

Virginia Land Conservation Foundation Board of Trustees
Tuesday, November 21, 2006
The Library of Virginia
Richmond, Virginia

Virginia Land Conservation Foundation Board of Trustees Members Present

Secretary L. Preston Bryant, Jr. Chair	Senator Patricia S. Ticer, Vice Chair
R. Brian Ball	Terri Cofer Beirne
Alexandra Liddy Bourne	Nancy T. Bowles
Margaret H. Davis	William C. Dickinson
Wendell P. Ennis	Albert Essel
Mary Bruce Glaize	Thomas B. Graham
L. Clifford Schroeder, Sr.	Albert C. Weed, II
Joseph H. Maroon, Executive Secretary	

Virginia Land Conservation Foundation Board of Trustees Members Not Present

Senator R. Creigh Deeds	Lou Giusto
Bonnie Moorman	Leah Fried Sedwick

Staff Present

Nicole M. Rovner, Deputy Secretary of Natural Resources
Ryan Brown, Office of the Attorney General
David C. Dowling, DCR
Michael R. Fletcher, DCR
Rick Hill, DCR
Bob Lee, Virginia Outdoors Foundation
Sarah Richardson, DCR
Larry Smith, DCR
Elizabeth Tune, Department of Historic Resources
Brad Williams, Virginia Department of Forestry

Others Present

Phil Hocker, ConServ Co.
Rex Linville, PEC
David Phemister, The Nature Conservancy
Rebecca McCoy, USCPA
Helen Tansey, Virginiaforever
Charles Seilhemer, VOF Board Member
G. William Thomas, James Monroe Foundation

Call to Order

Secretary Bryant called the meeting to order and declared a quorum present.

Approval of Minutes

MOTION: Mr. Dickinson moved that the minutes of the August 9, 2006 meeting of the Virginia Land Conservation Foundation Board of Trustees be approved as submitted.

SECOND: Mrs. Glaize

DISCUSSION: None

VOTE: Motion carried unanimously

Executive Secretary's Report

Mr. Maroon gave the Executive Secretary's report.

Mr. Maroon said that with regard to the Governor's land conservation goal, DCR and many of the public and private partners are contributing to this goal. He distributed a handout that featured a page from the DCR website. On the website is a tracking thermometer that will be updated to show acres conserved toward the goal. He said that relative to the 400,000-acre goal the Commonwealth still has 319,152 to reach that goal.

Mr. Maroon gave a brief update regarding the Virginia Outdoors Plan. This is a comprehensive review of recreational and outdoor needs in the Commonwealth. The 2002 report was the first to include land conservation discussions and recommendations. Staff expects to complete the plan in early 2007.

A legislative study committee has met to discuss matters related to land preservation, principally the issue of the purchase of development rights. Senator Emmett Hanger and Delegate Linwood Lewis participated.

Mr. Maroon said there were two upcoming land conservation workshops.

A land conservation workshop for state employees is scheduled for December 13 at the Virginia Historical Society. This workshop will provide an overview for state agency personnel who may be interested in assisting with land conservation and in achieving the Governor's 400,000-acre goal.

On December 14 there will be a meeting with a working group to discuss military installation projects and other conservation related matters. That will be held at Pocahontas State Park. Participants include DCR, military representatives, Virginia's Sustainable Future, and Ducks Unlimited.

Additionally, Secretary Bryant and Secretary Baskerville put together a two-day forum to talk through the key issues related to smoothing out the state land acquisition transaction process.

Secretary Bryant said it was a productive two-day meeting that will help further the Governor's goal. He said it was beneficial to have participation from the Trust for Public Land, the Audubon Society and the Nature Conservancy. Also, the Office of the Attorney General was a key participant.

Secretary Bryant noted that local governments are also critical partners in achieving the Governor's goal.

Announcement of VLCF Grant Round

Grant Round, November 15, 2006 through January 16, 2007

Mr. Maroon said the grant round officially began on November 15, 2006 and would end on January 16, 2007. There is \$5 million available for this grant round.

He noted that a Grant Applicant Workshop is scheduled for December 4 in Charlottesville.

Secretary Bryant asked how many applications were typically received.

Ms. Richardson said that it varied with the availability of funds.

Mr. Dickinson asked if projects that were not approved remained under consideration.

Ms. Richardson said those would have to reapply.

