.81	586.00	806.95	0.00	322.81	806.95	0.00	0.00
11.	Brunswick County	80.00	40.00	122.69	122.69	122.69	122.69	0.00	0.00
12.	Buckingham County	705.67	1,195.67	928.67	8.00	404.10	974.27	0.00	395.60
13.	Campbell County	105.00	515.00	690.99	0.00	695.99	695.99	0.00	0.00
14.	Carroll County	483.80	599.57	2.00	303.00	50.00	415.90	0.00	266.44
15.	Charlotte County	146.00	142.00	223.95	66.00	223.95	289.95	0.00	66.00
16.	City of Danville	0.00	0.00	0.00	105.63	105.63	105.63	105.63	0.00
17.	Clarke County	350.17	0.00	0.00	0.00	81.00	324.17	0.00	15.52
18.	Craig County	0.00	0.00	0.00	0.00	0.00	335.00	0.00	0.00
19.	Culpeper County	1,003.90	333.75	0.00	642.52	1,106.29	1,715.34	0.00	642.52
20.	Essex County	623.60	758.60	0.00	0.00	387.60	1,247.10	0.00	0.00
21.	Fauquier County	2,475.43	752.18	34.00	478.38	2,301.56	3,437.45	0.00	968.14
22.	Floyd County	225.00	50.00	20.00	0.00	0.00	0.00	0.00	0.00
23.	Fluvanna County	80.00	100.00	0.00	0.00	0.00	180.00	0.00	0.00
24.	Franklin County	70.00	171.87	241.87	0.00	237.63	241.87	0.00	0.00
25.	Frederick County	55.00	189.74	270.55	0.00	270.55	24.74	0.00	0.00
26.	Giles County	450.00	445.00	0.00	0.00	156.85	1,031.85	0.00	0.00
27.	Goochland County	222.09	148.00	129.93	0.00	351.20	351.20	0.00	0.00

28.	Grayson County	573.50	489.50	5.00	0.00	20.00	1,007.84	0.00	37.93
29.	Greene County	0.00	249.00	0.00	0.00	0.00	0.00	0.00	0.00
30.	Henry County	0.00	0.00	203.00	0.00	0.00	203.00	0.00	0.00
31.	Highland County	517.00	501.73	590.70	0.00	590.70	964.70	0.00	0.00
32.	James City County	0.00	160.00	160.00	0.00	160.00	0.00	0.00	0.00
33.	King and Queen Co.	123.20	443.20	123.20	143.20	123.20	150.20	0.00	0.00
34.	King George County	346.00	269.00	0.00	5.00	5.00	307.00	0.00	0.00
35.	King William County	0.00	0.00	0.00	13.40	13.40	13.40	0.00	13.40
36.	Lancaster	82.00	96.00	0.00	0.00	10.12	0.00	0.00	0.00
37.	Loudoun County	1,012.27	604.30	460.54	12.60	692.93	1,331.81	0.00	860.39
38.	Louisa County	350.00	408.00	0.00	258.00	0.00	608.00	0.00	0.00
39.	Madison County	835.77	193.65	25.22	0.50	25.00	1,205.72	0.00	0.00
40.	Middlesex County	14.00	241.83	0.00	0.00	297.83	95.83	0.00	0.00
41.	Montgomery County	40.00	160.00	200.00	0.00	0.00	200.00	0.00	0.00
42.	Nelson County	0.00	19.67	57.42	0.00	37.75	57.42	0.00	0.00
43.	Northampton County	267.00	60.00	275.80	0.00	89.00	124.00	0.00	0.00
44.	Northumberland Co.	136.40	136.40	332.10	324.40	332.10	332.10	0.00	324.40
45.	Orange County	1,437.22	182.00	0.00	2.00	20.00	1,498.71	0.00	0.00
46.	Patrick County	50.00	50.00	2.00	0.00	2.00	735.38	0.00	0.00
47.	Pittsylvania County	100.00	5,025.00	5,127.50	0.00	4,995.00	5,127.50	4,995.00	0.00
48.	Prince Edward County	311.00	112.00	338.60	0.00	464.94	338.60	0.00	0.00
49.	Prince William County	10.99	0.00	68.81	134.89	0.00	68.81	0.00	68.81
50.	Pulaski County	179.60	304.40	0.00	312.01	312.01	312.01	0.00	0.00
51.	Rappahannock County	340.73	268.81	131.51	20.00	109.51	541.51	70.00	208.96
52.	Roanoke County	90.50	100.50	0.00	0.00	16.21	31.87	0.00	0.00
53.	Rockbridge County	2,126.33	6,240.64	6,242.57	807.57	7,317.91	7,728.25	0.00	4,232.00
54.	Shenandoah County	236.00	0.00	0.00	0.00	136.00	283.00	0.00	0.00
55.	Smyth County	603.40	2,780.00	0.00	0.00	0.00	2,695.00	0.00	0.00
56.	Spotsylvania County	71.00	449.00	522.00	50.00	523.00	523.00	50.00	50.00
57.	Stafford County	128.69	228.69	0.00	0.00	148.69	346.69	0.00	1,448.46
58.	Suffolk County	0.00	152.59	0.00	0.00	0.00	0.00	0.00	0.00
59.	Warren County	351.22	230.00	251.22	0.00	360.22	360.22	0.00	0.00
60.	Washington County	323.00	275.00	0.00	0.00	0.00	288.00	0.00	0.00
61.	Westmoreland County	450.00	385.00	716.39	613.00	716.39	841.39	613.00	103.39
62.	Wythe County	295.17	190.00	180.00	20.00	20.00	135.17	0.00	0.00

