

STRATEGIC PLAN DRAFT 2023 - 2028

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Draft Strategic Plan

7/1/2023 – 6/30/2028

Introduction to 2023 Draft Strategic Plan

In 2019, the Virginia Outdoors Foundation's (VOF) implemented a five-year strategic plan that has guided the organization's work since the plan's inception. As the 2019-2023 strategic plan approached its sunset date, an update was necessary to address emerging opportunities and challenges.

This update builds on VOF's vision and goals using insightful input from VOF staff and the Board of Trustees.

2019 Strategic Plan Achievements

The 2019 plan included five strategic goals supported by 14 objectives to be achieved through the implementation of 53 strategies.

- Strategies completed: 37 (69.8%)
- Strategies in progress as of the writing of this update to the plan: 10 (18.9%)
- Strategies re-evaluated for inclusion and/or revision in this update to the plan: 6 (11.3%)

Major focal points in the 2019 plan are revenue generation for general operations, risk management and due diligence. Due to the nature of VOF's work, you will find some symmetry in the draft plan with the 2019 plan; however, the draft plan contains refined goals and objectives to reflect achievements, next steps and changed circumstances.

2023 Draft Plan

Major topics that emerged in the planning sessions were:

- 1) increased state/federal grant funding for acquisitions
- 2) administrative remedies for easement compliance
- 3) evolving law and policy on charitable gifts of easements (IRC 170(h))
- 4) community-based conservation and
- 5) open-space land conversion for renewable energy development.

Increasing Revenue for Acquisitions. Significant investment in conservation through state and federal programs is available today. VOF should position itself to be a key player in leveraging grant funding for project acquisition in furtherance of the Commonwealth's land conservation goals to increase public access, water quality protection and resilience.

Creating Administrative Remedies for Easement Enforcement. Lawsuits are unwieldy, expensive and unpredictable, and moreover, conservation easements have not fared well in Virginia's highest court. As such, VOF should seek out alternative paths for easement enforcement through linking easement compliance with preferential taxation under Virginia Code Section 10.1-1009.

Keeping Pace with Evolving Law and Policy on Charitable Gifts of Easements. Recent changes to the body of law around charitable gifts of easements have created uncertainty and increased due diligence costs for landowners. This, coupled with the reduced tax benefits associated with easement donation, has increased the burden on landowners when contemplating charitable gifts of easements. VOF should engage policy makers and stakeholders to seek out solutions to keep conservation easement donation a viable option for landowners.

Community-Based Conservation. Expanding the reach and impact of land conservation to all Virginia citizens through partnership work and grant funding provides VOF an opportunity to cultivate a deep conservation ethic across the Commonwealth. A widely shared conservation ethic ensures that land conservation will remain a priority of policy makers, budget writers, taxpayers and citizens. Eighty percent of Virginians live in a town, city or urbanizing county and a community-based conservation approach must include engagement with that 80% to understand their needs and open pathways for dialogue on the importance of open-space conservation for healthy communities, both rural and urban.

Renewable Energy Development. Transitioning to renewable energy will require millions of acres to be enrolled in wind and solar generation. Major public investment and policy targets are increasing the pressure on undeveloped, open-space land and it is likely we will see major conversion of farms and forests in the near term. VOF should review its Energy/Infrastructure, Diversion/Conversion and related policies to ensure best practices, which review should include stakeholder engagement to better understand the state of renewable energy development and its potential impacts on land conservation.

Optional Background Reading Materials:

VOF's founding document: 1965 Bemiss Report Excerpt
LPTC DCR report 2022
DCR summary of state and federal grants
Stewardship Summary
Land Trust Alliance (LTA) on Community Conservation
LTA on Conservation and Renewable Energy
LTA on Land Trusts and Wildlife Crossings
LTA Advisory for Surface Mining

Virginia Outdoors Foundation Vision

Protect the quality of Virginia's outdoors and make its resources available to its people.

Virginia Outdoors Foundation Goals for 2023-2028

- 1 Engage VOF's unique abilities to maximize the impact and reach of land conservation throughout the Commonwealth.
- 2 Create more opportunities for Virginia citizens to access and enjoy the benefits of its natural resources.
- 3 Increase revenue to support conservation programs.
- 4 Enhance partnerships and advance policy innovations in support of our work.
- 5 Optimize organizational effectiveness.

Strategic Measures (TBD)

The Virginia Outdoors Foundation monitors its progress and results through the following outcome measures.

Goal 1: Engage VOF's unique abilities to maximize the impact and reach of land conservation throughout the Commonwealth.

Objectives	Strategies
O1.1: Maximize conservation activities to support Commonwealth of Virginia goals.	<ul style="list-style-type: none">• Prioritize Chesapeake Bay goals in our conservation work.• Increase protected lands to a million acres by 2028.• Partner with other entities to collaborate on large scale conservation initiatives.• Explore opportunities (e.g., wildlife crossings) to protect wildlife habitats.• Support other programs that are state funded, such as Soil and Water District Best Management Practices (BMPs).
O1.2: Explore innovative and creative approaches to encourage and capitalize on conservation opportunities.	<ul style="list-style-type: none">• Advertise and promote conservation opportunities on existing conserved land.• Explore opportunities for federal funding in pursuit of landscape-scale projects.• Proactively seek high-value conservation lands.

Goal 2: Create more opportunities for Virginia citizens to access and enjoy the benefits of its natural resources.

Objectives	Strategies
O2.1: Support community conservation projects and local and state government conservation activities.	<ul style="list-style-type: none">• Look for gaps in Virginia Outdoors Plan to fund projects.• Complete a project in every jurisdiction.• Assist localities with their conservation and/or outdoor opportunities.
O2.2: Publicize and support outdoor opportunities.	<ul style="list-style-type: none">• Support programming at Bull Run Mts. Natural Preserve.• Increase VOF activity at House Mountain.• Prioritize trails.• Partner with the All Trails app to share outdoor opportunities.

Goal 3: Increase revenue to support conservation programs.

Objectives	Strategies
O3.1: Leverage private, federal, and state funding sources.	<ul style="list-style-type: none">• Complete a review of all conservation-related federal grants available to VOF; apply for eligible conservation grants.
O3.2: Improve processes and options for philanthropy and other avenues for revenue growth.	<ul style="list-style-type: none">• Encourage gifts of money, land and stock.• Plan fundraising goals and avenues to support grant programs.• Broaden VOF's planned giving.

Goal 4: Enhance partnerships and advance policy innovations to support our work.

Objectives	Strategies
O4.1: Cultivate stronger relationships with landowners.	<ul style="list-style-type: none"> • Educate landowners about available conservation programs and incentives. • Publicize the amendment initiative. • Explore the idea of offering classes or public engagement sessions on land conservation to current and prospective donors.
O4.2: Cultivate stronger relationships with local governments and state partners.	<ul style="list-style-type: none"> • Increase collaboration with local governments on conservation acquisitions through grant programs and technical assistance. • Evaluate the feasibility of tying easement compliance to preferential taxation. • Enhance working relationships with state agencies to capture efficiencies and achieve better conservation results.
O4.3: Ensure protection of conservation lands from conversion to industrial-scale renewable energy development.	<ul style="list-style-type: none"> • Review the Energy and Infrastructure Charter, Model Deed and Conversion/Diversion Policy to ensure best practices. • Study public policy, emerging technologies and associated land use demands of renewable energy to understand impacts to conservation lands. • Educate and collaborate with stakeholders on the importance of avoidance of conservation lands.

Goal 5: Optimize organizational effectiveness.

Objectives	Strategies
O5.1: Enhance the work environment and communication.	<ul style="list-style-type: none">• Improve internal communication channels.• Adopt standard practices to make meetings more efficient.
O5.2: Cultivate internal talent.	<ul style="list-style-type: none">• Establish a pilot program that provides opportunities for staff members to expand their knowledge through involvement in internal service projects.• Establish a mentorship program.
O5.3: Improve work processes and tools.	<ul style="list-style-type: none">• Implement one location to store procedures, policies and other guidance documents.• Clarify and document the decision-making process.• Review and update work procedures.

TO THE
GOVERNOR OF
VIRGINIA AND
MEMBERS OF THE
GENERAL ASSEMBLY

November 1, 1965

Gentlemen:

I have the honor to present the Report of the Virginia Outdoor Recreation Study Commission, in compliance with Chapter 277 of the Acts of the 1964 General Assembly.

The Report contains an analysis of the present and future outdoor recreation demands of the Commonwealth, and an inventory of the State's recreation resources and facilities. It recommends a long-range comprehensive plan of action, The Virginia Outdoors Plan, to meet these demands.

The rich and varied resources of the Virginia Outdoors are indeed our Common Wealth, and every Virginian justly expects to enjoy its benefits. Furthermore, millions of other Americans are willing and able to spend in our state tens of millions of dollars annually to share these benefits.

The opportunities for enjoyment are severely limited by inadequate facilities and by a threatened and diminishing supply of enjoyable lands and waters. Especially urgent is the need for a program of land acquisition for major enlargement of our State Park System, which now falls so far short of meeting the demand of our own citizens and of visitors to Virginia.

The case for prompt action for proper conservation and development of the Common Wealth is, in our opinion, overwhelming.

The Commission gratefully acknowledges the generosity of the Old Dominion Foundation, which expressed its concern for the protection and wise use of our Common Wealth by matching the State's appropriation to the Study Commission, thus making our work possible.

We express our appreciation to the hundreds of individuals and organizations contributing invaluable advice and energy to our work, and to the many local authorities who helped to make the Commission's five public hearings so productive.

Respectfully submitted,



FitzGerald Bemiss
Chairman

SUMMARY OF RECOMMENDATIONS

Adopt a State outdoor recreation and open space policy. In embarking on a program of conservation and development of outdoor recreation resources for the public benefit, the first and most basic step is a legislative statement of policy to guide the State and its political subdivisions, and to broaden and clarify the legal authority necessary to implement the program.

Create a Commission of Outdoor Recreation. An independent State agency is needed to guide and coordinate continuing statewide implementation of the Virginia Outdoors Plan. It should advise the Governor on resources and needs, coordinate the outdoor recreation activities of local, State and Federal agencies, provide technical assistance to localities, and receive and allocate Federal Land and Water Conservation funds.

Enlarge and improve the State Park System. The present number, location, and condition of State Parks and Recreation Areas is inadequate. Within the years 1966-76 land should be acquired for 36 new parks, 20 of which should be developed within this period.

Facilities in existing parks should be improved and increased. The Division of Parks should be given an expanded staff to administer the program of site planning and development.

Aid localities in resource conservation and development. Local governments have a vital role in the Virginia Outdoors Plan. They must take the initiative in the use of local resources for local benefit. Unfortunately, available local powers are not sufficiently used. Their use should be encouraged. The State should aid localities in three ways: (a) research, guidance, and technical assistance, (b) matching funds, and (c) provision of legal powers.

Encourage greater use of Regional Planning Commissions and Regional Park Authorities. Natural resources conservation and development problems and opportunities, more often than not, extend beyond the borders of political subdivisions. Where two or more localities share a common problem, regional action is an absolute necessity.

Establish a System of Scenic Byways and provide for Recreation Access Roads. All across Virginia are roads of incomparable charm and historic significance. These roads should be identified and their character protected for the general enjoyment of Virginians and as a prime attraction to visitors. Many major recreation attractions do not have adequate access roads.

Make our highways more pleasant. A substantial part of all leisure time is spent on the highways. Driving itself is regarded as a prime recreational activity. The design of roads and their amenities should recognize this fact.

Accelerate the program of the Commission of Game and Inland Fisheries. More fishing lakes, more boat launching ramps, and more public hunting lands are needed (especially in Eastern Virginia), than are being provided through revenues from Commission licenses and fees.

Encourage the multiple use of public lands to allow maximum recreation opportunity consistent with the land's primary purpose. This offers many practical and economical opportunities to achieve a broad range of outdoor recreation on land originally acquired for a single purpose. The State Forests should be incorporated into a system of forest preserves to conserve lands and waters for future public recreation use.

Encourage advance planning and land acquisition in areas of major water impoundments. These large man-made reservoirs offer great recreation potential which can only be realized fully when the State and the localities involved consider in advance the problems of public access, recreation areas, pollution control, and zoning.

