



**IMPROVING THE VIRGINIA LAND
CONSERVATION INCENTIVES ACT OF 1999:
MANDATORY PRE-REGISTRATION CERTIFICATION OF CREDITS**

A Successful Tax Incentive. Through the Virginia Land Conservation Incentives Act of 1999, the Commonwealth is investing in conservation that will preserve and improve the quality of life of Virginians far into the future. The state income tax credits offered under the Act have encouraged many Virginia landowners to voluntarily protect the conservation values of their land for the benefit of the public.

Exploitation Problems. Despite its success, potential problems with the design of the Act have become apparent, particularly the credit program's susceptibility to exploitation. Such exploitation may impair the program's efficiency and effectiveness if corrective measures are not taken by the General Assembly and the Virginia Department of Taxation. The Department has made it clear that it does not have the resources to quell any but the most egregious and obvious exploitation on its own.

A Cap on Credits. Placing a cap on the amount of tax credits that can be generated by a conservation or open-space easement (or land) donation should be considered as a first step towards mitigating the various problems associated with the Act. See *An Evaluation of the Land Conservation Incentives Act of 1999*, available from Conservation Partners, LLC. A cap should effectively deter exploitation on a very large scale.

After the Cap. Even after a cap has been implemented, exploitation on a smaller but still significant scale is likely to continue. The Department of Taxation only will be able to quell exploitation of the program with respect to a small number of abusive credit claims, and always after the fact (i.e., after the claims have been made). **The most efficient way to encourage widespread compliance with applicable standards is to recruit certain market players to pre-screen the various elements of credit claims, eliminating most potential abuse before the credits are even registered with the Department.**

Easement Holders. The government agencies and non-profit organizations that accept easement donations should be carefully screening the easement transactions they engage in, but such easement holders have their hands full protecting land, and typically do not have the expertise to screen appraisals or other highly technical aspects of easement transactions. Consequently, we recommend that other players be recruited in the fight against abuse of the program.

Required Certification by Licensed Tax Credit Reviewers. Requiring the certification of all credits by licensed reviewers prior to the credits' registration with the Tax Department would ensure that all credits are professionally pre-screened before they are claimed, significantly easing the Department's enforcement workload, curbing abuse in a cost-effective manner, and resulting in a far more efficient and efficacious tax credit program.

- Licensed credit reviewers would certify credits as compliant with a published set of standards created and/or endorsed by the Tax Department. The standards would



address both quality issues (the easement must provide significant public benefit by providing an appropriate level of protection for land with important conservation values) and valuation issues (the appraisal estimating the value of the donation must employ proper methodology and be appropriately supported by market evidence).

- Licensed reviewers likely would charge a fee for the certification service they provide, though competition among reviewers would promote efficiency and drive certification fees down over time.
- Certification by a licensed reviewer would not prevent the Tax Department from contesting a credit claim and disallowing the credits in whole or in part.
- Reviewers that repeatedly certify credits from transactions subsequently determined by the Tax Department to be abusive would lose their licenses and be subject to monetary penalties. Reviewers also would be subject to regular examination by the Department.
- Repeatedly rejected credit claimants could avail themselves of a limited fee-based appeal process at the Tax Department on a first-come, first-served basis.
- The certification requirement would apply to all land preservation tax credits, whether they are to be transferred or used by the original donor, thus preventing circumvention of the requirement through the use of pass-through entities and other stratagems.
- Persons and entities wishing to provide the certification service would apply to the Tax Department for licensure. The opportunity to become a licensed reviewer would be open to any person or entity qualified to review easements and appraisals for compliance with the Department's standards. The expertise of the applicant would be evaluated in the course of the application procedure.
- Implementation of the certification requirement could be phased in incrementally. For example, in the first year, only credit claims in excess of a certain dollar amount might be made subject to the requirement.

NOTICE: This document is intended for educational and informational purposes only. Nothing herein is to be considered the rendering of legal or tax advice and readers are responsible for obtaining such advice from their own professional advisors.

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