



# **Ensuring Conservation Value of Easements**

## **Conservation Value Review Criteria and Procedure**

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# Key Points

- DCR's verification review began January 1, 2007, as part of legislative changes
- Only review large donations (\$2.5M or more) that apply for \$ 1 M or more in tax credits
- “Conservation Value” involves 3 components prescribed by VLCF criteria (Conservation Purpose, Public Benefit, Water Quality/Forest Stewardship)



## Key Points (cont.)

- In 2007, DCR reviewed 18 of the 254 known donations filed. Represents 8% of applications but 25% of total credits claimed.
- 14 of the 18 required changes to clarify the conservation values. Only 1 was unresolved.
- Dept. of Taxation retains responsibility for valuation and appraisal review and for issuing the tax credit.

# 2006 Legislative Reforms To Ensure Conservation Value

- \$100 Million annual Cap (adjusted by the CPIU)
- Credits available only upon approval by TAX; changed from taxpayer “registering” credit
- Increased Taxation scrutiny over appraisals
- Established DCR Oversight Role

# 2006 Legislative Reforms To Ensure Conservation Value

- DCR Oversight Role to include:
  - Annual Report on all LPTC transactions
  - Verification to TAX the Conservation Value of land donations where credit of \$1 M or more is claimed (requires \$2.5M transaction)
- VA. Land Conservation Foundation to develop criteria to be used by DCR
- Tied in Water Quality Improvements and Forest Stewardship
- Legislative changes final on 8/28/06; effective 1/1/07

# DCR has Two Roles In Ensuring Conservation Value

- 1. Preparing an annual report on conservation easements requesting LPC.
  - Report Delivered to the Chairmen of the House Committee on Appropriations, House Committee on Finance, and the Senate Committee on Finance by December 1<sup>st</sup>.
- 2. Verification to TAX the Conservation Value of land donations where credit of \$1 M or more is claimed (requires \$2.5M transaction)



# LPC Annual Report 2007

## Preliminary Findings

- 254 tax credit applications filed for the \$100 million available in 2007.
- Amount of Acreage for which tax credits were applied is over 59,500 (out of over 78,200 total acres conserved statewide).
- 76% of acres protected in 2007 received tax credit.



# Annual Report

## 2007 Tax Credits

### Preliminary Findings

- Top Four Localities
  - By % of Total LPC Claimed:
    - Loudoun County 15%
    - Albemarle 12%
    - Fauquier 10%
    - Rockbridge 5%
  - By % of Total Acres Preserved:
    - Rockbridge 9%
    - Highland 8%
    - Albemarle 7%
    - Fauquier 7%

# LPC Annual Report 2007

## Preliminary Findings

- Average size property is 234 acres
- Forest Stewardship: 79% had Forest Stewardship Plans
- Water Quality: 66% had Agricultural BMP's
- Conservation Purpose applied for:
  - Scenic Preservation 79%
  - Agricultural Use 67%
  - Forestal Use 66%
  - Watershed Preservation 50%
  - Natural Habitat 37%
  - Land Designated by Local Government 26%
  - Historic Preservation 17%
  - Outdoor Recreation 3%



# Process for Developing Verification Criteria

- Virginia Land Conservation Foundation includes appointees of Governor, Speaker, Senate (Ticer, Deeds), Secretary NR (chair), Sec. of Ag/Forestry
- VLCF Subcommittee & DCR staff developed draft Criteria
- All subcommittee meetings were public and received substantial input from VOF, TNC, PEC, Farm Bureau, tax credit brokers, land trusts, and interested individuals
- Held 4 public meetings (2 in Charlottesville, Richmond, Blacksburg)



# Process for Developing Criteria (continued)

- 30-day comment period
- Received 36 written comments
- Held additional stakeholders' meeting to share proposed changes; well received
- Made numerous changes based on the public input
- VLCF Board adopted at 11/21/06 meeting

# VLCF Verification Criteria

- Verification of Conservation Value only applies to land donations claiming \$ 1 M or more; not required for those claiming less
- VLCF Criteria involves 3 factors that taken together are considered **Conservation Value** of donated land:
  1. *Conservation Purpose*
  2. *Public Benefit*
  3. *Water Quality and Forest Management.*
- Review Criteria are based on IRS Code § 170(h), and contain specific requirements that reflect state policy.
- State review is predictable, prompt, and based on specific criteria.