Develop the recreation opportunities created by Soil and Water Conservation Districts. Substantial lakes, created for soil and water conservation, offer important local or regional recreation opportunities. Localities should acquire sufficient land around these lakes to allow recreation for the general public benefit.

Recognize the vital role of the individual and the travel industry. Virginia benefits greatly from the facilities and services provided by private enterprise, from the activities of non-profit conservation groups, from associations devoted to historic preservation, and from the travel industry. These should be encouraged and relied upon to the greatest extent practical.

Undertake a study of the relation of land taxation to the preservation of open space. Preferential assessment and tax deferral have been tried with various difficulties and questionable results in a number of states. Present land taxation practice is nevertheless a factor which requires further study in the interest of the preservation of open space.

Provide for the acquisition of scenic and conservation easements. It is often economical and practical for the State to acquire less than fee title to protect scenic and conser-

vation values—in effect, acquiring development rights but leaving the land for the owner's use and enjoyment.

Initiate water resource and river basin studies. It is increasingly clear that present demands on Virginia's rivers—their waters and their shorelines—require comprehensive river basin research and planning to conserve our most vital resource and a prime recreation asset. There is no provision for this type of research and planning in Virginia and only an uncoordinated scattering of agencies concerned with various aspects of water—such as ground water, surface water, and pollution.

Accelerate marine resources and beach erosion study. There is far too little understanding of the natural forces which control our marine resources, our salt water marshes, and the shape of our beaches and islands. There is inadequate understanding of the extent to which man can intrude on these without destroying them. These values require intensified study.

Provide guidelines for planned communities and cluster development. State and local agencies should facilitate private entrepreneurial development of new communities and new types of housing subdivisions which meet acceptable standards and preserve the quality of the general outdoor environment.

Create an Historic Landmarks Commission. Virginia has no policy or program for the protection of its vast historical treasure. An agency is needed to catalog and evaluate historic and cultural buildings and sites, and to develop plans and programs for their protection. This is an economic resource which is being grossly exploited or destroyed.

Establish the Virginia Outdoors Foundation. The Foundation can be of substantial help in the encouragement of private gifts and bequests of lands and waters of recreation value. Virginia has benefited in the past from private generosity. The Foundation is intended to facilitate private philanthropy.

Establish the Virginia Outdoors Fund to implement the Virginia Outdoors Plan. State funds must be provided to meet the State's part of the total plan and to aid the localities in meeting theirs. The State General Fund appropriations will be matched by Federal Land and Water Conservation funds, constituting the Virginia Outdoors Fund.

Create greater awareness of the value of natural resources and environmental geography. The basic cause of inattention to the rapid consumption and destruction of our outdoor recreation resources is ignorance of their nature and value. The State must develop programs for the awakening of a conservation conscience in the public interest.

preservation and proper utilization of our historic heritage is a moral obligation and responsibility that should be shared by the individual owners of historic properties, by voluntary organized groups, and by Federal, State and local governments. It appears, though, that the Commonwealth itself and the counties and municipalities of the state are more intent on exploiting these treasures than in taking steps to insure their safety and integrity. Virginia, in short, has no governmental apparatus for safeguarding its heritage of historic buildings and sites, for coordinating historic preservation activities in the state, or for fitting the surviving components of the resource into the pattern of its planning for the future.

The Commission therefore recommends that an Historic Landmarks Commission be created in the State Government and empowered:

1. To conduct an inventory or survey of the components of the resource.
2. To list in an official register those buildings and sites that, because of historic, associative, architectural and aesthetic, or archeological values, qualify as landmarks possessing statewide or national significance; to publish lists of the registered landmarks; and to inspect such properties periodically.
3. To certify privately or corporately owned registered landmarks by entering into recorded agreements whereby conditions governing the preservation and utilization of those properties can be imposed in return for eligibility of the owners to receive (a) grants of funds, in hardship cases, for preservation and restoration purposes, (b) tax abatements, in hardship cases, or relief for a specified number of years from increased assessments occasioned by privately financed restoration projects, and (c) guarantees against seizure or damages to such properties under the power of eminent domain.
4. To acquire and administer registered landmarks by gift, purchase, devise, or bequest, or, in the event that such properties are in danger of being

sold or used so that their values will be destroyed or seriously impaired, to acquire such properties by condemnation.

5. To designate the boundaries and establish historic districts, or districts for each registered landmark, if it develops that the significance of the subject area, or registered landmark, is jeopardized by a failure on the part of the county or municipality in which the district, or registered landmark, is located, to take such action itself.
6. To conduct the State Highway historical markers program.
7. To coordinate historic preservation programs being conducted in the state by voluntary organized groups, the Federal Government, and the localities.
8. To accept gifts, bequests, endowments, and appropriations for purposes that fall within the general legal powers and duties of the Historic Landmarks Commission.

The Commission further recommends that the counties and municipalities of the state be authorized and encouraged to establish local historical commissions for the preservation, promotion, and development of their historical assets, especially the buildings and sites that do not meet specifications of statewide or national interest, but which nevertheless reflect the cultural development of the community in which they are situated.

Proposed legislation to establish an Historic Landmarks Commission appears on page 92.

19 THE VIRGINIA OUTDOORS FOUNDATION

The Commonwealth can now accept private gifts of land, money, or other property and has been the beneficiary of the generosity of citizens who have

donated property to the Commonwealth for the protection of natural beauty or historic values. There are, however, occasions in which a separate foundation might encourage and facilitate private philanthropy for the purpose of preserving natural, scenic, historic, and other recreational resources of the state.

The Foundation should be governed by a Board of Trustees, composed of five Trustees at large, to be appointed by the Governor, with the State Treasurer and Director of the Department of Conservation and Economic Development serving ex officio.

The Foundation should be empowered to accept, hold, and administer gifts and bequests of money, securities, or other property in support of the State's policy and program of conservation and development of outdoor recreation resources for the public benefit.

Proposed legislation will be found on page 94.

20 FUNDS TO IMPLEMENT THE VIRGINIA OUTDOORS PLAN

The principal sources of revenue to the Virginia Outdoors Fund, as proposed, are the State General Fund and Federal Land and Water Conservation Fund grants. Unclaimed refunds from the Marine Motor Fuel Tax collections should be especially designated for recreation area access roads and remain a part of the Highway Fund.

For the 1966-76 phase of the Virginia Outdoors Program, exclusive of recreation area access roads, the sum of \$64 million is recommended. Of this total, \$24 million is in Federal Land and Water Fund grants, requiring \$40 million in General Fund Appropriations. Local matching funds will increase the total investment in the program. There is at this time no means of estimating the extent of local participation.

REPORT OF THE DEPARTMENT OF CONSERVATION AND RECREATION

Calendar Year 2021 Land Preservation Tax Credit Conservation Value Summary

TO THE GOVERNOR AND THE CHAIRMEN OF THE SENATE FINANCE
AND APPROPRIATIONS COMMITTEE, THE HOUSE APPROPRIATIONS
COMMITTEE, AND THE HOUSE FINANCE COMMITTEE



COMMONWEALTH OF VIRGINIA
RICHMOND
DECEMBER 2022

Travis A. Voyles
Acting Secretary of Natural and Historic Resources

Matthew S. Wells
Director

Andrew W. Smith
Chief Deputy Director



COMMONWEALTH of VIRGINIA
DEPARTMENT OF CONSERVATION AND RECREATION

Frank N. Stovall
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*Deputy Director for
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December 1, 2022

The Honorable Glenn A. Youngkin, Governor of Virginia
The Honorable George L. Barker, Co-Chair, Senate Finance and Appropriations Committee
The Honorable Janet D. Howell, Co-Chair, Senate Finance and Appropriations Committee

The Honorable Barry D. Knight, Chair, House Appropriations Committee
The Honorable Roxann L. Robinson, Chair, House Finance Committee

Dear Governor Youngkin, Chairman Barker, Chairwoman Howell, Chairman Knight, and Chairwoman Robinson:

We are pleased to provide you with this report prepared in accordance with Virginia's Land Conservation Incentives Act ([§§ 58.1-511 through 58.1-513 of the Code of Virginia](#)). Subdivision (C) (2) of [§ 58.1-512](#) of the Act requires the Department of Conservation and Recreation (DCR) to compile an annual report on qualified tax credit donations of less-than-fee interests in land accepted by any qualified public or private conservation agency or organization. This report focuses on those donations made between January 1, 2021, and December 31, 2021, for which a taxpayer received a Land Preservation Tax Credit (LPTC) within the \$75,000,000 cap for the tax year 2021, established pursuant to Virginia Code [§ 58.1-512\(D\)\(4\)\(c\)](#).

The Virginia Land Preservation Tax Credit (LPTC) program continues to be a key factor behind land conservation successes in the Commonwealth. The transferability of the LPTC has proven to be a valuable incentive to persons voluntarily protecting working farms, forests, recreational lands, scenic viewsheds, historic sites, and natural areas. A two percent fee on the transfer of tax credits helps to provide much-needed support to land trusts and other conservation agencies and organizations for their ongoing responsibilities for the hundreds of thousands of acres of conserved lands they steward.

DCR is charged with reviewing LPTC applications for one million dollars or more (and certain other requests as identified in state code, [§ 58.1-512](#)) to verify the conservation value of the donation (Va. Code [§ 58.1-512\(D\)\(3\)\(a\)](#)). DCR's responsive and timely review process also serves as an important oversight tool for

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the Commonwealth, ensuring that protected lands have significant conservation value and that the natural and historical resources within will be adequately protected into the future.

DCR's verification process utilizes conservation review criteria adopted by the Virginia Land Conservation Foundation (VLCF). The criteria ensure that the conservation easements will require, where applicable; a forest management plan, development and implementation of an agricultural conservation plan, visual public access to scenic resources, the establishment of riparian buffer areas to protect water quality, protection of resources listed on the Virginia Landmarks Register or the National Register of Historic Places, and the protection of known natural heritage resources. Additionally, DCR's review certifies that voluntary easements meet VLCF criteria aimed at safeguarding the long-term conservation values of the property. This review prohibits intentional harm to the property's conservation values and ensures the property's conservation value will not be adversely affected by future on-site development. Such revisions to the easements significantly improve the conservation quality of the donations made under Virginia's tax credit program.

We trust that this report fulfills the required statutory obligations and demonstrates the importance of the Land Preservation Tax Credit Program.

Respectfully submitted,



Matthew S. Wells

Attachment

cc: Virginia Land Conservation Foundation Board of Trustees
The Honorable Travis A. Voyles, Acting Secretary of Natural and Historic Resources
Michael D. Maul, Director, Department of Planning and Budget
Craig M. Burns, Commissioner, Department of Taxation
April Kees, Director, Senate Finance and Appropriations Committee
Jason Powell, Special Projects Deputy, Senate Finance and Appropriations Committee
Anne E. Oman, Staff Director, House Appropriations Committee

Preface

This report has been prepared in accordance with and fulfills the requirements of:

[§ 58.1-512\(C\)\(2\)](#) of the Code of Virginia (Virginia's Land Conservation Incentives Act), which requires the Department of Conservation and Recreation to compile an annual report on qualified tax credit donations of less-than-fee interests accepted by any public or private conservation agency by December 1 of each year. This report covers those donations for which taxpayers claimed Land Preservation Tax Credits between January 1, 2021, through December 31, 2021, within the 2021 cap of \$75 million established by Virginia Code [§ 58.1-512\(D\)\(4\)\(c\)](#).

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Executive Summary

The Virginia Land Preservation Tax Credit (LPTC) Program has proven to be a valuable incentive for landowners interested in voluntarily conserving their property through perpetual conservation easements or fee-simple donations. The transferability feature of Virginia's tax credit program is especially valuable to landowners with little or no state income tax liability, enabling them to sell their tax credits for income. Responsibilities for oversight of the LPTC program are shared by the Virginia Department of Taxation (TAX) and the Virginia Department of Conservation and Recreation (DCR).

Virginia's Land Preservation Tax Credit Program began in January 2000 and continues to advance the preservation of important lands across the Commonwealth. TAX's records indicate that as of December 31, 2021, landowners have received tax credits for permanently protecting 999,557 acres across the Commonwealth through 4,572 land donations since program inception. The appraised value of this conserved acreage is about \$4.7 billion, with landowners receiving almost \$1.9 billion in tax credits.

