



**The Virginia Department of Conservation and Recreation
LAND PRESERVATION TAX CREDIT QUESTIONS AND ANSWERS
February 2008**

Role of the Department of Conservation and Recreation

As of January 1, 2007, DCR became responsible for conducting reviews of the conservation value of applications requesting \$1 million or more in Virginia's Land Preservation Tax Credit (LPC). This responsibility was given to DCR by the Governor and the Virginia General Assembly pursuant to the Land Conservation Incentives Act (Virginia Code § 58.1-512). All such donations must meet the conservation value review criteria adopted by the Virginia Land Conservation Foundation Board in November of 2006. The criteria establish minimum standards.

To claim \$1 million or more of LPC, the taxpayer must have made a land 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. This is an important point as some persons have mistakenly indicated that all land conservation easements or donations over \$ 1 Million must undergo a DCR review. This is NOT true! In 2007, only 18 of over 180 such transactions required DCR review.

You may contact DCR for a copy of the criteria or visit DCR's website at www.dcr.virginia.gov/land_conservation/ (click on "Land Conservation Tax Credits"). The Director of DCR is charged with verifying the conservation value of these donations to the Department of Taxation (TAX) in advance of TAX issuing a LPC.

Since January 1, 2007, when the Governor and General Assembly gave DCR this responsibility, questions have arisen from applicants. DCR has worked to better explain the criteria and, where necessary, to provide additional guidance. The following questions and answers have been compiled to assist future applicants in the development of their tax credit requests.

Questions and Answers:

What do I need to do to ensure that my donation has "Conservation Value" that meets the state standards?

You need to meet three requirements.

First, your donation has to have ONE of eight Conservation Purposes identified by the Virginia Land Conservation Foundation Conservation Value Criteria (VLCF Criteria). You can select as many Conservation Purposes as you believe apply, but you are only required to have ONE verifiable Conservation Purpose to meet the DCR review.

Second, you have to ensure that you protect this Conservation Purpose by imposing the restrictions found in the Public Benefit section of the VLCF Criteria. These restrictions limit development of the property in ways that could potentially harm the Conservation Purpose for which you have donated the conservation easement. These restrictions include:

- ♦ limiting the division of the land;
- ♦ limiting the number of structures that can be built on the property; and
- ♦ limiting the locations of new structures and roads.

Third, you must protect the resources that the Virginia General Assembly has identified as being of “special importance” to the Commonwealth of Virginia, which are water quality and forestlands.

- ♦ To protect water quality, all conservation easements must require a minimum 35-foot riparian vegetated buffer along or around any wetlands, perennial streams, rivers, sinking streams, lakes, or tidal waters in or adjoining the property. Where the land is in agricultural production, the conservation easement must stipulate that the deed requires a Conservation Plan that incorporates the use of agricultural best management practices for the farmed areas.
- ♦ If the property contains 20 acres or more of forestlands, then the conservation easement must require a written forest management plan.

What is a Riparian Vegetated Buffer?

For the purposes of the Criteria, a riparian area is the 35 feet of land located immediately adjacent to perennial streams, rivers, sinking streams, lakes, and wetlands. A vegetated buffer in the riparian area intercepts and absorbs sediments, pesticides, nutrients, and fecal bacteria from grazing animals and farm fields before they can run off the land and pollute the water body. Stream-bank stabilization provided by riparian buffer areas can prevent stream-bank erosion and loss of farmland, and vegetated buffers also increase biodiversity by providing habitat for wildlife.

Can I mow the 35 feet of land in the Riparian Vegetated Buffer to control invasive species?

Yes, you can mow the buffer area up to three times in one calendar year. This would control invasive species. You can also burn the buffer to control invasive species if that is appropriate for the location and management of the vegetative cover. Within the 35-foot buffer area you must maintain vegetative cover. Vegetative cover may include trees, shrubs, and warm season grasses. The buffer does not have to include all three, though a mixture of all three has been shown to be most effective at protecting water quality.

What can be done in a Riparian Vegetated Buffer?

You can do anything in a buffer area that is not specifically prohibited by the conservation easement. Some of the things you can do are: mow the buffer area three times a year; plant native trees, shrubs, and grasses; maintain existing structures and

roads; construct water dependent amenities such as docks; and have access points to the water.

What can I not do in a Riparian Vegetated Buffer?

You cannot do things that are specifically prohibited or restricted by the conservation easement. The conservation easement must prohibit construction of new buildings, structures, and roads within the buffer. Livestock grazing must also be restricted, though limited designated crossing points are permitted.

Others have told me that I must have a 100-foot buffer and not just a 35-foot one.

A 100-foot buffer is one of several options an applicant may wish to consider to qualify under the Conservation Purpose of “Watershed Preservation”. If this purpose is not selected, then only a 35-foot buffer will be required immediately adjacent to perennial streams, rivers, sinking streams, lakes, and wetlands that may exist on the property. A buffer is not required on an intermittent stream.