Mr. Dickinson expressed concern that some applicants may see the application process as too much of a burden.

Land Conservation Tax Credit Review

Ms. Rovner gave the following overview of the Statutory Provisions Governing VLCF Conservation Verification Requirements for the Land Preservation Tax Credit.

Authority for criteria

Virginia Code § 58.1-512 D 3 a

*No credit in the amount of \$1 million or more shall be issued with respect to a donation unless the **conservation value** of the donation has been verified by the Director of the Department of Conservation and Recreation, **based on the criteria adopted by the Virginia Land Conservation Foundation for this purpose.** Such*

criteria and subsequent amendments shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.), but the Virginia Land Conservation Foundation shall provide for adequate public participation, including adequate notice and opportunity to provide comments on the proposed criteria. The Director shall act on applications within 90 days of his receipt of a complete application and shall notify the taxpayer and the Department of Taxation of his action.

Meaning of “conservation value”

Virginia Code § 58.1-512 A

*For taxable years beginning on or after January 1, 2000, there shall be allowed as a credit against the tax liability imposed by §§ 58.1-320 and 58.1-400, an amount equal to 50% of the fair market value of any land or interest in land located in Virginia **which is conveyed for the purpose of agricultural and forestal use, open space, natural resource, and/or biodiversity conservation, or land, agricultural, watershed and/or historic preservation**, as an unconditional donation by the landowner/taxpayer to a public or private conservation agency eligible to hold such land and interests therein for conservation or preservation purposes. For such conveyances made on or after January 1, 2007, the tax credit shall be 40% of the fair market value of the land or interest in land so conveyed.*

Virginia Code § 58.1-512 D 1

The taxpayer shall apply for a credit after completing the donation by submitting a form or forms prescribed by the Department in consultation with the Department of Conservation and Recreation. If the application requests a credit of \$1 million or more, then a copy of the application shall also be filed with the Department of Conservation and Recreation by the taxpayer. The application shall include, but not be limited to:

- a. A description of the **conservation purpose or purposes** being served by the donation;*
- b. The fair market value of land being donated in the absence of any easement or other restriction;*
- c. The **public benefit** derived from the donation;*
- d. The extent to which **water quality best management practices** will be implemented on the property; and*
- e. Whether the property is fully or partially forested and a forest management plan is included in the terms of the donation.*

Conservation value is also determined by federal law because Virginia Code § 58.1-512C2 provides that *“Qualified donations shall include the conveyance in perpetuity of a fee interest in real property or a less-than-fee interest in real property, such as a conservation restriction, preservation restriction, agricultural preservation restriction, or watershed preservation restriction, provided that such less-than-fee interest qualifies as a charitable deduction under § 170 (h) of the U.S. Internal Revenue Code of 1986, as amended.”*

Treasury Reg. §1.170A-14 requires that a donation must meet one of four **conservation purposes** in order to qualify as a charitable deduction:

1. Recreation or education
2. Relatively natural habitat of fish, wildlife, or plants, or similar ecosystem
3. Open space (including farmland and forest land)
4. Historically important land area or historic structure

Land Preservation Tax Credit Conservation Value Review Criteria

Mr. Maroon reviewed the subcommittee process and the draft criteria. Members of the subcommittee were Mr. Ball, Ms. Beirne, Mr. Dickinson, Ms. Bourne and Ms. Glaize. The subcommittee met twice. Mr. Ball chaired the group.

DCR staff held four public hearings to receive comments on the draft criteria: two in Charlottesville, one in Richmond and one in Blacksburg. About 30 people attended the various meetings.

DCR also received forty written comments. Copies of those comments were distributed to members and are available from DCR.

Mr. Maroon said a key issue identified was concern with the 100 ft. buffer requirement. The protection of historic facades was a concern, as well as specific suggestions regarding the criteria.

Mr. Maroon said that DCR staff David Dowling, Sarah Richardson and Rick Hill did a considerable amount of work on the criteria.

A final meeting of interested parties from several organizations was held following the public comment period to discuss draft revisions.

Mr. Maroon said the draft before the Board included DCR staff revisions based on public comments and additional suggestions from the stakeholder meeting.

Mr. Maroon said the three main components were: conservation purpose, public benefit, and general water quality and forest management.

Mr. Maroon said this document differed from the version sent out for public comment. The procedural guidelines and reporting requirements have been moved to a separate document that the Department will promulgate as guidance.