DCR's review of LPTC applications for one million dollars or more (and for certain other circumstances as identified in state code ([§ 58.1-512](#)) began in January 2007. As directed by [§ 58.1-512\(D\)\(3\)\(a\)](#) of the Code of Virginia, DCR follows the Conservation Value Review Criteria as adopted by the Virginia Land Conservation Foundation to verify the conservation value of donated land or conservation easements. This verification process is an important tool for the Commonwealth to ensure that the protected lands have worthy conservation values and that the natural and historical resources are adequately protected in perpetuity.

The tax credit report contained herein summarizes the land donations for which landowners applied for 2021 Land Preservation Tax Credits within that year's cap of \$75 million. Based on the information provided to DCR from TAX for 2021, 183 applications were granted, protecting 41,858.62 acres and reaching the \$75 million cap.

For the calendar year 2021, taxpayers in 65 localities claimed tax credits. Loudoun County received 29 land donations - the most of any county. Loudoun County also protected the largest amount of land (3,638.04 acres) and received the highest value of tax credits, totaling \$19,643,627.

There are eight different conservation purposes that a landowner can claim to be eligible for a LPTC. Applicants may claim more than one conservation purpose, and many do; however, it is not necessary in order to qualify for the LPTC program. In the 2021 LPTC program year, the Scenic Open Space category was chosen for 95.60 percent (40,015.23 acres) of the total acreage preserved. The next three largest categories claimed were Forestal Use at 27,937.1 acres or 66.7 percent of the total acreage, Watershed Preservation at 25,626.9 acres or 61.2 percent, and Agricultural Use at 20,146.2 acres or 48.1 percent.

As reported by landowners in their LPTC application packages to TAX, under the 2021 cap, about 9,143.0 acres of active agricultural land and 19,427.2 acres of active forestal land were conserved. Within the LPTC application, landowners report on the total length of riparian buffers, with a required minimum width of 35 feet, in their donated easements or gifts of land. The applications for 2021 indicate a total length of 751,620 linear feet of forested buffers and 205,089 linear feet of no-plow buffers along rivers, streams, wetlands, ponds, springs, and shorelines. The two categories of buffers differ in the activities that are restricted or allowed within the conservation easement or deed of gift. Activities such as mowing or timber harvesting are restricted in forested buffers but are allowed within no-plow buffers to maintain non-woody vegetation such as pasture or grasslands.

In 2021, the Virginia Land Conservation Foundation (VLCF) distributed dedicated funding to land conservation agencies and organizations for their stewardship efforts. Pursuant to the authority granted in Virginia Code [§ 58.1-513\(C\)\(2\)](#), the VLCF Board of Trustees distributed a total of \$1,865,802 in stewardship funds to 42 land trusts, conservation organizations, and agencies to support their ongoing monitoring and enforcement of donated lands. The dedicated funding is generated from a two percent fee imposed on the sale of LPTCs.

DCR is also charged with conducting reviews of the Conservation Value of LPTC requests of one million dollars or more (based on a 40 percent credit for a donation valued at \$2.5 million or greater) and for certain other LPTC requests as identified in state code, [§ 58.1-512](#). During the review, DCR must verify the conservation value of these donations in advance of TAX issuing a land preservation tax credit. DCR reviews these LPTC requests in accordance with criteria adopted by the VLCF for this purpose. In 2021, DCR reviewed and commented on the conservation value associated with 23 LPTC applications submitted for pre-file review by the applicants.

DCR's oversight continued to enhance the Commonwealth's efforts to ensure the conservation value of properties applying for the LPTC. DCR's review process resolved a number of issues with applications that would have negatively affected the donation's conservation value if the applicants had recorded their deeds as originally submitted during DCR's pre-filing review. In addition, DCR's review helped to ensure that persons eligible for one million dollars or more in state land preservation tax credits also addressed water quality and forest stewardship protections associated with their conserved lands. Although state law allows the Director of DCR 90 days to complete their review after receipt of a final application, on average, DCR took approximately seven days to verify the conservation value of the final application and issue the final review letter.

Land Conservation Tax Credit Program Overview

Virginia's land preservation tax credit (LPTC) program is considered one of the most effective conservation tools available in the Commonwealth. Since its beginning on January 1, 2000, Virginia's tax credit program continues to leverage significant private investment to attain noteworthy land conservation levels every year. As of December 31, 2021, the Virginia Department of Taxation's (TAX) records indicated that a total of 999,557 acres of land, appraised at about \$4.7 billion, have been protected through 4,572 donations representing \$1.9 billion in tax credits. This extensive level of tax credits, as well as the number of land donations and acres conserved, demonstrates great public interest and participation in this valued tax credit program.

Thirteen other states also provide state tax incentives for donations of conservation easements (Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Iowa, Maryland, Massachusetts, Mississippi, New Mexico, New York, and South Carolina). Like Virginia, four states also provide for the transfer of those credits (Colorado, Georgia, New Mexico, and South Carolina). However, Virginia's tax-credit program is by far the largest in dollar value of property conserved. In Virginia, this is a program that has enormous land conservation benefits.

As a result of legislative amendments enacted in 2006, effective January 1, 2007, the LPTC program was capped at \$100 million per year, with donations in excess of the annual cap to be rolled over to subsequent years. The tax credit cap was adjusted annually to the Consumer Price Index, increasing to \$102.3 million in 2008; \$106.6 million in 2009; \$106.8 million in 2010; \$108.4 million in 2011; and \$111.1 million in 2012. Additionally, in 2006, the number of tax credits requested for any land donation was limited to 40 percent of the fair market value of the qualified donation, reduced from the previously allowed 50 percent. These compromises represented a diminution in the state's peak annual tax credit expenditures, which reached \$155.9 million in the tax year 2005 and \$247.8 million in 2006 but still allowed for an exemplary program that the state can budget for into the future.

In the 2013 Legislative Session, the cap was further modified. [Chapter 798 of the 2013 Virginia Acts of Assembly](#) (HB 1398) lowered the maximum annual amount of land preservation tax credits that could be issued to taxpayers to \$100 million beginning with the calendar year 2013. However, the \$100 million was to continue to be annually indexed. The intent of the legislation was for the Governor to include in the Budget Bill a recommended appropriation from the general fund to fund other land conservation programs in an amount equal to the difference between the indexed amount and \$100 million. The amount was to be appropriated as follows: 80 percent to the Virginia Land Conservation Fund, 10 percent to the Civil War Site Preservation Fund, and 10 percent to the Virginia Farmland Preservation Fund.

The LPTC program saw further revisions during the 2015 Legislative Session with the enactment of [Chapter 680 of the 2015 Virginia Acts of Assembly](#) (SB 1019). Most notably, any unused balance left in the annual tax-credit cap is now closed out at the end of the calendar year. In the past, those balances carried forward until expended. Other aspects of the program were amended by (i) reducing the annual tax-credit cap from \$100 million to \$75 million; (ii) with the exception of credits issued for fee simple interest donations to the Commonwealth, reducing the maximum amount of the tax credits that can be claimed by a taxpayer from \$100,000 to \$20,000 in 2015 and 2016 and \$50,000 for each year thereafter; and (iii) requiring that a complete application for the tax credit be filed with TAX by December 31 of the year following the year of the conveyance.

The 2019 legislature extended the amount of time a taxpayer is allowed to claim the land preservation tax credit to either (i) December 31 of the second year following the calendar year of the donation if the conveyance was made on or after January 1, 2020, or (ii) December 31 of the third year following the calendar year of the donation if the conveyance was made before January 1, 2020.

Language has been included in the state budget every year since 2017 to extend the \$20,000 limit on the amount of the Land Preservation Tax Credit that each taxpayer can claim for those calendar years.

Benefits of the Land Preservation Tax Credit DCR Review

DCR reviews LPTC applications for one million dollars or more as directed by the Code of Virginia ([§ 58.1-512\(D\)\(3\)\(a\)](#)). Conservation Value Review Criteria, adopted by the Virginia Land Conservation Foundation, is used by DCR in verifying the conservation value of donated land and conservation easements. The VLCF Board adopted the LPTC Conservation Value Review Criteria in November 2006 and amended them on August 7, 2008, and March 27, 2009. The review criteria encompass three factors, which, together, make up the Conservation Value of the donated land. The three factors are (i) Conservation Purpose, (ii) Public Benefit, and (iii) Water Quality and Forest Management. The review criteria are based on [IRS Code § 170\(h\)](#), provisions in [§ 58.1-512](#) of the Code of Virginia, and specific requirements that reflect state policy.

The first factor of the criteria is Conservation Purpose. DCR assesses the land being conserved and the legal documents submitted to verify the purpose for which it is being conserved, i.e., what conservation purposes are being protected by the conservation easement that will be of value to the Commonwealth. Applicants only need to satisfy one of the eight potential Conservation Purposes; however, many applicants select more than one to reflect the multiple attributes of their donated land.

The eight Conservation Purposes identified in the criteria are:

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; and
8. Conservation and Open Space Lands Designated by Federal, State, or Local Governments.

There are several options for meeting each Conservation Purpose, and designated safe harbors are provided to satisfy each purpose. If a donation meets a safe harbor, then the donation fulfills the specific Conservation Purpose. For example, within the Conservation Purpose of Agricultural Use, land that a locality has designated as being subject to use value taxation is deemed to have a valid Agricultural Use Conservation Purpose. Within the Conservation Purpose of Historic Preservation, a battlefield individually listed in the Virginia Landmarks Register or the National Register of Historic Places is also deemed to have a valid Historic Preservation Conservation Purpose.

Conversely, some land uses may be specifically ruled out for certain Conservation Purposes. For example, public recreation lands where development covers more than 15 percent of the site, such as amusement parks, will not meet the Conservation Purpose of Natural-Resource Based Outdoor Recreation or Education.

The second factor of the criteria, Public Benefit, ensures that safeguards exist in the proposed deed to protect the conservation values of the donated land in perpetuity, prohibit intentional destruction or significant alteration of the conservation values of the protected property, and ensure that the conservation value of the property will not be adversely affected by future division or development. The deed of easement must contain the following restrictions:

1. Limits on the number of permitted subdivisions of property;
2. Limits on the number and size of permitted new buildings and structures;
3. Restrictions on location of new buildings and structures;
4. Restrictions on location of new roads or access ways; and
5. Limits on alterations, demolition, or ground-disturbing activity that may impact historic or natural heritage resources.

The final factor of the Conservation Value Review Criteria is Water Quality and Forest Management. This factor focuses on protecting water quality and the stewardship of agricultural and forest lands. Concerning water quality protection, if the property contains wetlands, frontage on a perennial stream or river, lakes, or tidal waters, then the deed must prevent certain activities determined to

impact water quality within the required 35-foot riparian buffer. In addition, if the property contains lands in agricultural use, then the deed must provide for the implementation of a written conservation plan that stipulates the use of best management practices. If the property contains 20 acres or more of forest lands, the deed must require that a written forest management plan or Virginia Forest Stewardship Plan be in place prior to the commencement of timber harvesting or other significant forest management activities. This plan is to be developed by or in consultation with the Virginia Department of Forestry or be consistent with Forestry Best Management Practices.

2021 Review of the Conservation Values of Land Preservation Tax Credits

DCR is responsible for conducting reviews of the Conservation Value for LPTC requests of one million dollars or more (based on 40 percent of the fair market value of a land donation valued at \$2.5 million or greater) and certain other requests as identified in state code, [§ 58.1-512](#). During our review, DCR verifies the conservation value of these donations in advance of TAX issuing a land preservation tax credit. This review is performed in accordance with Conservation Value Review Criteria adopted by the VLCF for this purpose.

As part of its pre-filing review process, DCR reviewed and commented on the conservation value associated with 23 LPTC applications in 2021. The agency provides this pre-file review service to applicants so that any potential issues can be resolved prior to the recordation of a donation and submission of a final LPTC application. DCR sent final verification letters to TAX for eleven pre-filed applications, all of which were issued land preservation tax credits in 2021. According to DCR's records, these 11 applications received over \$10.3 million in land preservation tax credits and protected 4,446 acres of land. Of the remaining 12 applications, one was filed in 2021 but was valued below the threshold for our final review, and nine went on to complete their conservation value review and file with TAX in 2022. Two are continuing to work on their projects.