I have an ornamental pond on my property; does it require a riparian buffer?

The pond would require a riparian buffer only if it is shown to have water flowing out from it on a perennial basis. If necessary, during our site visit, DCR can evaluate the outflow and determine if a buffer is required. In rare situations where an easy determination is not possible, DCR has trained staff who can assist in the determination.

Is a riparian buffer required in areas where I may have a “historic lawn”?

Documented historic landscapes involving mowed lawns or pastures on historic properties (verified by the Department of Historic Resources) may be maintained as such.

What is a Farm Conservation Plan?

A farm conservation plan is currently needed for land in agriculture production where the owner is claiming a land preservation tax credit over \$1 million. A farm conservation plan is prepared by the landowner, the easement holder, and either the local office of the Soil and Water Conservation District or the local Natural Resources Conservation Service officer. It is a guide for the landowner’s agricultural operations that identifies the best conservation practices for that particular farm. A farm conservation plan provides resource development opportunities over a five- to ten-year period, helping a farmer make short-term decisions that will be compatible with his or her long-term goals.¹

Who writes the Conservation Plan?

It is prepared jointly by the landowner and easement holder in consultation with the local Soil and Water Conservation District or the local Natural Resources Conservation Service officer. DCR suggests that the landowner or the easement holder consider

¹ NRCS National Planning Policy Handbook website: policy.nrcs.usda.gov/viewerFS.aspx?id=73.

starting by contacting the local office of one of Virginia's 47 soil and water conservation districts or the local office of the USDA Natural Resources Conservation Service.

What happens if my agricultural operation changes?

One of the benefits of a conservation plan is that it is flexible; as the resources and needs of the agricultural operation change, the conservation plan can be amended to reflect those changes. The plan should be amended if the property or a portion of the property goes out of agricultural production or the type of agricultural production changes.

What is a Forest Management Plan or a Virginia Forest Stewardship Plan?

The Virginia Department of Forestry (DOF) reports that the first step toward a healthy productive woodland is the development of a Forest Stewardship Plan. DOF Area Foresters are available in every county to provide management plans for woodland owners.

According to DOF, a Stewardship Plan:²

- ♦ is designed to achieve the specific landowner's objectives
- ♦ provides an inventory of tree species composition, age, merchantability, growth rate, and wildlife habitat conditions
- ♦ considers multiple uses of the total forest resource
- ♦ provides options for developing wildlife habitat, aesthetics, and recreation opportunities accomplished in harmony with timber production
- ♦ recommends methods of protecting water quality and sensitive natural areas during logging activities
- ♦ includes a map showing location of the various forest types, land uses and natural features such as drainages
- ♦ includes reference information on resource management

If my property has been verified as farmland or forest land must it retain this use?

It is not necessary for a property to remain in agricultural or forestal production. However, land which has been indicated to have conservation value as agricultural or forestal land must be protected by the easement and agricultural or forestal use by future generations must remain a viable option.

How can I be confident that a recorded easement will meet DCR's verification criteria?

In order to facilitate successful applications for tax credits of \$1 million or more (which require a land or easement donation whose value meets or exceeds \$ 2.5 million), the Director of DCR offers an optional pre-filing review to verify conservation value before recordation of the easement.

² Virginia Department of Forestry, Forest Stewardship, The Forest Stewardship Plan, ¶ 3 (2007), at <http://www.dof.virginia.gov/mgt/index-stewardship.shtml>.

The pre-filing review is optional and is available upon request to any donor who has submitted documentation that includes the following:

1. A completed LPC tax form as required by TAX, and other specified documentation;
2. Confirmation of approval of the conservation easement document by its holder; and
3. Confirmation that the donation of the easement or bargain sale will produce tax credits of \$1 million or more.

DCR staff will consult with other agencies as needed to ensure that the deed of easement provides appropriate protection for the resources. DCR will then issue a letter outlining its findings. Although review of recorded easements will receive priority handling, requests for pre-filing review will be handled by DCR in the order they are received and every attempt will be made to complete reviews within 90 days. During 2007, DCR's pre-filing review took an average of 20 working days to complete.

A landowner's reliance on the pre-filing review should be predicated on the recording of the easement document in a form consistent with the DCR review.

Who can help me through the verification process?

The landowner has a variety of technical experts available to assist them through this process ranging from local land trust representatives, to attorneys, to tax consultants. DCR will continue to provide educational opportunities to these technical experts so that they may better serve the tax credit applicants in the future.

What if I have additional questions?

For additional information about DCR's review of Land Preservation Tax Credit applications, contact the agency's land conservation analyst, Jeremy Stone, at (804) 371-5218 or by e-mail at jeremy.stone@dcr.virginia.gov.

An applicant may also visit the Land Conservation Tax Credit page of DCR's website at www.dcr.virginia.gov/land_conservation/.

Rulings issued by the Commissioner of the Virginia Department of Taxation related to the subject of land conservation tax credits may be found at www.policylibrary.tax.virginia.gov/OTP/Policy.nsf.