

# **Senate Finance Economic Development and Natural Resources**

**Land Preservation Tax Credits  
Conservation Value Review Criteria  
and Review Procedure**

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# Key Points

- DCR's verification review began January 1, 2007, as part of legislative changes
- Only review large donations (\$2.5 million or more) that apply for \$1 million 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.
- Law allows 90 days for DCR review. Has taken average 22 days for pre-filing and 7 days for final verification.
- Dept. of Taxation retains responsibility for valuation and appraisal review and for issuing the tax credit.



# 2006 Legislative Reforms

- \$100 million annual cap (adjusted by the CPIU)
- Tax credit reduced from 50% to 40% per donation
- Carry forward increased from 5 to 10 years plus the year of donation
- Credits available only upon approval by Dept. of Taxation; changed from taxpayer “registering” credit
- Increased Taxation scrutiny over appraisals



## 2006 Legislative Reforms (cont.)

- Established DCR Oversight Role
  - Annual Report on all LPTC transactions
  - Verification to TAX of Conservation Value of land donations where credit of \$1 million or more is claimed (requires \$2.5 million 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



# Annual Report

## 2007 Tax Credits

### Preliminary Findings

- 254 tax credit applications filed for the \$100 million available in 2007. (review based on 233)
- 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.
- Properties in 61 localities claimed tax credits
  - Loudoun County 17%
  - Albemarle 12%
  - Fauquier 10%
  - Rockbridge 5%



# Annual Report 2007 (Preliminary Findings)

- Average size property is 234 acres
- Forest Stewardship: 79% had Forest Stewardship Plans
- Water Quality: 71% had Agricultural BMPs
- Conservation Purpose applied for:
  - Scenic Preservation 76%
  - Agricultural Use 69%
  - Forestal Use 69%
  - Watershed Preservation 50%
  - Natural Habitat 38%
  - Land Designated by Local Government 29%
  - Historic Preservation 14%
  - Outdoor Recreation 2%



# Process for Developing Verification Criteria

- Virginia Land Conservation Foundation includes appointees of Governor, Speaker, Senate (Ticer, Deeds), Secretary of Nat'l Resources (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 comments received
- VLCF Board adopted at 11/21/06 meeting



# VLCF Verification Criteria

- Verification of Conservation Value only applies to land donations claiming \$1 million 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.
- DCR review provides consistency, accountability, and timely review based on state specific criteria for large land donations and easements.



# VLCF Criteria

## 1. Conservation Purpose

Properties must meet at least one of the following:

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 number 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.
  - Allowed: limited stream crossings, stream access points, limited mowing (3X/yr)
  - Exceptions: NOT required for historic lawns, intermittent streams, ornamental ponds
- If the property contains lands in agricultural use, then deed must 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 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 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

- DCR reviewed less than 8% of all applications (18 out of 254)
  - Represents \$25 million in state tax credits on nearly 7,000 acres.
  - More than the expected number of applications to review; suggests that DCR Review has not slowed interest.
- DCR conducted preliminary and final reviews and issued consistency letters to 17 of the 18 applications.
- 14 of 18 applicants are known to have recorded their deed or easement in 2007. (Others had problems with adequate appraisals, bank lender concerns or unresolved questions.)
- DCR's average review time for a pre-filing review was 20 business days and final review time was about 7 days.
  - State law allows 90 days



# 2007 DCR Review Results (Continued)

- 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 million 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 that, for \$1 million or more in tax credits, 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 and Issues

- Working with VOF to ensure that DCR review begins earlier in process in order to avoid issues later.
- Holding joint VOF-DCR educational forum for lawyers and others who advise landowners.
- Developed new educational materials and a question and answer fact sheet that helps to explain some of the recurring questions that have been raised.
- Revised land conservation website to provide additional information available to the public on tax credits.
- Improve awareness of Criteria interpretations.
- Willing to consider future modifications in VLCF criteria as warranted.