Another issue of concern was the need for a pre-approval process. The procedural guidelines have a provision for a pre-filing review.

A copy of the draft criteria is included as Attachment #1.

Mr. Maroon said that lines 17-21 defined the three principal sections.

Mr. Maroon said that the DCR role in this was only in relation to easements that come to a value of \$2 1/2 million or more which will generate \$1 million in tax credits.

Mr. Maroon said that in the section on conservation purpose the intent was to outline eight different conservation purposes. He noted that these generally tracked with federal IRS requirements. He said that these were noted as “safe harbors” meaning that if a landowner met one of those conservation purposes, they had met the “safe harbor” requirement.

Mr. Maroon continued the review of the document.

Ms. Bourne suggested that “safe harbors” be clearly defined with each section.

Mr. Dickinson said that references to urban forestry should include a term such as “if applicable” or “if available.” He noted that not every city or county has an arborist.

Ms. Bourne asked how a taxpayer would demonstrate conservation value. Would that be outlined in either the guidelines or the regulation?

Mr. Maroon said that it would not be specifically spelled out in either, but that the guidelines indicate that a landowner must include information supporting the conservation value with the documents submitted.

Ms. Bourne expressed a concern that this could lead to a broad interpretation on the part of the individual and on the part of the government. She suggested that a definition of conservation value belonged in the guidelines. She said that it should be clear how a landowner can demonstrate the conservation purpose.

Ms. Rovner noted that each of the definitions specifies the meaning of the conservation value.

Mr. Ball noted that not all items that a taxpayer would include for consideration could be anticipated. In those cases DCR would need to make a judgment call.

Mr. Maroon said that DCR would be fine with the discretion. He said he did not anticipate problems with the conservation purpose section.

Ms. Bourne asked if an old foundation was discovered and the landowner would like to restore the building for public viewing if the landowner would get a special permit.

Ms. Richardson said the key consideration would be whether there was a significant alteration of the recorded conservation value.

Mr. Maroon continued with the review of the document.

Ms. Bourne asked how these easement requirements were enforceable.

Mr. Maroon said that DCR was largely dependent upon the holder of the easement in that regard.

Mr. Graham noted that caves were not addressed.

Ms. Richardson said that if there were a conservation easement on the land, if public access was provided and if the landowner would not profit from the land then it would qualify for the tax credit.

Mr. Graham asked about visual easements in areas such as along the Appalachian Trail.

Ms. Richardson said that would qualify as the views from the trail would be protected.

Mr. Maroon noted that caves and other resources might also qualify under natural habitat.

Mr. Dickinson noted the section with regard to battlefields. He said that it appeared to be limited to Civil War sites.

Ms. Richardson said the term used was "any battlefield" and that if a non-Civil War battlefield met the standards it would be eligible.

Mr. Dickinson said he would encourage flexibility with regard to the 35 ft. buffers, particularly in urban areas.

Ms. Bourne said that in urban areas it was important to consider the conservation value to the state as a whole and not just for the urban area.

Mr. Maroon said that if the Board wants a change to a requirement less than the 35-foot buffer it would be important for the Board to direct that change.

The following language suggestion with regard to buffers was submitted by the Department of Historic Resources to address historic structures issues. This addresses Section C, General Water Quality and Forest Management.

Suggested language changes from Ms. Kilpatrick. DHR (handout)

- b. To qualify as a buffer under these criteria, the easement must:
1. prohibit within the buffer construction of new buildings or structures and roads (however, existing buildings or structures; reconstruction of documented historic buildings and structures on historic properties, and certain water-dependent structures such as docks are permitted, as are existing roads, limited stream crossings, and limited access points);
 2. restrict within the buffer other soil disturbance, including plowing (however, tree planting, forest management, archaeological investigations, and restoration, reconstruction, and maintenance of documented historic landscapes on historic properties are permitted.
 3. maintain within the buffer vegetative cover including forest, shrubs, or warm-season grasses. Mowed lawns or mowed or grazed pastures shall not constitute vegetative cover for the purposes of this provision. However, documented historic landscapes involving such materials on historic properties may be restored or reconstructed and maintained, and control of non-native vegetation or removal of diseased trees is permitted.

MOTION: Ms. Bourne moved that the language submitted by the Department of Historic Resources for Section C be included in the draft criteria.