63.	York County	0.00	81.80	81.80	81.80	81.80	81.80	0.00	0.00
		Agricultural Use	Forestal Use	Natural Habitat and Biological Diversity	Historic Preservation	Watershed Preservation	Preservation of Scenic Open Space	Natural- Resource Based Outdoor Education & Recreation	Conservation of Open Space Lands Designated by Fed., State or Local Gov't
	Acre totals statewide	25,744.95	35,493.13	22,957.20	4,939.75	33,460.12	51,921.35	7,027.63	16,110.84
	Percentage of acres in Conservation Value	13.03%	17.96%	11.61%	2.50%	16.93%	26.27%	3.56%	8.15%

2010 Calendar Year

In 2010, based on applications submitted by taxpayers, taxpayers filed 144 applications for the \$106.8 million of available land preservation tax credits. Those applications, which represent almost \$267 million in easement value, requested LPTCs for donations totaling 41,776 acres of the 55,130 total acres that were conserved statewide in 2010. Therefore, approximately 76 percent of the total acres protected in 2010 (easement or fee-simple) received a tax credit. It is unknown if any of the other 24 percent of lands placed under conservation were eligible to request a LPTC but chose not to, or delayed their applications to another year.

LPTCs were requested for land donations in 57 localities in 2010, as shown in Table 3. Fifty-six percent of the requested tax credits occurred within four counties: Albemarle, Fauquier, Loudoun and Rockbridge. The largest number of donations per county occurred in Albemarle County with 21 donations for 4,620 acres total with a total LPTC value of \$37,350,400. Albemarle County also had the greatest number of acres preserved and the most credit dollars requested per county. The total of all LPTC donations in calendar year 2010 was \$106,845,000 for a total of 41,776 acres. Fifty-three of the localities containing LPTC credit requests contained less than five donations each. 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. (We are utilizing the same threshold standard utilized by the Department of Taxation associated with their data.) In the 53 localities containing less than five donations each, the total dollar value of credits requested was approximately \$46.9 million, approximately 44 percent of the statewide total. The acres preserved in those localities totaled 33,664, approximately 81 percent of the statewide LPTC acreage.

Although the LPTC program requires that only one conservation purpose be met, applicants often declare that their conservation easement or fee simple gift meets multiple purposes. Table 4 lists by locality the total conservation purposes claimed by acreage for 2010. Of the eight possible conservation purposes, the highest category claimed was Preservation of Scenic Open Space at 34,520 acres and approximately 25 percent of total conservation value acres claimed. The next most popular categories claimed were Watershed Preservation (24,759 acres) and Forestal Use (24,348 acres) with approximately 18 percent, each and Agricultural Use (23,638 acres) with 17 percent. The remaining categories in rank order were: Lands Designated by a Federal, State or Local Government, Natural Habitat and Biological Diversity, Historic Preservation, and Natural Resource Based Outdoor Education and Recreation.

Table 3: CY 2010 Land Preservation Tax Credits by Locality (dollars and acres)

County	# of Donations	Amount of Tax Credits Requested	Percent of Statewide Total Requested	Acres Preserved	Percent of Acres Preserved Statewide
Albemarle	21	\$37,350,400.00	34.96%	4,619.59	11.06%
Fauquier	7	\$1,240,000.00	1.16%	492.51	1.18%
Loudoun	11	\$20,487,400.00	19.17%	2,250.48	5.39%
Rockbridge	6	\$834,250.00	0.78%	749.76	1.79%
Subtotal	45	\$59,912,050	56.07%	8,112.34	19.42%
Other*	99	\$46,932,950	43.93%	33,663.54	80.58%
Total	144	\$106,845,000	100%	41,775.88	100%