Additionally, seven pre-file applications that DCR reviewed in 2019 and 2020 were issued tax credits in 2021. Combined, these seven property owners received over \$15 million in tax credits and protected 5,629 acres.

The objective of DCR's review is to ensure a basic level of protection for all of the known conservation values of the property at the time of the donation in accordance with the VLCF Conservation Value Review Criteria. DCR's reviews significantly modified many applications submitted to the agency. Through the collaborative pre-filing review process, DCR and the applicants resolved a number of substantial issues with the applications that could have negatively affected the land donation's conservation value if the donation had been recorded as submitted. Applicants modified their draft

deeds following the DCR review process to ensure the appropriate protection of the conservation values of the properties in perpetuity as follows:

- For Forestland, deeds were modified to require a forest management plan for significant forest management and all timber harvesting activities;
- For Farmland, deeds were modified to require the development and implementation of a written agricultural conservation plan;
- For Water Quality Protection, deeds were modified to ensure the placement of appropriate riparian buffer areas with adequate protections;
- For Historic Resources, deeds were modified to ensure the protection of resources listed on the Virginia Landmarks Register or the National Register of Historic Places from demolition and alteration; and
- For Natural Heritage Resources, deeds were modified to protect known resources documented in state databases.

Additionally, deeds were often refined to specify no-build areas, limitations on paved roads and the placement of utilities, and the establishment and limitations on the disturbance of vegetated buffers along perennial streams and other specified water bodies. The reviews also led to other minor changes for clarification and often required the applicant to provide additional documentation of the conservation purposes claimed. In several cases, the review required additional language in the deeds of easement to ensure the protection of water quality, historic structures, and areas containing special habitats supporting known natural heritage resources.

The common factor that ran through each review conducted by DCR was the obvious pride landowners have in their land and the fulfillment they achieve in ensuring their land will remain open space, whether working lands, historic battlefields, or natural areas, for generations to come. Most properties DCR reviewed in 2021 had some form of agricultural or forestal activity at the time of donation, whether a historic manor on hundreds of acres or a small farm in the foothills. Where the land was in agricultural use, the donation of a conservation easement was intended to ensure the opportunity for future generations to farm the land.

In addition to improving the conservation value of the donations, DCR sought to complete its reviews in a timely fashion and worked closely with applicants, their attorneys, and land trusts. The law, Virginia Code [§ 58.1-512\(D\)\(3\)](#), allows DCR's Director to take up to 90 days to review a final, completed application before taking final action. On average, in 2021, DCR took about seven days to review a final application.

DCR's review of tax credits that claim one million dollars or more has been both responsive and timely and serves as an important tool for the Commonwealth to ensure that the lands protected for which

a Land Preservation Tax Credit is issued are worthy of protection and that the natural and historical resources will be adequately protected in perpetuity.

Issuance of Land Preservation Tax Credits by TAX

Virginia's Land Conservation Incentives Act, Virginia Code [§ 58.1-512\(C\)\(2\)](#), requires DCR to compile an annual report on qualified donations of less-than-free interests accepted by any public or private conservation agency. The following sections of this report detail those land conservation donations for which a taxpayer has been issued a tax credit for a land donation within the 2021 annual cap.

To apply for a LPTC, a taxpayer must have successfully recorded a conservation easement or donated land to a qualified conservation organization. The taxpayer must then submit a form LPC-1 to TAX and send a copy to DCR after completing the land donation. DCR has compiled this report from taxpayer information provided to the agency in form LPC-1 and confirmed this initial data with TAX. This section only summarizes the information submitted as part of the application process and may vary somewhat from the final totals managed by TAX.

Calendar Year 2021 Land Preservation Tax Credit Summary

Based on the information provided by TAX and taxpayers in their tax credit applications, tax credits were awarded to 183 applications which, in total, reached the \$75 million cap for the calendar year 2021. These applications spanned 60 localities and conserved 37,975 acres of land in the Commonwealth.

Table 1 highlights the 12 counties where taxpayers each claimed four or more LPTCs. Loudoun County had the largest number of donations per county, with 29 donations (15.8 percent of the total donations in 2021). Loudoun County also had the greatest amount of acreage preserved per county, at 3,638 acres or 8.7 percent of the total acreage, and the county was issued the most tax credit dollars (\$19,643,627 or 26.2 percent of the total LPTC value issued).

Fifty-three localities each had at least one, but no more than three, land donations that were issued LPTC credits. In those 53 localities, the total dollar value of credits issued was \$32,897,429, or 43.86 percent of the statewide total. The total acreage preserved in those localities was 23,748.15 acres, 56.73 percent of the statewide total.

Of the total 41,858.62 acres preserved under the 2021 LPTC program, landowners reported in their LPTC application packages that approximately 9,143.0 acres were currently being used for production agriculture. On-site operational best management practices designed to protect water quality are reportedly required on 89.99 percent of those acres (8,228.00 acres). Approximately 19,427.23 acres were reported as being used for active silvicultural land, of which it was reported that 19,126.23 acres (98.45 percent) are required to have on-site operational best management practices or pre-harvest management plans.

Within the LPTC application, landowners are also asked to report on the total length of vegetated riparian buffers, with a minimum width of 35 feet, required to be maintained in their conservation easement or fee simple deed of gift. The applications for 2021 indicated a total length of 751,620 feet of forested buffers and 205,089 feet of no-plow buffers along rivers, streams, wetlands, ponds, springs, and shorelines. The two categories of buffers differ in the activities restricted or allowed within the easements or deeds. Activities such as mowing or timber harvesting are restricted in forested buffers but are allowed within no-plow buffers to maintain non-woody vegetation such as pasture or grasslands.

Landowners may claim eight conservation purposes when applying for tax credits. A property must meet at least one conservation purpose, but the applicant may claim multiple purposes. In 2021, applicants claimed the following conservation purposes:

- Preservation of Scenic Open Space: 40,015.23 acres (95.60 percent of the total acreage),
- Forestal Use: 27,937.09 acres (66.74 percent of the total acreage),
- Watershed Preservation: 25,626.94 acres (61.22 percent of the total acreage),
- Agricultural Use: 20,146.24 acres (48.13 percent of the total acreage),
- Lands Designated by Federal, State, or Local Government: 16,522.46 acres (39.47 percent of the total acreage),
- Natural Habitat and Biological Diversity: 9,794.47 acres (23.40 percent of the total acreage),
- Historic Preservation: 2,409.80 acres (5.76 percent of the total acreage), and
- Natural Resource-Based Outdoor Education and Recreation: 176.35 acres (0.42 percent of the total acreage).

Table 1: 2021 Land Preservation Tax Credits by Locality

	Locality	Number of Donations	Tax Credits Issued	Percent of Total Tax Credits	Acres Preserved	Percent of Total Acres Preserved
1	Loudoun County	29	\$19,643,627	26.19%	3,638.04	8.69%
2	Albemarle County	11	\$5,005,600	6.67%	2,861.65	6.84%
3	Halifax County	8	\$1,783,200	2.38%	1,218.05	2.91%
4	Southampton County	6	\$1,070,800	1.43%	2,220.81	5.31%
5	Westmoreland County	6	\$2,080,380	2.77%	1,320.39	3.15%
6	Fauquier County	6	\$4,224,459	5.63%	519.15	1.24%
7	Appomattox County	5	\$544,400	0.73%	761.82	1.82%
8	Sussex County	4	\$2,487,400	3.32%	2,370.04	5.66%
9	Louisa County	4	\$1,004,000	1.34%	1,104.65	2.64%
10	Prince Edward County	4	\$862,040	1.15%	1,006.01	2.40%
11	Essex County	4	\$674,600	0.90%	596.14	1.42%
12	Frederick County	4	\$2,722,065	3.63%	493.72	1.18%
	Subtotal	91	\$42,102,571	56.14%	18,110.47	43.27%
	Other*	92	\$32,897,429	43.86%	23,748.15	56.73%
	Total	183	\$75,000,000	100.00%	41,858.62	100.00%

The 12 localities listed above had a minimum of four donations in 2021.

* Other: Localities containing at least one but no more than three donations. These include the counties of Alleghany, Amelia, Augusta, Bath, Bedford, Botetourt, Brunswick, Buckingham, Campbell, Caroline, Charles City, Charlotte, Chesterfield, Cumberland, Dinwiddie, Fairfax, Fluvanna, Franklin, Giles, Gloucester, Goochland, Hanover, Henrico, Henry, Highland, Isle of Wight, James City, King and Queen, King George, King William, Lunenburg, Madison, Mathews, Mecklenburg, Montgomery, Nelson, New Kent, Northumberland, Nottoway, Orange, Page, Pittsylvania, Rockbridge, Scott, Shenandoah, Smyth, Spotsylvania, Stafford, Surry, Tazewell, and Warren, in addition to the cities of Hampton and Richmond.

Table 2: 2021 LPTC Acreages of Lands Preserved by Conservation Value

	Locality	Agricultural Use	Forestal Use	Natural Habitat & Biological Diversity	Historic Preservation	Natural-Resource Based Outdoor Ed. & Rec.	Watershed Preservation	Preservation of Scenic Open Space	Conservation of Open Space Lands Designated by Fed, State, or Loc. Gov't
1.	Albemarle County	1,332.00	1,876.00	346.90	167.00	66.00	2,723.90	2,575.00	0.00
2.	Alleghany County	130.63	130.63	130.63	0.00	0.00	0.00	130.63	0.00
3.	Amelia County	306.00	316.00	0.00	0.00	0.00	434.00	621.00	187.00
4.	Appomattox County	335.00	441.00	0.00	9.00	0.00	463.00	758.00	176.00
5.	Augusta County	315.00	996.00	1,009.00	0.00	0.00	1,013.00	1,303.23	0.00
6.	Bath County	204.00	332.00	207.00	0.00	0.00	537.00	537.00	0.00
7.	Bedford County	60.00	447.00	0.00	0.00	0.00	333.00	507.00	0.00
8.	Botetourt County	74.00	135.00	210.00	0.00	0.00	210.00	210.00	0.00
9.	Brunswick County	55.00	136.00	0.00	0.00	0.00	5.00	226.00	226.00
10.	Buckingham County	108.00	377.00	0.00	0.00	0.00	0.00	487.00	487.00
11.	Campbell County	211.00	500.00	0.00	0.00	0.00	164.74	724.74	0.00
12.	Caroline County	593.00	578.00	425.00	0.00	0.00	425.00	798.00	0.00
13.	Charles City County	14.00	181.00	0.00	0.00	0.00	0.00	195.00	0.00
14.	Charlotte County	108.00	182.00	0.00	0.00	0.00	0.00	300.00	300.00
15.	Chesterfield County	31.00	34.00	5.00	0.00	0.00	31.00	34.00	0.00
16.	Cumberland County	350.00	40.00	0.00	0.00	0.00	400.00	400.00	0.00
17.	Dinwiddie County	55.00	213.00	0.00	0.00	0.00	0.00	268.00	0.00
18.	Essex County	150.00	427.00	0.00	0.00	0.00	20.00	596.00	0.00
19.	Fairfax County	0.00	0.00	0.44	0.00	0.00	0.44	0.44	0.00
20.	Fauquier County	455.05	237.05	0.00	159.05	0.00	220.95	423.28	319.05
21.	Fluvanna County	311.66	311.66	0.00	0.00	0.00	311.66	311.66	311.66
22.	Franklin County	0.00	139.00	141.00	0.00	0.00	0.00	141.00	0.00
23.	Albemarle County	1,332.00	1,876.00	346.90	167.00	66.00	2,723.90	2,575.00	0.00