SECOND: Senator Ticer

DISCUSSION: None

VOTE: Motion carried unanimously

Mr. Maroon said that The Nature Conservancy had also suggested revisions.

Secretary Bryant moved to a public comment period and called on Mr. Phemister from The Nature Conservancy.

Opportunity for public comment on revisions to proposed criteria

Mr. Phemister said the draft criteria were very well done. He offered the following suggested language on behalf of The Nature Conservancy.

Existing Proposed Language

1. *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 subdivision and development of the property. This may be accomplished by including:*
 - a. *limitations on the number, size, and location of new buildings, structures, or roads;*
 - b. *limitations on the permissible number of subdivisions;*
 - c. *establishment of no-build or no-road zones;*
 - d. *designation of building envelopes or pre-approved routes for roads;*
 - e. *restrictions on the collective footprint of all buildings or structures;*
 - f. *limitations on alterations, demolition, or ground-disturbing activity that may impact cultural or natural heritage resources; and/or*
 - g. *by requiring review and approval by the easement holder before initiating any such structures or roads.*

Suggested Replacement Language

1. 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 subdivision and development of the property. To ensure this protection of conservation values, every easement submitted for DCR review must include the following provisions:
 - a. Easement must include a clear limitation on the number of permitted subdivisions of the property.
 - b. Easement must limit 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.
 - c. Easement must place restrictions on the location of permitted new buildings and structures, either through the use of building envelopes, no-build zones, or through required review and approval of the location new buildings and structures prior to construction by the easement holder.
 - d. Easement must place restrictions on the location of permitted new roads, either through use of pre-approved routes, no-road zones, or through required review and approval of new roads prior to construction by the easement holder.
 - e. Easement must include limitations on ground-disturbing activity that may impact cultural or natural heritage resources.

Mr. Phemister said at the Friday stakeholders meeting that there was general agreement on the themes outlined above.

Mr. Maroon noted that the proposal from TNC was essentially suggesting that each easement meet these five criteria. He said that DCR staff is comfortable with the suggestion.

Mr. Dickinson said that he liked this approach, but noted a concern that some of the lands that are under these easements may be parkland in the future.

Mr. Maroon said that these types of requirements were typical in an easement.

Ms. Richardson said that the provisions limit, but do not prohibit, development depending on how they are written.

Mr. Bob Lee of the Virginia Outdoors Foundation said that in item “d” roads might be confusing. He noted that often times there were access ways on a property that provide access for permitted uses. He said he was not sure of the usage of the term roads. He asked if DCR felt comfortable with interpreting the difference.

In reviewing the road restrictions, Mr. Maroon suggested adding at the end of Section “d”, the words “Roads for permitted uses such as farming and forestry may be constructed and maintained. If the road is to a permitted use then it would be allowable.”

Mr. Lee said an access way should still be added.

Ms. Bourne said that a road or access way could be a public safety issue.

Secretary Bryant called for additional public comment.

Rex Linville of the Piedmont Environmental Council addressed Item “b”, “placing a limit on the number of new buildings.” He noted that the PEC works with the Virginia Outdoors Foundation. He said that his understanding of their easement draft is that the VOF will usually have a specific limit on the number of residential structures that would be permitted on the property. He noted that there is typically not a restriction on the number of agricultural structures. He said an absolute number on the types of agricultural structures might be difficult.

Mr. Phemister suggested the section be modified to say “or some combination thereof.” He said that the VOF template limits the number of residential buildings, but not the number of agricultural buildings. However there is a limit on the collective footprint of those structures.

Mr. Lee said that the new template for VOF easements incorporates those changes.

Ms. Tune said that it would be helpful to have clarification with regard to structures. She noted that the Department of Historic Resources would not consider limiting structures to be in their interest.

Mr. Hocker expressed appreciation to Mr. Maroon and the DCR staff. He said the draft was a move in the right direction and that he would recommend adoption.

Secretary Bryant called for other comments.

Mr. Phemister said that The Nature Conservancy was the only voice advocating the provision of the 100 ft. buffer. He said the flexibilities provided in the buffer language are numerous. He said if water quality and riparian habitats are to be addressed, he would encourage the Board not to create additional flexibilities in the buffer.

Mr. Phemister said that he also had concern with the inclusion of forest management as a permitted activity. He expressed concerns about opening the door to logging in the buffer.