* Note: Localities containing less than five donations were: The Counties of Amelia, Amherst, Appomattox, Augusta, Bath, Buckingham, Campbell, Carroll, Charles City, Charlotte, Chesterfield, Clarke, Culpeper, Essex, Floyd, Fluvanna, Franklin, Frederick, Goochland, Grayson, Halifax, King William, Louisa, Lunenburg, Mecklenburg, Middlesex, Montgomery, Nelson, Northampton, Northumberland, Orange, Page, Patrick, Pittsylvania, Prince Edward, Prince George, Rappahannock, Richmond, Rockingham, Shenandoah, Stafford, Surry, Tazewell, Warren, Washington, Westmoreland, Wythe, and York, the Cities of Alexandria, Charlottesville, Newport News, and Suffolk, and the Town of Luray.

Table 4: 2010 LPTC Acreages of Land Preserved by Conservation Value

	Locality	Agricultural Use	Forestral Use	Natural Habitat and Biological Diversity	Historic Preservation	Natural-Resource Based Outdoor Education & Recreation	Watershed Preservation	Preservation of Scenic Open Space	Conservation of Open Space Lands Designated by Fed., State or Local Gov't
1.	Albemarle County	1,397.76	1,828.61	1,692.75	205.05	0.00	1,541.27	1,262.63	1,574.35
2.	Alexandria	0.00	0.00	0.00	0.12	0.00	0.12	0.00	0.00
3.	Amelia County	3,943.92	4,492.92	0.00	0.00	0.00	4,593.77	4,593.77	3,786.92
4.	Amherst County	75.00	113.00	0.00	0.00	0.00	0.00	0.00	0.00
5.	Appomattox County	110.00	269.00	260.00	0.00	0.00	384.27	384.27	0.00
6.	Augusta County	838.26	183.00	0.00	1.00	0.00	4.80	1,022.26	0.00
7.	Bath County	430.11	1,930.11	1,636.95	230.11	0.00	1,636.95	2,169.06	0.00
8.	Buckingham County	150.00	230.00	0.00	411.60	0.00	411.60	411.60	219.00
9.	Campbell County	1,188.00	119.68	0.00	0.00	0.00	0.00	1,240.00	0.00
10.	Carroll County	23.00	34.00	0.00	0.00	0.00	0.00	10.00	0.00
11.	Charles City County	122.00	30.00	0.00	0.00	0.00	0.00	184.00	184.00
12.	Charlotte County	1,420.21	1,000.00	0.00	0.00	0.00	1,420.21	1,420.21	0.00
13.	Chesterfield County	0.00	0.00	0.00	0.00	0.00	0.00	1.00	0.00
14.	City of Charlottesville	0.00	0.00	0.00	0.00	0.00	0.00	0.00	18.29
15.	City of Suffolk	62.75	0.00	127.63	0.00	0.00	127.63	127.63	0.00
16.	Clarke County	246.90	230.00	0.00	204.00	0.00	230.00	434.00	0.00
17.	Culpeper County	1,312.94	1,264.15	0.00	1,613.43	0.00	963.66	1,136.66	1,102.33
18.	Essex County	544.00	156.50	0.00	0.00	0.00	126.00	826.50	0.00
19.	Fauquier County	300.35	0.00	156.50	138.79	0.00	249.22	482.40	368.40
20.	Floyd County	0.00	174.61	0.00	0.00	0.00	0.00	195.95	0.00

21.	Fluvanna County	491.00	450.65	0.00	0.00	0.00	0.00	941.65	0.00
22.	Franklin County	79.00	215.00	0.00	227.41	0.00	0.00	295.41	93.35
23.	Frederick County	10.00	95.00	0.00	0.00	0.00	106.91	106.91	0.00
24.	Goochland County	320.39	418.99	98.60	0.00	0.00	418.99	418.99	98.60
25.	Grayson County	72.00	31.00	0.00	0.00	0.00	0.00	0.00	293.06
26.	Halifax County	25.00	175.00	200.28	0.00	0.00	200.28	200.28	0.00
27.	King William County	340.00	535.00	584.00	0.00	0.00	594.00	584.00	0.00
28.	Loudoun County	2,218.28	1,360.39	211.26	854.56	13.01	2,164.73	2,246.78	1,777.99
29.	Louisa County	614.00	262.99	0.00	884.99	0.00	884.99	620.00	884.99
30.	Lunenburg County	1,529.90	1,529.90	0.00	0.00	0.00	1,529.90	1,529.90	0.00
31.	Luray, Town of	0.00	0.00	0.00	0.00	0.00	0.00	0.00	463.60
32.	Mecklenburg County	304.00	2,000.00	2,304.00	0.00	0.00	2,304.00	2,304.00	0.00
33.	Middlesex County	25.00	95.00	120.47	0.00	0.00	120.47	120.47	0.00
34.	Montgomery County	750.90	482.63	482.63	261.03	261.03	221.60	972.50	750.90
35.	Nelson County	82.00	54.00	0.00	0.00	0.00	0.00	136.00	0.00
36.	Newport News	0.00	1.00	0.00	0.00	0.00	0.00	1.00	1.00
37.	Northampton County	299.00	274.50	583.00	583.00	0.00	583.00	583.00	0.00
38.	Northumberland County	70.00	0.00	0.00	0.00	0.00	0.00	78.00	0.00
39.	Orange County	686.37	595.72	0.00	0.00	0.00	0.00	576.30	0.00
40.	Page County	35.00	10.00	35.00	0.00	35.00	35.00	35.00	35.00
41.	Patrick County	0.00	0.00	0.00	0.00	0.00	0.00	0.00	147.59
42.	Pittsylvania County	170.00	30.00	0.00	0.00	0.00	0.00	202.10	0.00
43.	Prince Edward County	334.00	411.44	0.00	0.00	0.00	745.44	745.44	0.00
44.	Prince George County	305.37	418.00	0.00	0.00	0.00	470.00	470.00	0.00
45.	Rappahannock County	103.00	175.00	55.00	0.50	0.00	61.00	727.62	446.62