	Locality	Agricultural Use	Forestral Use	Natural Habitat & Biological Diversity	Historic Preservation	Natural-Resource Based Outdoor Ed. & Rec.	Watershed Preservation	Preservation of Scenic Open Space	Conservation of Open Space Lands Designated by Fed, State, or Loc. Gov't
24.	Frederick County	375.00	190.00	0.00	154.00	0.00	418.00	347.00	264.00
25.	Giles County	0.00	42.00	50.00	0.00	50.00	50.00	50.00	50.00
26.	Gloucester County	175.00	261.00	0.00	233.00	0.00	226.00	325.00	325.00
27.	Goochland	248.00	70.00	318.00	0.00	0.00	318.00	318.00	0.00
28.	Halifax County	177.00	1,358.00	472.00	72.00	0.00	1,520.00	1,242.00	357.00
29.	Hampton, City of	0.00	0.00	0.00	0.00	0.45	0.00	0.00	0.00
30.	Hanover County	203.00	95.75	0.00	7.75	0.00	7.75	298.75	7.75
31.	Henrico County	502.00	488.00	0.00	477.00	0.00	477.00	512.00	477.00
32.	Henry County	0.00	81.00	81.00	0.00	0.00	81.00	0.00	0.00
33.	Highland County	0.00	2,004.00	842.50	0.00	0.00	2,100.50	2,100.50	0.00
34.	Isle of Wight County	81.00	170.00	252.00	0.00	0.00	252.00	252.00	0.00
35.	James City County	0.00	874.00	1,828.00	0.00	0.00	2,069.00	2,069.00	1,241.00
36.	King and Queen County	0.00	107.00	0.00	0.00	0.00	0.00	130.00	0.00
37.	King George County	0.00	48.00	0.00	0.00	0.00	0.00	48.00	48.00
38.	King William County	305.00	648.00	0.00	0.00	0.00	0.00	1,128.00	0.00
39.	Loudoun County	2,696.90	1,328.00	750.00	455.00	59.90	2,406.00	3,089.00	2,197.00
40.	Louisa County	2,378.00	760.00	0.00	0.00	0.00	0.00	3,051.00	3,138.00
41.	Lunenburg County	0.00	179.00	0.00	0.00	0.00	0.00	179.00	0.00
42.	Madison County	0.00	125.00	147.00	0.00	0.00	147.00	147.00	147.00
43.	Mathews County	0.00	16.00	25.00	0.00	0.00	25.00	25.00	0.00
44.	Mecklenburg County	594.00	491.00	244.00	0.00	0.00	244.00	831.00	244.00
45.	Montgomery County	243.00	243.00	243.00	0.00	0.00	0.00	0.00	0.00
46.	Nelson County	195.00	195.00	195.00	195.00	0.00	195.00	195.00	195.00
47.	New Kent County	497.00	702.00	0.00	0.00	0.00	162.00	1,037.00	0.00

	Locality	Agricultural Use	Forestal Use	Natural Habitat & Biological Diversity	Historic Preservation	Natural-Resource Based Outdoor Ed. & Rec.	Watershed Preservation	Preservation of Scenic Open Space	Conservation of Open Space Lands Designated by Fed, State, or Loc. Gov't
48.	Northumberland County	45.00	19.00	0.00	0.00	0.00	64.00	64.00	0.00
49.	Nottoway County	250.00	130.00	0.00	0.00	0.00	0.00	385.00	0.00
50.	Orange County	31.00	77.00	0.00	0.00	0.00	0.00	108.00	0.00
51.	Page County	127.00	54.00	0.00	0.00	0.00	182.00	182.00	0.00
52.	Pittsylvania County	200.00	478.00	0.00	0.00	0.00	241.00	709.00	0.00
53.	Prince Edward County	296.00	881.00	0.00	0.00	0.00	1.00	835.00	649.00
54.	Richmond, City of	0.00	0.00	0.00	1.00	0.00	16.00	17.00	17.00
55.	Rockbridge County	118.00	378.00	0.00	0.00	0.00	499.00	499.00	0.00
56.	Scott County	0.00	0.00	132.00	0.00	0.00	132.00	65.00	0.00
57.	Shenandoah County	392.00	495.00	293.00	422.00	0.00	293.00	888.00	0.00
58.	Smyth County	930.00	617.00	680.00	10.00	0.00	1,025.00	1,175.00	1,098.00
59.	Southampton County	536.00	1,683.00	175.00	0.00	0.00	2,221.00	1,086.00	710.00
60.	Spotsylvania County	205.00	131.00	0.00	30.00	0.00	306.00	306.00	30.00
61.	Stafford County	539.00	526.00	61.00	0.00	0.00	621.00	621.00	621.00
62.	Surry County	92.00	260.00	0.00	0.00	0.00	0.00	352.00	0.00
63.	Sussex County	1,730.00	2,193.00	474.00	0.00	0.00	1,956.00	2,187.00	1,597.00
64.	Tazewell County	160.00	43.00	0.00	0.00	0.00	0.00	203.00	0.00
65.	Warren County	157.00	392.00	57.00	18.00	0.00	58.00	93.00	177.00
Acreage totals statewide		20,146.24	27,937.09	9,794.47	2,409.80	176.35	25,626.94	40,015.23	16,522.46
Percent of conserved acreage claiming Conservation Value		48.13%	66.74%	23.40%	5.76%	0.42%	61.22%	95.60%	39.47%

Virginia Land Conservation Foundation Stewardship Funding

In 2021, the VLCF distributed the annual land conservation Stewardship Fund deposits for the tenth time, pursuant to [§ 58.1-513\(C\)\(2\)](#) of the Code of Virginia. Monies for the fund are generated by a two percent fee imposed on the sale or transfer of land preservation tax credits. Distributions are calculated based on the formula in the Code of Virginia, using a three-year average of the number of donated interests accepted by the conservation agency or organization. To be counted in the calculation, the land owner must have applied for a tax credit during the immediately preceding three years. During the 2012 Session of the General Assembly, legislation was enacted to clarify that Federal governmental entities are prohibited from receiving these state-generated funds.

On October 27, 2021, the Virginia Land Conservation Foundation approved the distribution of \$1,865,802 to 42 conservation agencies and organizations to support their ongoing monitoring and enforcement of conservation easements and fee simple gifts (Table 3).

Table 3: 2021 VLCF Stewardship Funding Distribution

	Agency/Organization Name	Number of Donations	% of Total Donations	Amount of Funds
1	American Battlefield Trust	4	0.80%	\$14,971.33
2	Blue Ridge Land Conservancy	29	5.82%	\$108,542.14
3	Broad Water Innovations	1	0.20%	\$3,742.83
4	Capital Region Land Conservancy Inc	6	1.20%	\$22,456.99
5	City of Charlottesville	2	0.40%	\$7,485.66
6	City of Hampton	1	0.20%	\$3,742.83
7	City of Harrisonburg	1	0.20%	\$3,742.83
8	City of Staunton	1	0.20%	\$3,742.83
9	County of Albemarle	24	4.81%	\$89,827.98
10	County of Clarke	6	1.20%	\$22,456.99

	Agency/Organization Name	Number of Donations	% of Total Donations	Amount of Funds
11	County of Fauquier	24	4.81%	\$89,827.98
12	County of Loudoun	0.5	0.10%	\$1,871.42
13	County of Stafford	1.5	0.30%	\$5,614.25
14	County of Warren	1	0.20%	\$3,742.83
15	Culpeper Soil and Water Conservation District	0.5	0.10%	\$1,871.42
16	Enrichmond Foundation	1	0.20%	\$3,742.83
17	Ever Green Team	54	10.83%	\$202,112.95
18	Friends of Dragon Run	1	0.20%	\$3,742.83
19	Friends of the Rappahannock	1	0.20%	\$3,742.83
20	Henricopolis Soil & Water Conservation District	0.5	0.10%	\$1,871.42
21	Historic Fredericksburg Foundation, Inc.	1	0.20%	\$3,742.83
22	Historic Green Springs Inc.	1	0.20%	\$3,742.83
23	Historic Virginia Land Conservancy	16	3.21%	\$59,885.32
24	Land Trust of Virginia	41.5	8.32%	\$155,327.55
25	New River Land Trust	2	0.40%	\$7,485.66
26	Northern Neck Land Conservancy	19	3.81%	\$71,113.82
27	Northern Virginia Conservation Trust	7.5	1.50%	\$28,071.24
28	Northern Virginia Regional Park Authority	1	0.20%	\$3,742.83
29	Old Dominion Land Conservancy, Inc.	39	7.82%	\$145,970.47
30	Outdoors Preservation Foundation	2	0.40%	\$7,485.66
31	Piedmont Environmental Council	3.5	0.70%	\$13,099.91

	Agency/Organization Name	Number of Donations	% of Total Donations	Amount of Funds
32	Potomac Conservancy	1	0.20%	\$3,742.83
33	Rockbridge Area Conservation Council	1	0.20%	\$3,742.83
34	Shenandoah Valley Battlefield Foundation	2	0.40%	\$7,485.66
35	The 500-Year Forest Foundation	2	0.40%	\$7,485.66
36	The Conservation Fund	2	0.40%	\$7,485.66
37	The Nature Conservancy	3	0.60%	\$11,228.50
38	Valley Conservation Council	12	2.41%	\$44,913.99
39	Virginia Department of Conservation & Recreation	2	0.40%	\$7,485.66
40	Virginia Department of Forestry	23	4.61%	\$86,085.15
41	Virginia Department of Historic Resources	3	0.60%	\$11,228.50
42	Virginia Outdoors Foundation	154	30.89%	\$576,396.20
	TOTALS	498.5	100.00%	\$1,865,802.00



Federal and State Grants

Agricultural Conservation Easement Program:

- Administered by the USDA Natural Resources Conservation Service (NRCS).
- Provides financial assistance to eligible partners for purchasing Agricultural Land Easements that protect the agricultural use and conservation values of eligible land.
- Eligible partners include Indian tribes, state and local governments, and non-governmental organizations that have farmland or grassland protection programs.
- NRCS may contribute up to 50% of the fair market value of the Agricultural Land Easement. Where NRCS determines that grasslands of special environmental significance will be protected, NRCS may contribute up to 75% of the fair market value of the Agricultural Land Easement.
- Contact: Diane Dunaway, Easement Specialist & Program Manager, USDA NRCS, diane.dunaway@usda.gov, 804-287-1634.

American Battlefield Acquisition Grants:

- DCR serves as the state governmental sponsor for this National Park Service program.
- The federal Land and Water Conservation Fund supports the permanent protection of threatened historic battlefield lands through the American Battlefield Protection Program's (ABPP) Battlefield Land Acquisition Grants.
- To be eligible, the property must be at least 50% within the boundary of one of the battlefields identified in the 1993 Report on the Nation's Civil War Battlefields, or in the 2007 Revolutionary War and War of 1812 Historic Preservation Study. The land must also be outside the boundaries of any National Park Service unit legislative boundary.
- State or local government entities are eligible to apply, and nonprofits may act as sub recipients of grant funds.
- Each grant requires a dollar-for-dollar non-federal match.
- Contact: Kristal McKelvey, Recreation Grants Manager, DCR, kristal.mckelvey@dcr.virginia.gov, 804-508-8896.

Clean Water Financing and Assistance - Land Conservation Loan Program

- The Virginia Department of Environmental Quality, on behalf of the State Water Control Board, manages the Virginia Clean Water Revolving Loan Fund.
- Funds the acquisition or permanent conservation of land that (1) protects or improves water quality and prevents the pollution of state waters, and (2) protects the natural or open-space values of the property or ensures its availability for agricultural, forest, recreational or open-space use.
- Repayment schedules of 20, 25 or 30 years are available, depending on the project type.
- Contact: Karen Doran, Program Manager of the Clean Water Financing and Assistance Program, DEQ, karen.doran@deq.virginia.gov, 804-698-4133.

Coastal and Estuarine Land Conservation Program:

- Federal program administered on the state level by the [Virginia Coastal Zone Management \(CZM\) Program](#) at DEQ.
- Provides funding for the acquisition and conservation of coastal and estuarine land with significant ecological values that can be effectively managed and protected.
- To be eligible for this annual funding opportunity, the Virginia CZM Program, with the assistance of its conservation partners, developed a Virginia CELCP Plan. The plan outlines Virginia's conservation priorities within the coastal zone.
- Contact: Laura McKay, Manager of the Virginia CZM Program, DEQ, laura.mckay@deq.virginia.gov, 804-698-4323.

Conservation Reserve Enhancement Program

- State cost-share payments are administered through local soil and water conservation district (SWCD) offices. Federal reimbursement is made through the Farm Service Agency.
- Aims to improve Virginia's water quality and wildlife habitat by offering rental payments to farmers who voluntarily restore riparian buffers, filter strips and wetlands through the installation of approved conservation practices. State cost-share payments are administered through local SWCD offices.