Mr. Ball said there was significant discussion with regard to the 100 ft. buffer. He said that he would not advocate making a change from the draft.

Mr. Dickinson said that the point was there was a need for flexibility in urban situations.

Mr. Hill said the science supports having a minimum 35 ft. buffer. This usually includes conservation practices as well.

MOTION: Senator Ticer moved that the Virginia Land Conservation Foundation accept the language as recommended by The Nature Conservancy for inclusion into the draft criteria.

SECOND: Mr. Graham

DISCUSSION: Miss Rovner suggested that the TNC proposal be revised to read as follows:

Section B:

Easement must limit 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 some combination thereof*, OR by placing a limit on the collective footprint of all buildings and structures.

Section D:

Add the sentence, "Roads or access ways for permitted uses such as farming or forestry may be constructed or maintained as well as other public safety needs."

After additional discussion it was agreed that Ms. Richardson and staff would produce the final version reflective of the Board's recommendations.

VOTE: Motion carried

MOTION: Senator Ticer moved that the Virginia Land Conservation Foundation accept the draft criteria as presented by staff and as amended by Board action.

SECOND: Mr. Ball

DISCUSSION: None

VOTE: Motion carried unanimously

Presentation of Procedural Guidelines

Mr. Maroon reviewed a draft of the procedural guidelines. The draft copy is included as Attachment #2.

Mr. Weed asked about the appeal process.

Ms. Bourne noted a concern about a potential conflict of interest if DCR was a party to the tax credit transaction. She suggested an annual report to the General Assembly.

Ms. Rovner suggested the guidelines say, "the report shall specify which donations were made to DCR."

Next Steps Related to the Criteria

Mr. Dowling reviewed the next steps related to the criteria.

Mr. Dowling said the legislation indicates that the criteria will be transmitted by December 1 to the respective committee chairs of the House Finance and Appropriations Committee and the Senate Finance Committee.

He said DCR would work with the Department of Taxation to develop the tax forms. He said there was a meeting scheduled with the Department of Taxation for December 6. He said that DCR would also work with Taxation to develop a Memorandum of Understanding in terms of sharing associated funds.

FOIA and Conflict of Interest Presentation

Mr. Brown gave a presentation regarding the Freedom of Information Act and the Conflict of Interest Act. A copy of this presentation is available from DCR.

Other Business

There was no other business.

Next Meeting Date

Mr. Maroon said the next meeting would likely be in late May. Staff will contact members when more information is available.

Adjourn

There being no further business, the meeting was adjourned.

Respectfully submitted,

L. Preston Bryant, Jr.
Chairman

Joseph H. Maroon
Executive Secretary

Attachment #1

VIRGINIA LAND CONSERVATION FOUNDATION

Land Preservation Tax Credits – Conservation Value Review Criteria

This document sets out the criteria adopted by the Virginia Land Conservation Foundation, pursuant to Virginia Code § 58.1-512(D)(3), that the Director of the Department of Conservation and Recreation (DCR) will use to verify the conservation value of conservation easement donations that results in tax credit applications for \$1 million or more.

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 the sections below:

- § Conservation purpose;
- § Public benefit; and
- § General water quality and forest management.

Easement 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 DCR criteria will remain subject to later audit by the Virginia Department of Taxation for items not covered by the criteria (notably, but not limited to, valuation standards). In addition, donors claiming federal tax incentives will remain subject to audit by the Internal Revenue Service.

A. Conservation Purpose: The donated land or conservation easement must be conveyed for at least one of the following purposes, pursuant to Virginia Code § 58.1-512(A) and Internal Revenue Regulations § 1.170A-14. Each category includes “safe harbors” that will 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 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 stated in the deed of conservation easement.

1. Agricultural Use. A land area of five contiguous acres or more devoted to production for sale of plants and 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 conservation purpose for the agricultural use category:
 - (1) Land that a county, city or town has designated as “real estate devoted to agricultural use” or “real estate devoted to 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 § 15.2-4301 or § 15.2-4401.
 - (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. Other lands will meet the conservation purpose for this category, if the taxpayer demonstrates the conservation value of the land for agricultural uses.
2. Forestal Use. Land used for tree growth and maintained as a forest area under the following definitions.
- a. “Land used for tree growth” means an area of at least 20 contiguous acres from which livestock has been excluded and that meets one of the following conditions:²
 - (1) The land contains existing, well distributed, and commercially valuable trees. Land used for tree growth that has been recently harvested of merchantable timber, is regenerating into a new forest, and has not been developed for non-forest use will qualify.
 - (2) The land has trees but is not capable of growing a commercial timber crop because of inaccessibility or adverse site conditions such as steep outcrops of rock, shallow soil on steep mountainsides, excessive steepness, heavily eroded areas, coastal beach sand, tidal marsh and other site or environmental conditions.
 - b. The following lands will meet the conservation purpose for the forestal use category.
 - (1) Land 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.

