

Department of Conservation and Recreation
Procedural Guidelines for Land Conservation Tax Credits Conservation Value Review
Adopted by DCR Director on December 22, 2006

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, including bargain sales:

To qualify for a tax credit under Virginia Code § 58.1-512, any donation of a fee simple interest in real property to a public or private conservation agency (including a bargain sale) that involves a tax credit application for \$1 million or more must be documented with adequate information demonstrating that the agency's ownership of the land provides conservation value to the Commonwealth in perpetuity. This documentation shall include:

- The conservation agency's reasons for accepting the donation;
- How the donation meets at least one of the conservation purposes set out in Section A of the Land Preservation Tax Credits – Conservation Value Review Criteria;
- The public benefit derived from the donation, that is, how the public will benefit from the protection of the property's conservation values;
- The extent to which water quality best management practices will be implemented on the property; and

- Whether the property is fully or partially forested and a forest management plan is included in the terms of the donation.

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(C)(5).

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. The VLCF annual report shall specifically note which donations were made to the Department of Conservation and Recreation.