- The state will reimburse up to 25%, not to exceed \$200 per acre of restored buffer or wetland, of conservation practice costs deemed eligible by the local SWCD. There is also a 25% state income tax credit for out-of-pocket expenses, thus further reducing the landowner's cost.
- Federal reimbursement is for up to 50 percent of a participant's eligible expenses for implementing best management practices (BMPs), such as fencing or alternative watering systems.
- Contact: Darryl Glover, Director of the Division of Soil and Water Conservation, DCR, darryl.glover@dcr.virginia.gov, 804-786-7119.

Get Outdoors

- Administered by the Virginia Outdoors Foundation.
- Provides grants for projects that increase equitable access to safe open space in Virginia's communities. Some examples of costs that can be covered include infrastructure, planning and capacity building.
- Contact: Emily White, Grant Program Manager, Virginia Outdoors Foundation, ewhite@vof.org, 434-282-7054.

Forest Legacy Program:

- Federal program administered on the state level by the Virginia Department of Forestry, and funded by the Land and Water Conservation Fund.
- Protects private forests by paying for their acquisition or an easement. Land must be within a designated Forest Legacy Area to qualify.
- Grants require a 25% non-federal match.
- Contact: Karl Didier, Forestland Conservation Program Manager, DOF, karl.didier@dof.virginia.gov, 434-459-8278.

Historic Resources Incentives and Grants

- The Virginia Department of Historic Resources administers various programs that offer funding for historic preservation.
- Programs offer funding for easements, acquisition, maintenance, and restoration of historic resources.
- Contact: For easements and rehabilitation tax credits: Megan Melinat, Manager, Office of Preservation Incentives, megan.melinat@dhr.virginia.gov, 804-482-6455. For the Virginia Battlefield Preservation Fund: David Edwards, Director of Community Services, David.Edwards@dhr.virginia.gov, 540-868-7030.

Land and Water Conservation Fund – State and Local Grant Funding

- Federal program administered on the state level by DCR.
- Provides funding for the acquisition and development of public outdoor recreation areas and facilities.
- These grants are for public bodies only.
- Towns, cities, counties, regional park authorities and state agencies may apply for 50% matching fund assistance. This is a reimbursement program meaning that the sponsoring agency should be capable of financing the project while requesting periodic reimbursement.
- Contact: Kristal McKelvey, Recreation Grants Manager, DCR, kristal.mckelvey@dcr.virginia.gov, 804-508-8896.

National Coastal Wetlands Conservation Grant Program:

- Administered by the US Fish and Wildlife Service (USFWS).
- Protects, restores and enhances coastal wetland ecosystems and associated uplands.
- States along the coasts or Great Lakes are eligible.
- If the state has established a fund for acquiring coastal wetlands, other natural areas, or open space, then NCWCG funds can be used to cover up to 75% of the cost of a project. If the state has not created such a fund, states are eligible to receive funding to cover up to 50% of the cost of a project.
- Contact: Shelley Dibona, USFWS, Region 5 Coordinator, shelley_dibona@fws.gov, 413-253-8509.

North American Wetland Conservation Act:

- Administered by the USFWS.
- Supports the protection of bird populations and wetland habitat.
- Grants require a 50% non-federal match.
- Contact for Standard Grants proposals: Stacy Sanchez, U.S. Standard Grants Program Coordinator, USFWS, stacy_sanchez@fws.gov, 703-358-2017. Contact for Small Grants proposals: Rodecia McKnight, Small Grants Program Coordinator, USFWS, rodecia_mcknight@fws.gov, 703-358-2266.

Purchase of Development Rights (PDR) Program Matching Funds

- Administered by the Virginia Department of Agriculture and Consumer Services (VDACS).
- Provides guidance and matching funds to help localities establish PDR programs, which compensate landowners who voluntarily place an agricultural conservation easement on their property.
- Contact: Jennifer Perkins, Coordinator, Office of Farmland Preservation, VDACS, jennifer.perkins@vdacs.virginia.gov, 804-786-1906.

Virginia Coastal Zone Management Program

- The Virginia CZM Program office at DEQ administers the program's annual grant award from the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service, Office for Coastal Management.
- Among other projects, CZM grants can be used to fund the fee simple acquisition of property, the purchase of conservation easements, or the cost of habitat restoration.
- CZM grants used for the above projects require a 50% non-federal match.
- Contact: Laura McKay, Program Manager of the Virginia CZM Program, DEQ, laura.mckay@deq.virginia.gov, 804-698-4323.

Virginia Land Conservation Fund

- Administered by the Virginia Land Conservation Foundation.
- Aims to conserve certain categories of land: open spaces and parks, natural areas, historic areas, farmland and forests.
- The grant can cover up to 50% of the total project cost and 100% for state agencies and tribes.
- Contact: Suzan Bulbalkaya, Land Conservation Manager, DCR, suzan.bulbalkaya@dcv.virginia.gov, 804-371-5218.

Virginia Open-Space Lands Preservation Trust Fund

- Administered by the Virginia Outdoors Foundation.
- Provides grants to localities or landowners for the protection of open space that offers a wide range of public benefits. Public Access grants are available for projects that result in new or expanded open space that is available to the public for recreation or education. Easement Assistance grants may cover legal fees, appraisals, surveys, partial purchase and other costs associated with conveying an open-space easement.
- Contact: Emily White, Grant Program Manager, Virginia Outdoors Foundation, ewhite@vof.org, 434-282-7054.

Virginia Recreational Trails Fund:

- On the state level, this federal matching reimbursement program is administered by DCR.
- Provides federal funds for building and rehabilitating trails and trail related facilities. Funds may also be used to acquire land that is part of a trail development project.
- Funding may be provided to private organizations, local governments, other government entities, and federal agencies if teamed with private trail groups and organizations.
- Requires an applicant match of 20% of the cost of the project. This is a reimbursement program, so the applicant must be able to cover the initial costs.
- Contact: Kristal McKelvey, Recreation Grants Manager, DCR, kristal.mckelvey@dcv.virginia.gov, 804-508-8896.

U.S. Department of Defense:

- **Readiness and Environmental Protection Integration** program
- **Army Compatible Use Buffer** program

Virginia Department of Conservation and Recreation
600 East Main Street, 24th floor | Richmond, VA 23219-2094 | 804-786-6124

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Memorandum

To: VOF Board of Trustees

From: Martha Little, Deputy Director of Conservation

Date: March 16, 2023

Re: Stewardship Overview

VOF has one of the largest portfolios of conservation easements in the nation. With nearly 4,500 separate conservation easement properties totaling over 850,000 acres in nearly every locality across Virginia, and representing some of our state's best, most critical, and valuable lands from a conservation value perspective, VOF has an enormous responsibility. From VOF's perspective, once a new easement is recorded, our work is just beginning. We take very seriously the role and duty of upholding the terms and restrictions of each individual open-space easement we hold, on each unique property.

One of the reasons we believe our program has been so successful in the past, and one reason why many legislators look favorably upon VOF, is our agency's dedication to upholding our stewardship duties and responsibilities by ensuring that the conservation values protected by our Deeds of Easement remain upheld and protected in perpetuity. Our Stewardship Division, while relatively young in comparison to when our Foundation was created by the General Assembly in 1966, got its "feet wet" 2006 with my hire, and along with my senior leadership colleagues in conjunction with our governor-appointed Board of Trustees, we have over the past 15 years, consistently and increasingly, dedicated our organization's financial resources for increased stewardship staffing, technology, tools, training, and other resources to ultimately ensure the Commonwealth is receiving a sound return on its investment into the Land Preservation Tax Credit and in general support for the Foundation.

We believe the success of our stewardship department is partially attributed to our multi-pronged monitoring and inspection approach, which has consistently evolved over the years to increase our monitoring numbers while also remaining an efficient program. Without an unlimited program budget, as you can imagine, inspecting over 4,500 properties on an annual basis is neither practicable nor feasible, and we have found that by utilizing a variety of tools, technology and methods, that VOF can still ensure the protection of the land and conservation values of each unique property with the available resources at our disposal. Additionally, VOF continues to be at the forefront of conservation and stewardship topics both in Virginia, and nationally as well, by continuing to learn, adapt, and adopt new strategies and methods for achieving program success. Due to the size of our easement portfolio, and the experience our staff has with stewarding this substantial acreage, VOF has been consistently approached to serve as conference presenters on a variety of stewardship topics, both for state-wide and national land conservation conferences, and

in some cases have been asked to join the boards of smaller, non-profit land trusts to help provide guidance on stewardship topics.

The following list provides an overview of the variety of methods and strategies our organization has used to monitor and enforce the terms of our easements. VOF is constantly evolving by applying and adopting new methods and/or technologies into our practices often. Our staffing levels have increased over the years and in the past couple years VOF has been leading an AmeriCorps pilot project to further enhance our monitoring footprint. We initiated the pilot in April 2021 and to date we have utilized 4 students/assistants to monitor our easements resulting in over 500 property visits. The students receive education and experience in the land conservation world and several have gone on to begin their careers in the field.

At least for VOF, we no longer look at “monitoring” easements as a one-time visit to a property every so often, but rather it has evolved into a much more thorough collection and analysis of a variety of data, reports, and other information to aid in our ability to maintain accurate, and timely, records and to ensure that our easement terms and restrictions are being upheld, especially more so now that we are witnessing many of our original donors conveying their easement properties to the next generation of successor owners.

VOF’s Easement Monitoring Methods

1. On-site monitoring methods:

- a. Stewardship Field Report (SFR)
- b. Present Conditions Report (PCR)
- c. Specific landowner requests to review activity or proposal

These are our “boots-on-the-ground” stewardship monitoring activities. This method focuses primarily on the Stewardship Field Report, a very thorough and all-encompassing process including the inspection of all previous monitoring reports, baseline and/or present condition reports, the Deed of Easement, in addition to various maps and property surveys prior to setting foot on any property. In addition, staff login and research each easement property within every locality’s online deed and records system to determine if any new legal instruments have been recorded on the property. Over the years, we have learned how important it is to keep an eye on the legal record as each subsequent recorded document may impact VOF’s easement or a property’s unique conservation values, including, but not limited to property transfers, conveyances, and subdivisions; other ownership changes (including internal changes to Trusts/Trustees, LCs, LLCs, etc.); new property interests (ex: new or modified Deeds of Trust); leases; utility, road, or other infrastructure rights-of-way, among many others. After these pre-visit activities have been completed, staff will contact each landowner to request a physical visit to the property; staff are encouraged and trained to discuss and ask each landowner questions about past, ongoing, and future activities or development on these easement properties. The SFR process would not be complete without the physical visit to the property, in addition to completing a report about any observations or issues relating to the visit (or perhaps any issues discovered prior to the physical site visit). When changes to a property are observed, staff are tasked with documenting these changes using photos and GPS units, with the end result of a photo album and map being appended to each monitoring form.

Another form of on-site monitoring include Present Conditions Reports (PCR), which are very similar to Baseline Documentation Reports (BDR), but are based on the current conditions of an easement property at the time of the report, not the time the easement was recorded. These reports are most typically produced when either VOF has determined that the original BDR includes either insufficient information, or there have been so many changes a new comprehensive property report is warranted. Prospective buyers of VOF easement properties have the option, for a fee, to ask VOF to complete a PCR for any easement property.

The two forms of on-site monitoring described above are supplemented and further informed by specific visits to easement properties to meet with landowners and/or their representatives to evaluate and analyze, or perhaps discuss ongoing or future plans and activities. Many landowners will request VOF staff to visit, sometimes to allow VOF staff to take a closer look at something, such as a forested stream buffer, if they have questions about specific activities permitted by their DOEs. In other cases, staff will visit properties to further evaluate landowner activities or proposals and evaluating their potential impacts to conservation values.

2. Off-site monitoring methods:

- a. Landowner Surveys
- b. Aerial Imagery Assessments
- c. Courthouse Research: secure-remote access (SRA) to all locality deeds and land records
- d. Visual Assessments from Public areas/ROWs
- e. Inspection of County Property Tax Cards and Reassessments, locality GIS systems, etc.

For over 10 years now, VOF has been engaged with completing various forms of off-site monitoring methods, including those types listed above. Landowner surveys are completed individually for each property or landowner by stewardship staff, however, VOF also has initiated state-wide landowner surveys in the past and has recently conducted a statewide contact survey. We have now incorporated a feedback/survey attribute to our e-newsletters. This enables property owners to easily alert VOF staff to any changes in ownership or building activity. These surveys are critical for maintaining and updating landowner contact information, but more importantly, allow landowners to initiate conversations with staff about ongoing questions, concerns, or proposed activities they wish to seek VOF review and approval.