¹ 2 Virginia Administrative Code (VAC) 5-20

² 4VAC10-20

- (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 that is adjacent to lands owned or managed by the United States Forest Service or the Virginia Department of Forestry.
 - (4) Land that contains less than 20 acres of forest area, provided that the land has greater than 50% canopy coverage and has been certified by the State Forester in consultation with the local city or county arborist, as important to the establishment and preservation of urban forests, pursuant to Va. Code § 10.1-1105.
- c. Other lands will meet the conservation purpose for this category, if the applicant demonstrates the conservation value of the land for forestal use.
3. Natural Habitat and Biological Diversity. Land that contains significant natural habitats and/or ecosystems that support native plant and animal species and protect a relatively natural habitat of fish, wildlife, plants, or similar ecosystems, including natural areas and natural heritage resources as defined below.
- a. For the purposes of this category, the following definitions apply.
 - (1) Natural area – Any area of land, water, or a combination thereof, that retains or has reestablished its natural character, though it need not be completely natural and undisturbed; or which is important in preserving rare or vanishing flora, fauna, native ecological systems, geological, natural historical, scenic or similar features of scientific or educational value benefiting the citizens of the Commonwealth.³
 - (2) Natural heritage resource – The habitat of rare, threatened, or endangered plant and animal species, rare or state significant natural communities or geologic sites, 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.⁵
 - b. The following lands will meet the conservation purpose for the natural habitat and biological diversity conservation category.

³ Virginia Code § 10.1-209

⁴ Virginia Code §10.1-209

⁵ 26 Code of Federal Regulations (CFR) §1.170A-14(d)(3)

- (1) Lands identified in writing by the Department of Conservation and Recreation's Virginia Natural Heritage Program as 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 conservation purpose for this category, if the applicant demonstrates the conservation value 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.⁶
- a. The following properties will meet the conservation purpose for the historic preservation category:
- (1) Properties individually listed in the Virginia Landmarks Register or the National Register of Historic Places;
 - (2) Properties that have been determined by the Virginia Department of Historic Resources to be eligible for listing in the Virginia Landmarks Register and/or recommended for listing in the National Register of Historic Places;
 - (3) Properties that are contributing resources within historic districts that are listed in the Virginia Landmarks Register and/or National Register of Historic Places;
 - (4) Any battlefield that meets the above standards and/or is listed by the Civil War Sites Advisory Commission Report of 1993, as amended.
- b. Other properties may meet the conservation purpose for historic preservation if the applicant demonstrates the conservation value 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 devoted to and available for natural-resource based outdoor recreation by, or education of,

⁶ 26 CFR §1.170A-14(d)(5)

the general public. Access for substantial and regular use by the general public is required to qualify under this category.⁷

- a. For the purposes of this category, the land devoted to and available for natural-resource based outdoor recreation or education means parks, trails, greenways or similar recreational areas, open for public use, except any use operated with intent for profit.⁸ 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.⁹
- b. Lands will meet the conservation purpose for this category if the applicant demonstrates the conservation value 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% of the site (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.

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).¹⁰

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 drinking-water supplies. Examples include floodplains, wetlands, riparian buffers, 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

⁷ 26 CFR §1.170A-14(d)(2)

⁸ 4VAC5-20-20(A)

⁹ 26 CFR §1.170A-14(d)(2)

¹⁰ 4VAC5-20-20(A)

lowlands, such as bays, estuaries or ocean shores, subject to inundation by storms or high tides.¹¹

(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.¹²

(3) Riparian vegetated buffers – An area of land along a river, 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 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 riparian buffers of at least 100 feet in width with substantial frontage on a perennial stream, wetland, or tidal waters.