46.	Richmond County	106.00	211.00	23.00	0.00	0.00	173.15	475.45	23.15
47.	Rockbridge County	458.22	254.11	111.93	18.02	0.00	502.95	506.40	0.00
48.	Rockingham County	132.77	1,089.00	1,101.47	248.10	0.00	1,101.47	1,234.24	1,216.80
49.	Shenandoah County	0.00	0.00	0.00	0.00	0.00	65.05	65.05	0.00
50.	Stafford County	201.44	201.44	201.44	0.00	0.00	201.44	204.44	0.00
51.	Surry County	0.00	0.00	0.00	0.00	57.62	57.62	0.00	57.62
52.	Tazewell County	533.00	355.00	0.00	0.00	0.00	0.00	888.00	0.00
53.	Warren County	288.03	288.03	189.54	0.00	0.00	0.00	288.03	0.00
54.	Washington County	313.50	40.00	0.00	0.00	0.00	0.00	354.18	0.00
55.	Westmoreland County	80.00	10.00	0.00	0.00	0.00	100.05	100.05	1.13
56.	Wythe County	420.00	147.00	200.00	200.00	100.00	351.71	531.71	0.00
57.	York County	75.37	75.37	75.37	75.37	75.37	75.37	75.37	75.37
	Totals	Agricultural Use	Forestral Use	Natural Habitat and Biological Diversity	Historic Preservation	Natural-Resource Based Outdoor Education & Recreation	Watershed Preservation	Preservation of Scenic Open Space	Conservation of Open Space Lands Designated by Fed., State or Local Gov't
	Acre totals statewide	23,637.74	24,347.74	10,450.82	6,156.96	542.03	24,758.50	34,520.21	13,620.06
	Percentage of total Conservation Value acres	17.12%	17.64%	7.57%	4.46%	0.39%	17.94%	25.01%	9.87%

Background on the Development of the Value Review Criteria

The Land Preservation Tax Credit Conservation Value Review Criteria were first adopted by the VLCF Board on November 21, 2006, after extensive public meetings and opportunity to comment. From the beginning of the process, DCR had anticipated that finalization of the LPTC Review Criteria would require an iterative process with many revisions in response to issues and questions raised by stakeholders and projects being reviewed. At the August 7, 2008, VLCF 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. The Board considered the stakeholders' recommendations and adopted the current criteria amendments at their meeting on March 27, 2009 (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.

¹ 2 VAC 5-20

a. For the purposes of this category, “land used for tree growth” means an area that meets one of the following conditions²:

(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.

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 percent 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

² 4VAC10-20

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) 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.

³ Virginia Code § 10.1-209

⁴ Virginia Code § 10.1-209

⁵ 26 CFR § 1.170a-14(d)(5)

(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:

(1) Lands where development (for example, buildings, roads, or parking lots) covers more than 15 percent 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 26 CFR § 1.170A-14(d)(2)

⁷ 4VAC5-20-20(A)

⁸ 26 CFR § 1.170A-14(d)(2)

⁹ 4VAC5-20-20(A)

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.

(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.

¹⁰ 4VAC5-20-20(C)

¹¹ Virginia Code § 58.1-3666

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.

¹² 12 CFR § 339.2

¹³ 4VAC5-20-20(F)(3)

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.

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 percent 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

¹⁴ 26 CFR §1.170A-14(d)(4)

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

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.