Aerial Imagery Assessments have been greatly utilized by our staff over the years; Virginia has such great geospatial data and imagery available to our staff through the Virginia Base Mapping Program (VBMP) and other sources, such as the National Agricultural Imagery Program (NAIP). These high resolution, sub-meter imagery sources, allow VOF staff to document changes on VOF properties without having to leave their offices. Some limitations do exist for this type of monitoring, such as tree cover in certain areas, however, changes on properties such as new buildings, roads, utility corridors, and land-use activities such as grading or clearing, silviculture, and agricultural activities are easily observed and documented.

Additionally, staff frequently are engaged with researching and retrieving new information on easement properties through courthouse deed research, retrieving locality property tax assessment cards, and in limited cases where views are unimpeded, will visually assess a property from public roads or rights-of-way. Collectively, each of these off-site methods is helping inform and drive our priorities for visiting properties to complete our in-person, stewardship field reports. As staff observe changes in aerial photography, notice a property transfer or subdivision occur through the legal record, or happen to observe activity while driving by, all of these intermediary monitoring activities allow for VOF to be more engaged and responsive to our easements and landowners, all with the goal of VOF upholding the terms of these easements and ensuring the protection of the property's conservation values.

3. Third-party notification systems:

- a. Department of Forestry (VDOF) harvest notifications
- b. Infrastructure Impact Review
 - a. Virginia Department of Transportation (VDOT)
 - b. Department of Environmental Quality (DEQ) Coordinated Agency Review
 - c. State Corporation Commission (SCC) for large scale utility projects (Dominion, AEP)
 - d. Federal Energy Regulatory Commission (FERC)
 - e. Locality/County Review (example: Fauquier, Northampton, Albemarle)

Similar to the off-site monitoring methods, VOF has also implemented a number of third-party notification systems and partnerships to assist with our program. The Virginia Department of Forestry sends a monthly report to VOF, including GPS points of active, or upcoming timber harvests and contact information for the forester and logging company involved. This notification system has proven to be absolutely critical for ensuring VOF staff have had an opportunity to review and approve required forestry plans. More recently, VOF has been very active in establishing other notification systems, including a new Impact Review process which was established to allow public agencies to submit specific projects for VOF review. These can be property specific, such as VDOT is seeking VOF review of a road maintenance project that may impact a VOF easement property, to a regional or state-wide scale. One large scale project that our Impact Review team has been engaged with over the past couple of years is Dominion Energy's Strategic Underground Program. This program was launched by Dominion state-wide to address infrastructure that frequently underperformed or had frequent outages. Due to the sheer volume of anticipated requests for review, VOF was able to meet with Dominion to establish a unique and specific review process for all of Dominion's underground projects; many of which intersected with VOF easement properties. Other Impact Review projects have included regional transmission line upgrades and replacements, gas pipelines, water and sewer infrastructure, greenways and trails, and many others. This process allows VOF to act proactively and work with all stakeholders involved to ensure either a positive outcome for our easement properties, or to mitigate for any impacts.

Increasingly, VOF is establishing better relationships and partnerships with localities across the Commonwealth. VOF staff have been engaged with locality planners, zoning officials, permit offices, and others to ensure VOF is notified or has approved any specific development proposals

prior to their locality signing-off. So far, VOF has been successful in establishing these relationships in a handful of localities, but because we find these relationships so valuable to our program, we will continue our efforts to expand this program even further.

4. Organizational Structure and other related Tools:

- a. VOF's TerraTrac database (also refer to EMA)
- b. Utilization of Microsoft's Box Cloud system to manage and organize all projects in the cloud (which allows for easier sharing of easement reports and documents with landowners, co-holders, partner land trusts and agencies).
- c. Positive landowner relationships and education

Record-keeping is also a substantial part of our stewardship work and has proven critical at times in defending our easements during legal challenges. Each easement includes many specific restrictions, for example, the number of permitted houses, the number of permitted property subdivisions, size limitations for individual buildings and in the aggregate, riparian buffer areas and no-build setbacks, and so on, and keeping track of all this information is critical to ensuring VOF is upholding our obligations. Which is why, throughout the past several years, VOF has dedicated funding and many hours of staff time working with Timmons Group to design and release a brand new organizational-wide database, TerraTrac. Released during the pandemic of 2020, TerraTrac was designed to assist all our staff, volunteers, work-studies, board members, and eventually, the public. TerraTrac is a comprehensive platform through which all staff interact through daily, starting each day through a virtual dashboard. All the restrictions I listed above that VOF is responsible for tracking are done so in TerraTrac, among many other types of valuable information for each easement, property, and landowner.

TerraTrac directly interfaces with our online cloud storage system, hosted through Microsoft Box. Prior to adopting Box in 2013, all VOF records were paper based. Over the years, staff, volunteers, and others are continuing efforts to scan and make each and every file in digital form which has allowed VOF to achieve much greater efficiencies at our scale. We can share files with one another, landowners, attorneys, county and agency personnel with the click of a button. File types and names are organized and guided by VOF-wide procedures, ensuring consistency across our portfolio and across our five offices around the state.

As you can see VOF is committed to ensuring the perpetual protection of these easement assets. At our divisional core, we have been and remain committed to creating positive, working relationships with all our landowners. Positive landowner relationships take lots of staff time and effort, but we find that the value of these relationships pays off in the long-run. We serve as a resource for many landowners, either with direct assistance, or in many cases as a liaison to connect landowners with other professionals, whether it be related to ecosystem restoration, to connect with foresters and soil scientists, and even grant programs they would not otherwise have known about. I did not touch much on education in my letter, however, as you might imagine, as we see this continuing trend from one generation to the next, we are and will remain engaged with educating landowners, especially new ones, with the importance of their easements and how we can work together to ensure the perpetual protection of each property's unique conservation values.

Land Conservation and Renewable Energy Development: Finding a Balance in a Warming World



Our nation's vast and varied lands will play a central role in the transition from fossil fuels to renewable energy and energy efficiency. Since the early 19th century, our public, private, state, and tribal lands have been a vital source of the raw energy inputs that power the country. As we transition to a clean energy economy, these lands will supply the nation with renewable energy from sources such as the sun, wind, and the earth. Along with other land ownership types, public lands will play an important role in these 21st century solutions to our energy needs.

The nation needs a comprehensive energy policy rooted in energy efficiency and conservation. Enhancing the efficiency of our technologies and using only what we need is the cheapest, simplest, and most environmentally sound way to reduce consumption of fossil fuels. However, these actions alone will not be enough. The nation must be repowered with new renewable energy technologies at the small and large scale. Clean energy generation must be developed and deployed immediately to meet the climate challenge.

Renewable energy potential in the U.S. is enormous, and a significant portion of renewable resources can be found on public lands. Because of the size and nature of many large-scale renewable energy projects, they must be sited to avoid our wildest lands and sensitive fish and wildlife habitat, and great care must be taken to limit environmental impacts to our precious landscapes.

By working together to strike a balance between ecosystem services and the need for renewable energy, we can protect our valued and unique open spaces and simultaneously meet our energy and climate challenges.



*Sawtooth Mountains, Idaho
(wilderness.net)*

The Role of Landscapes in a Changing Climate

Our natural ecosystems provide key benefits and services to people, flora, and fauna across the country. Uses of both public and private lands include but are not limited to: recreation, grazing, hunting and fishing, species habitats and biodiversity, natural resource extraction, scenery, and as the setting of many refuges and other protected areas. They also play an important role in capturing and storing carbon emitted by fossil fuel power, tremendously assisting the fight

against global warming. The value of intact ecosystems in combating climate change cannot be understated. Lands, like oceans, are a critical link in the carbon cycle, continuously removing carbon dioxide from the air and storing it for long periods. Weakening this link will accelerate the climate impacts of fossil fuel emissions. The Congressional Budget Office reported that lands in the United States alone have the potential to sequester “about 40 billion to 60 billion metric tons of carbon dioxide over the course of 50 years and another few tens of billions of tons over the following half-century.”¹ In addition to sequestration, ecosystems are important for the stocks of carbon they already contain, which should be safeguarded, not emitted.



*Bob Marshall Wilderness, Montana
(wilderness.net)*

Additionally, wildlands help both natural and human communities cope with the unavoidable effects of global warming by supporting biodiversity, protecting air and water quality, and by providing corridors of undisturbed habitat. In fact, land use policies that conserve migration corridors may also improve the likelihood that some species survive as climate changes.² There must be a balance between addressing the near-term need to site renewable energy facilities with the long-term impacts of climate change.

Renewable Energy at Every Scale

In the United States, there are significant opportunities for new generation that maximize the use of the existing built environment. Small-scale, or “distributed,” generation such as rooftop solar panels minimizes the amount of land required for development and does not require construction and maintenance of transmission infrastructure. This type of generation can be well-suited for remote



*Solar panels on a roof
(househunting.ca)*

areas that are far from population centers, congested urban areas where electric grids are at or near capacity, communities looking to avoid the substantial cost of constructing new transmission and distribution lines, and other areas with excellent renewable resource potential and local electricity needs. Additional potential benefits of distributed generation include greater reliability and security, lower costs for consumers, and efficiency gains from reduced energy losses from transmission.³

However, our country has traditionally relied on centralized generation and an immense transmission network to bring energy to where we live and work. Almost all of our current electricity supply comes from utility-scale power; only about 0.5% of total U.S. electricity generation comes from non-utility scale generation.⁴ Utility-scale plants benefit from the

¹ United States Congressional Budget Office. “The Potential for Carbon Sequestration in the United States.” September 2007.” <http://www.cbo.gov/ftpdocs/86xx/doc8624/09-12-CarbonSequestration.pdf>

² Pew Center on Global Climate Change. “Coping With Global Climate Change: The Role of Adaptation in the United States.” June 2004. <http://www.pewclimate.org/docUploads/Adaptation.pdf>

³ U.S. Department of Energy, Electricity Deliverability and Energy Reliability. “Distributed Energy Program.” <http://www.eere.energy.gov/de/>

⁴ United States Congressional Budget Office. “Prospects for Distributed Electricity Generation.” September 2003. <http://www.cbo.gov/doc.cfm?index=4552&type=0>



Wind turbines
(Bureau of Land Management)

economies of scale that come from producing large amounts of electricity from a single capital investment. Power is then “wheeled” through the grid to consumers.

Renewable energy can also be produced using this same model. Because the best renewable resources are often far from population centers where people live and work, new transmission lines will also be needed to transfer this immense amount of new renewable energy to load centers. But, since long lines may cross areas with sensitive lands or habitat, they must be properly sited to minimize impacts to precious places.

In addition, requirements must be included to ensure that transmission lines serve renewables, and not carbon-heavy generation such as coal-fired power plants that will cause further harm to the environment.

Energy Development and Land Use Impacts

Some utility-scale renewable energy plants require a potentially large amount of land to site their facilities, but such land use must be considered in context. Analyses that suggest that power generated by renewable energy has greater land use impacts than fossil fuel-generated power, for example, often only take into account the footprint of fossil-fuel generation facilities, as opposed to capturing the “upstream” or full-cycle impacts of energy extraction, transportation, and generation.⁵ Coal and natural gas that fuel electric power plants have multiple impacts to lands. For example, coal extraction destroys large tracts of ecosystems and habitats by way of strip mining and mountain top removal, and slurry wastes account for significant pollution in natural places. Transportation and burning of coal also impact air, water, and wildlife. Similarly, natural gas extraction has life-cycle impacts associated with drilling, pipelines, staging areas, and compressor stations. In some instances – e.g., Wyoming’s Upper Green River Valley between the Wyoming and Wind River Ranges – impacts affect entire landscapes. In other words, the “land footprint” for—and negative impacts of—these fossil-fuel resources incorporate far more than merely the site of the power plant. Renewable energy facilities are also often more compatible with existing agricultural land-uses, allowing, for example, farmers to continue to plant crops around wind turbines.