(3) Lands adjacent to reservoirs used for public drinking water supplies or within 1,000 feet of a public drinking water well.

c. Other lands will meet the conservation purpose for this category if the applicant demonstrates the conservation value 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 buffers of at least 35 feet, or lands located within an identified Special Flood Hazard Area mapped by the Federal Emergency Management Agency¹³ may meet the conservation purpose for this category.

¹¹ 4VAC5-20-20(C)

¹² Virginia Code § 58.1-3666

¹³ 26 CFR §59.1

- d. Easements placed on wetlands created or restored for the purposes of providing compensation pursuant to a regulatory requirement will not meet the conservation purpose for the watershed preservation category.
7. Preservation of Scenic Open Space. Lands that contain views, vistas, or characteristics that contribute to, and are compatible with, the scenic character or enjoyment 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.¹⁴
 - a. The following lands will meet the conservation purpose for the scenic preservation category.
 - (1) Lands adjacent to or 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 adjacent to or 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 adjacent to, or 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.¹⁵
 - b. Other lands will meet the criteria for this category if the applicant demonstrates the conservation value of the land for preservation of scenic open space. For example, lands adjacent to or visible from 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 visual access to the property is not available, physical access may be used to demonstrate the conservation value of the land for preservation of scenic open space.
 8. Conservation and Open Space Lands Designated by Local Governments. Land that contains features, resources, values, or other attributes that local governments have 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, local governments must have adopted, in an official public ordinance or comprehensive plan, one of the following as worthy of protection:

¹⁴ Virginia Code § 58.1-3666

¹⁵ 4VAC5-20-20(F)(3)

- (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.¹⁶

B. Public Benefit

1. The deed of conservation easement must contain terms and restrictions that protect the conservation purpose(s) 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 subdivision and development of the property. This may be accomplished by including:
 - a. limitations on the number, size, and location of new buildings, structures, or roads;
 - b. limitations on the permissible number of subdivisions;
 - c. establishment of no-build or no-road zones;
 - d. designation of building envelopes or pre-approved routes for roads;
 - e. restrictions on the collective footprint of all buildings or structures;
 - f. limitations on alterations, demolition, or ground-disturbing activity that may impact cultural or natural heritage resources; and/or
 - g. by requiring review and approval by the easement holder before initiating any such structures or roads.

¹⁶ 26 CFR §1.170A-14(d)(4)

4. Donated property must not have been dedicated as open space in, or as part of, a residential or commercial subdivision or development, or dedicated as open space for the purpose of fulfilling density requirements to obtain approvals for zoning, subdivision, site plan, or building permits.

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 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.

If the property contains or includes wetlands or frontage on a perennial stream or river, sinking streams (as defined above in section A.6.a.(5)), lakes, or tidal waters, the following minimum protections for those resources apply.

- a. Conservation easement terms must require a riparian vegetated buffer (as defined above in section A.6.a.(3)) that is at least 35 feet wide, unless a wider buffer is required by local, state, or federal law or regulations.

- b. To qualify as a buffer under these criteria, the easement must:

- (1) prohibit within the buffer construction of new buildings or structures and roads (however, existing buildings or structures, historical restoration, and certain water-dependent structures such as docks are permitted, as are existing roads, limited stream crossings, and limited access points);

- (2) restrict within the buffer other soil disturbance, including plowing (however, tree planting, forest management, archaeological investigations, or other restoration activities are permitted);

- (3) maintain within the buffer vegetative cover including forest, shrubs, or warm-season grasses. Mowed lawns or mowed or grazed pastures shall not constitute vegetative cover for the purposes of this provision. Control of non-native vegetation or removal of diseased trees is permitted.

- (4) restrict regular livestock grazing within the buffer (however, limited designated points for crossing are permitted).

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 implementation of a written conservation plan that stipulates the use of best management practices (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 implemented as long as the lands remain in agricultural production.

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 a 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.

