



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

Conservation Value Review

As of Jan. 1, 2007, DCR is responsible for conducting reviews of the conservation value of applications requesting \$1 million or more in Virginia's Land Preservation Tax Credit. This responsibility was given to DCR by the governor and the Virginia General Assembly pursuant to the Land Conservation Incentives Act ([Virginia Code § 58.1-511, et seq.](#)). All such donations must meet the [conservation value review criteria](#) adopted by the Virginia Land Conservation Foundation Board in November 2006, as amended in August 2008 and March 2009. The criteria establish minimum standards. The director of DCR is charged with verifying the conservation value of these donations to the Department of Taxation before a credit can be issued.

The amount of tax credit that can be claimed by a taxpayer is 40 percent of the fair market value of a land donation. Therefore, to claim \$1 million or more, the taxpayer must have made a land donation equal to or greater than \$2.5 million ($\$2.5M \times 40\% = \$1M$). Any land transaction claiming less than the \$1 million tax credit does not require a DCR review.

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 the three following requirements:

1. Your donation must meet at least one of the eight conservation purposes identified by the [Virginia Land Conservation Foundation Conservation Value 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.
2. You must ensure that you protect this conservation purpose in perpetuity 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, roads and utilities.
3. You must also protect the resources that the Virginia General Assembly has identified as

being of special importance to the state, which are water quality and forestlands.

- To protect water quality, all conservation easements must require a minimum 35-foot vegetated riparian buffer along or around any wetlands, perennial streams, rivers, sinking streams, lakes or tidal waters in or adjoining the property.
- Where the conservation easement allows for agricultural use, 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.
- The conservation easement must require a written forest management plan if the property contains 20 acres or more of forestlands.

What is a vegetated riparian 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.

Vegetative cover for riparian buffers 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.

Can I mow within the vegetated riparian buffer?

Yes, you can mow the buffer area up to three times per calendar year. Within the buffer area you must maintain vegetative cover, as outlined above.

What can be done in a vegetated riparian 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 up to three times a year; plant native trees, shrubs and grasses; control invasive species; 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 vegetated riparian 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, as well as the expansion of any such existing features. Livestock must also be prohibited, though limited designated crossing points are permitted.

Others have told me that I must have a 100-foot vegetated riparian buffer and not just a 35-foot one. Which is it?

A vegetated riparian buffer of at least 100 feet is required for applicants wishing to qualify for the conservation purpose of watershed preservation. Additionally, buffers of 100 or 200 feet may be required to protect natural heritage resources on the property. We also encourage buffers of at least

100 feet in any areas that overlap with the Floodplains and Flooding Resilience or Water Quality Improvement layers of ConserveVirginia, though it is not required. For most other properties, only a 35-foot buffer will be required immediately adjacent to perennial streams, rivers, sinking streams, lakes, ponds with perennial outflow and wetlands that exist on the property. A riparian 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 vegetated 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 review the National Hydrography Dataset and any documentation provided by the applicant to determine if a vegetated buffer is required.

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 needed for land in agriculture production where a landowner 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. You can learn more on [NRCS's Conservation Planning website](#) or in their [brochure](#).

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 starting by contacting the local office of one of Virginia's 47 soil and water conservation districts or the local office of the United States Department of Agriculture Natural Resources Conservation Service. Visit the [Virginia Association of Soil and Water Conservation Districts](#) to find your local district.

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 suggests that the first step toward a healthy and 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. Forest

Stewardship Management Plans are comprehensive plans that help landowners to manage their land for multiple purposes. Forest Management Plans are less comprehensive and focus on information and recommendations to help with forest management decisions on the property. You can learn more about Forest Stewardship Management Plans and Forest Management Plans on [DOF's website](#).

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 that 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?

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), DCR recommends applicants complete the optional pre-filing review process. DCR staff will work with the applicant to verify conservation value before recordation of the easement.

The pre-filing review is optional but highly encouraged. It is available upon request to any donor who has submitted documentation that includes the following:

1. Completed draft LPC-1 and Schedule B tax forms as required by the Department of Taxation, and other specified documentation;
2. A draft deed of conveyance;
3. Confirmation of approval of the conservation easement document by its holder;
4. A description of conservation purposes and of how the easement protects public benefit, water quality and forest management;
5. A draft Baseline Development Report;
6. A scale map;
7. Estimation that the donation of the easement 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.

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 also continue to be available.

What is ConserveVirginia and where can I find it?

ConserveVirginia is a state-developed tool for identifying lands of the highest conservation value that are currently unprotected. Conservation is prioritized by state-agency experts based on the following categories: Agriculture and Forestry; Cultural & Historic Preservation; Floodplains and Flooding Resilience; Natural Habitat and Ecosystem Diversity; Protected Landscapes Resilience; Scenic Preservation; and Water Quality Improvement. It is not a requirement that properties seeking tax credits intersect with one of these layers, but identifying any layers that intersect your project can help make the case for the property's conservation value. You can [learn more about ConserveVirginia here](#), find the [ConserveVirginia mapping tool here](#), and see the [ConserveVirginia Deed Review Criteria here](#).

What if I have additional questions?

For additional information about DCR's review of Land Preservation Tax Credit applications, contact Land Conservation Specialist Gina DiCicco at (804) 837-1819 or gina.dicicco@dcr.virginia.gov or Land Conservation Manager Suzan Bulbulkaya, at (804) 371-5218 or suzan.bulbulkaya@dcr.virginia.gov.

An applicant may also visit the [Land Conservation Tax Credit page of DCR's website](#).

Rulings issued by the Commissioner of the Virginia Department of Taxation related to the subject of land conservation tax credits may be found on their [Laws, Rules, and Decisions page](#).