# VLCF Criteria

## 1. Conservation Purpose

Properties must meet at least 1

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
8. Conservation and Open Space Lands Designated by Local Governments



# 1. Conservation Purpose (Continued)

- Multiple options for meeting each purpose.
- Safe harbors available; if met, satisfies specific purpose.
- Examples of Safe Harbors:
  - Agricultural Use: land that a locality has designated as being subject to use value taxation.
  - Historical Preservation: a battlefield individually listed in the Virginia Landmarks Register or the National Register of Historic Places.
- Examples of public recreation lands that will not meet the Criteria are those where development covers more than 15% of the site, amusement parks, or private beaches.



# VLCF Criteria

## 2. Public Benefit

DCR's review ensures that safeguards exist in deed to:

- Protect conservation values of the land in perpetuity.
- Prohibit intentional destruction or significant alteration of the conservation values of the protected property.
- Assure that conservation value of the property will not be adversely affected by future division or development of the property.



## 2. Public Benefit (continued)

The deed of easement must contain the following restrictions:

- limits on no. of permitted subdivisions of property;
- limits on permitted new buildings & structures;
- restrictions on location of new buildings & structures;
- restrictions on location of new roads or access ways;
- limits on alterations, demolition, or ground-disturbing activity that may impact cultural/historic resources and natural heritage resources.



# VLCF Criteria

## 3. Water Quality and Forest Stewardship

### To Protect Water Quality

- If property contains wetlands, frontage on perennial stream or river, lakes, or tidal waters, then deed must provide for a 35-foot riparian buffer.
  - Exception: NOT required for historic lawns, intermittent streams, ornamental ponds
  - Allow: limited stream crossings, stream access points, limited mowing
- If the property contains lands in agricultural use, then deed shall require implementation of a written conservation plan that stipulates the use of best management practices. (Similar requirement to receive state or federal Cost Share assistance.)

# 3. Water Quality and Forest Stewardship

## Forest Stewardship

- Applies if property contains 20 acres or more of forest lands.
- Deed must require written forest management plan or Virginia Forest Stewardship Plan in place prior to the commencement of timber harvesting or other significant forest management activities.
- Plan to be developed by or in consultation with Dept of Forestry or be consistent with Forest BMPs



# DCR Pre-Filing Review

- Potential applicants are strongly encouraged to request an optional pre-filing review.
- Offers opportunity to correct deficiencies before deed is recorded.
- Components of DCR review
  - Conduct site visit
  - Research local, state, & federal databases/maps to ensure deed protects previously documented resources
  - Review deed to ensure Criteria restrictions are included
  - Discuss any issues with applicant or representative
  - Send pre-filing comment letter or final verification letter



# 2007 DCR Review Results

- Changes to deeds included:
  - Requiring a forest management plan.
  - Requiring water quality buffers.
  - Protecting resources previously listed as National or State Historic Landmarks from demolition and alteration.
  - Requiring protection of sensitive resources (such as a bald eagle's nest) documented in state databases.
- Examples of the added value of DCR's Review:
  - As originally submitted to DCR, one application would have allowed almost unlimited development of the property with buildings under the terms of the proposed easement.
  - Another application included a deed that did not mention the existence of a bald eagle's nest on the property.



# Benefits of the DCR Review

- Ensures consistency in the conservation value of the land transactions claiming over \$ 1 M in state tax credit.
- Provides a check and balance on the quality of the largest easements and land donations.
- Enhances the value of Virginia tax dollars by adding water quality and forest stewardship protections.
- Expectation is for \$ 1 M or more, landowner will conserve their land and provide water quality buffers or use BMPs to reduce stream erosion and runoff, and properly manage forests.



# Future Efforts to Ensure Conservation Value

- Working with VOF to ensure that DCR review begins earlier in process in order to avoid issues later.
- Holding joint VOF-DCR educational forums for lawyers and others who advise landowners.
- Willing to consider future modifications in VLCF criteria as warranted.