Attachment #2

**Department of Conservation and Recreation
Procedural Guidelines for Land Conservation Tax Credits Conservation Value Review
To Be Adopted by January 1, 2007**

A. *Reporting information for all donations of land or interests in land, regardless of the amount of tax credits*

Pursuant to Virginia Code § 58.1-512(D)(1), the taxpayer must provide the following information (collected on forms developed by the Virginia Department of Taxation and provided to the Department of Conservation and Recreation (DCR) pursuant to Virginia Code § 58.1-512(D)(1)) for all donations of land or conservation easements for which tax credits are claimed:

1. A description of the land or easement being donated, including acreage, types of land uses such as forestry, agriculture, or recreation, and property features such as waterways, wetlands, or historic resources;
2. A description of the conservation purpose(s) being served by the donation;
3. A statement of the fair market value of the land being donated in the absence of any easement or other restriction;
4. The public benefit derived from the donation, i.e., how a conservation easement will protect the property's resources or how ownership of the property by a public or private conservation agency benefits the public;
5. The extent to which water quality best management practices will be implemented on the property; and
6. Whether the property is fully or partially forested and whether a forest management plan is included in the terms of the donation.

B. *Review of donations seeking tax credits of \$1 million or more*

1. Donations of land in fee simple: For land donated to a public or private conservation agency, the completed application forms required by the Virginia Department of Taxation shall be accompanied by documentation from the conservation agency that describes its reasons for accepting the gift and provides adequate information to determine that public ownership of the land provides conservation value to the Commonwealth in perpetuity. A Property Features Summary Report should satisfy this documentation requirement. For donations to private conservation agencies, the documentation must also affirm that the conservation agency agrees that if it ever subsequently conveys its fee-simple interest in the property, such a conveyance will be either a) subject to a conservation easement pursuant to Va. Code §§ 10.1-1009 or 10.1-1700, or b) made to the Commonwealth of Virginia or to a federal conservation agency pursuant to Va. Code § 58.1-512.
2. Donations of less-than-fee interests in land (conservation easements): The taxpayer shall complete and submit the form required by the Virginia Department of Taxation, accompanied by a written statement from the easement holder attesting to the accuracy of the information related to the conservation value criteria. A complete application package must include the conservation easement deed and baseline documentation report as required by Internal Revenue Regulations § 1.170A-14.

C. Verification procedures by the Department of Conservation and Recreation

To verify the conservation purpose of land or conservation easement donations seeking tax credits of \$1 million or more, in accordance with Virginia Code §§ 58.1-512, 58.1-512.1, and 58.1-513, the Director of DCR shall:

1. Review the LPC form required by the Virginia Department of Taxation, the deed of conservation easement, the baseline documentation report, and any other documentation required to be submitted by the taxpayer, such as documentation that confirms that the donation has not been dedicated as open space in, or as part of, a residential or commercial subdivision or development, or dedicated as open space for the purpose of fulfilling density requirements to obtain approvals for zoning, subdivision, site plan, or building permits;
2. Require an officer of the organization that holds the conservation easement to certify to the Director of DCR that the information on the application related to conservation value is accurate;
3. Verify the information with existing natural-resource and historic databases, as applicable;
4. Conduct a site visit of the property, if necessary;
5. Consult with other agencies and organizations as needed to ensure that the deed of easement provides appropriate protection for the resources;
6. Complete the review within 90 days, pursuant to Virginia Code § 58.1-512; and,
7. Issue a letter of determination in writing to the Department of Taxation with copies to the taxpayer and to the conservation easement holder.

D. Pre-filing review

In order to facilitate successful applications for tax credits of \$1 million or more, the Director of DCR will offer an optional review to verify conservation value prior to recordation of the easement.

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

1. A completed LPC tax form as required by the Virginia Department of Taxation, and other documentation as set out in Section C(1) above;
2. Confirmation of approval of the conservation easement document by its holder; and
3. Confirmation that donation of the easement will produce tax credits of \$1 million or more. Such confirmation can include a preliminary valuation or a full appraisal that states the value of the conservation easement is approximately \$2.5 million or more.

The Director of DCR will consult with other agencies and organizations as needed to ensure that the deed of easement provides appropriate protection for the resources. Requests will be handled in the order they are received and every attempt will be made to complete reviews within 90 days, although review of recorded easements will receive priority handling.

Reliance on the pre-filing review will be predicated on the recording of the easement document in a form consistent with the DCR review.

E. Review of conservation easements accepted by the Department of Conservation and Recreation

In the event that a donation of land or conservation easement donations involving a tax credit of \$1 million or more is made to the Department of Conservation and Recreation, the Director may request an advisory opinion from either the Virginia Land Conservation Foundation or its Chairman that the deed of easement provides conservation value consistent with the Conservation Value Review Criteria approved by the VLCF Board on November 21, 2007.