Life-cycle analyses are appropriate regardless of the type of energy source. Other potential adverse environmental impacts must be taken into account when energy projects, including renewable energy ones, are planned and sited. For example, wind power can be compatible with other land-uses, but the installation and maintenance of wind turbines, associated roads, and perimeter fencing can fragment habitat, lead to soil erosion and pollution from runoff, and can significantly impact bird and bat populations.⁶ Large-scale solar projects can require major landscape changes over thousands of acres, as land must be properly graded and vegetation must be removed to reduce the risk of fire.⁷ Geothermal projects can deplete groundwater resources or lower the water table during drilling, and can emit low levels of some pollutants.

⁵ See, for example: Eilperin, Juliet and Steven Mufson. “Renewable Energy’s Environmental Paradox.” *The Washington Post*. April 16, 2009. <http://www.washingtonpost.com/wp-dyn/content/article/2009/04/15/AR2009041503622.html>

⁶ Bureau of Land Management Wind Programmatic Environmental Impact Statement. Chapter 5, pages 1, 5. <http://windeis.anl.gov/documents/fpeis/maintext/Vol1/Vol1Ch5.pdf>

⁷ Western Governors’ Association Western Renewable Energy Zones – Zone Identification and Technical Analysis Work Group. “Resource Criteria for Development of Candidate Study Areas.” p. 9, 11. <http://www.westgov.org/wga/initiatives/wrez/zita/ZITA%20TC%20criteria%20presentation.ppt>

Balance Through Proper Siting

As with all energy options, the social and ecological impacts of renewable energy development must be assessed through science-based planning processes with opportunities for robust public involvement. In order to ensure high-quality and legitimate development decisions and minimize controversy, renewable development planning on public lands must include meaningful and early opportunities for public engagement. Planning should assess ecological and social impacts, linkages between habitats, and the cumulative effects across administrative boundaries.



*Organ Pipe Cactus National Monument, Arizona
(wilderness.net)*

Land that has already been disturbed should be given preference for development. Whether in private or public ownership, land that has been used for industrial, agricultural, or other intensive human purposes is generally superior to “greenfield” sites in term of reduction of environmental degradation. Redevelopment of disturbed sites offers opportunities to improve lands that may not otherwise be reclaimed. When siting new power lines to bring renewable energy to market, existing transportation, telecommunication, pipeline and power line corridors should be utilized to the maximum extent to minimize new impacts. And, technology that results in the lowest environmental impact should be given preference, such as underground or superconducting cables for transmission lines.

Renewable energy can be appropriate on both public and private lands if sited properly. In addition to contributing to our environmental goals, clean energy offers significant opportunities to contribute to our economic prosperity. Renewable energy development can offer tax benefits to local communities and benefits to landowners through sale or lease of their property in the case of private lands, and potentially offer several times the employment of fossil-fuel alternatives.⁸ However, whether on private or public lands, great care must be taken to ensure that renewable energy development avoids high value habitat and sensitive lands wherever possible, or minimizes and mitigates impacts where development occurs.

Unique Role of Public Lands

Interest in utility-scale renewable energy development in the U.S. has been increasing. Wind development has occurred on both public and private lands, while most solar development so far has been on private lands. However, approximately 200 applications for solar development on public lands are pending. Because renewable energy is a new and exclusive use of traditionally multiple-use public lands, it is important that public land management agencies weigh both the environmental and opportunity costs and benefits when assessing the potential of any of these pending projects, by way of full environmental review, a transparent public process, and a thorough discussion of impacts, alternatives, and mitigation techniques.

In addition to increased energy conservation and attention to energy efficiency measures, a dramatic and rapid shift to renewable energy is needed to avoid catastrophic climate change. Public lands can and should be a part of the solution. By setting in place intelligent, forward-thinking policy and guidance now, we can ensure responsible renewable energy development that serves our energy needs, helps meet our climate change goals, and protects natural ecosystems and priceless public lands.

⁸ See, for example, Union of Concerned Scientists. “Clean Energy, Green Jobs.” 2009. www.ucsusa.org/25by25



EQUITABLE LAND ACCESS



FAMILY FARMS AND RANCHES



HEALTHY COMMUNITIES



FUTURE GENERATIONS

Community-centered conservation: Meeting local needs for land and people

Community-centered conservation offers an opportunity to reach more people than ever before, by doing land conservation in new, different and more inclusive ways to connect with those in the diverse places that we live.

By Jennifer Miller Herzog • January 23



Jennifer Miller Herzog

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Tags

accessibility

veterans

food security

Disability Inclusion

Indigenous communities

community engagement

community-centered conservation

Wallowa Land Trust

Land Conservancy of West Michigan

Five Valleys Land Trust

Santa Fe Conservation Trust

Kestrel Land Trust



This piece originally appeared in "[The Ozark Holler](#)," the newsletter of the accredited [Ozark Land Trust](#).

Community-centered conservation is part of a growing movement across the land conservation sector. It offers an opportunity to reach more people than ever before, by doing land conservation in new, different and more inclusive ways to connect with those in the diverse places that we live. Land trusts all over the nation, familiar with the specific needs and goals of their local and regional constituents, are expanding and adapting their approach to reach and engage more people than ever in their communities — especially those who haven't seen and felt the benefits of land conservation in their lives so far.

There are as many different community-centered conservation strategies as there are communities, primarily because the needs of those communities are a unique blend of circumstances and characteristics that include ecology, demographics, socio-economic conditions, and cultural and political history. Because of that reality, five attributes of effective community-based strategies are that they are inclusive, connective, authentic, responsive and engaged.

The community-centered approach meets people where they are, is based on relationships and not simply transactions, engages expertise and wisdom based within the community, and focuses on community-centered process to craft solutions collaboratively rather than driving toward a specific, predetermined outcome. In other words, it's not just *what* we do, but *how* we do it.

In the process, land trusts and their staffs and boards are learning and bringing new competencies, sensibilities, perspectives and skills into their work to achieve inspiring results. Here are just a few examples of how several land trusts are engaging their communities in new ways.

Food Security

The accredited [Kestrel Land Trust](#) has a long history of protecting farmland in its region of western Massachusetts. But they've expanded their approach to address the challenge of food security and access to farmland for refugee and immigrant farmers in their community by partnering with a local nonprofit to find and [acquire farmland for 60 multi-generational families](#).



By using their expertise in land protection and stewardship to meet urgent community needs, Kestrel is building new partnerships and raising its profile — while maintaining knowledge and connections to the land and helping to grow their community's next generation of farmers.

Seniors

The accredited [Santa Fe Conservation Trust](#) partners with the New Mexico state health and aging/long-term services departments, Big Brothers Big Sisters, AARP, a local medical center and several local seniors programs and facilities to host [¡Vámonos!, a free urban walking program](#). The program gets people outside and increases access to the outdoors, improves health, increases social opportunities for seniors and builds community, all while making new friends for the land trust. Vámonos resources are published in both English and Spanish.



Veterans

The accredited [Five Valleys Land Trust](#) in Montana has [partnered](#) with military veterans' group Team Rubicon to improve forest management on conserved lands and connect veterans to the land, each other and the community. While helping the land trust meet its stewardship goals, the program also helps Team Rubicon hone its chainsaw and other unique skills to maintain its readiness to respond to natural disasters and other emergencies across the country.



Universal Access

The accredited [Land Conservancy of West Michigan](#) protected the [Anderson Woods Nature Preserve](#) and then capitalized on the preserve's gentle terrain by designing and building a universally accessible trail in partnership with Disability Network/West Michigan. The Preserve provides a rare opportunity to get deep into a serene natural forest for people using wheelchairs, walkers or strollers. Volunteer trail monitors care for the high-maintenance trail surface by removing debris and other obstacles at least weekly.

Indigenous Peoples

The accredited [Wallowa Land Trust](#) has partnered with tribal members, the [Nez Perce](#) Wallowa Homeland and The Nature Conservancy since 2019 to host the [Wallowa Gathering](#), an annual traditional root gathering event that brings people together, heals historic trauma from land dispossession and displacement, and reconnects Indigenous people with their ancestral homelands. Interest has grown each year from both tribal members and landowners welcoming gatherers to access these lands.



While each of these examples represents very different work on the ground, they share the common themes of partnership and creating solutions with partners and users, responsiveness to needs in their communities, and meeting those needs using the technical expertise, networks and resources of land conservation.

When we consider how to build new and durable support for land conservation, who will be America's future champions for conservation, and how conservation will remain relevant, important and valued by more people in a changing world, taking an intentional, authentic and committed community-centered conservation approach is a win-win-win-win — for people and the land.

More in Equitable land access < >



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Catching up with our Conservation Scholars: Nina Jeffries

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Not today

An aerial photograph of a rural landscape. A two-lane road runs horizontally across the middle. To the left of the road is a large green field, and to the right is a dense forest. In the bottom left corner, there is a large, dark, textured area that appears to be a field or a forest. The overall scene is a mix of natural and developed land.

Land Trusts and Wildlife Crossing Structures

**A Toolkit Detailing How Land
Trusts Can Contribute to Highway
Infrastructure Projects for
Wildlife**

January 2023

CENTER
for
**LARGE LANDSCAPE
CONSERVATION**

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This resource is a compilation of lessons learned and best practices in action by land trusts engaged in wildlife crossing structure projects. This toolkit has the intention to inform and support land trusts that are less familiar with connectivity and wildlife crossing efforts. It is geared for those interested in better understanding the critical role that land trusts play in increasing wildlife crossings across the nation and in how land trusts already work with transportation-related projects. The document includes many diverse examples and links to allow for further examination. It emerges from review of and interactions with land trusts and leans on the Center for Large Landscape Conservation's organizational expertise around planning, science, and implementation of wildlife crossings.

Document Summary:

Land trusts play a vital role in wildlife crossing projects. They can help to facilitate wildlife crossing structure projects in the following ways: hold conservation easements or own land; serve as interim landholders; find conservation buyers; design conservation easements for land adjacent to wildlife crossings; cultivate relationships with private landowners and local government agencies; steward the management of private land for wildlife habitat; and help steward private land management for wildlife habitat.

The following are recommendations provided at the bottom of each section in this document. *Land trusts can get further involved in wildlife crossing projects.* They can:

- Find out if there is a state or regional wildlife crossing or connectivity coalition near you and join—or initiate one if not yet in existence.
- Identify and develop a relationship with key Department of Transportation (or equivalent agency) staff. Take the first step to meet them.
- Examine existing habitat connectivity mapping or undertake new connectivity mapping. Examine where pinch point locations occur across roadways that could be addressed with protected private land and wildlife crossing structures.
- Find and examine existing reports or take part in developing plans. If such an analysis has not occurred in the land trust's focal area, advocate to initiate one in the state or region.
- Look at future transportation projects in transportation agency planning documents to see if they overlap with land trust priority areas or parcels.
- Consider prioritizing habitat connectivity and wildlife crossings in organizational strategic planning and other visioning opportunities.
- Incorporate wildlife connectivity and crossing priorities into existing relevant programs in the organization.
- Learn about existing connectivity and wildlife crossings-related policies in the land trust's state or in other states, or in federal policies. Share examples with relevant decision-makers and stakeholders. Advocate for or initiate policies.
- Learn about existing local government policies related to habitat connectivity and wildlife crossings. Share examples with relevant decision-makers and stakeholders. Advocate for or initiate policies.

Recommended citation: Paul, K., A. Breuer, A. Wearn. 2023. Land trusts and wildlife crossing structures: A toolkit detailing how land trusts can contribute to highway infrastructure projects for wildlife. Center for Large Landscape Conservation, Bozeman, MT, USA.

Layout and design: Kendra Hoff, Center for Large Landscape Conservation

All photos Adobe Stock

Easement donation disqualification for reserved rights of surface mining methods

Recent advice from the IRS Office of Chief Counsel reiterates the IRS's position on perpetual conservation easements on land where the landowner retains the rights to extract minerals using *surface* mining methods. The IRS announced its position that a landowner's retention of rights to use surface mining methods of their *unsevered* mineral interests would disqualify the easement donation as a charitable deduction. This position could significantly impact conservation easements on working lands allowing agricultural "borrow pits" and the removal or extraction by surface mining methods of gravel, sand or other surface mining materials to build or maintain roads on the protected property.

Office of Chief Counsel Internal Revenue Service [Memorandum, 202236010 \(9/9/2022\)](#) states:

- If the easement deed permits the landowner as owner of an unsevered mineral interest to extract or remove minerals by a surface mining method then the conservation easement does not satisfy the requirements of section 170(h) because the contribution is not treated as "made exclusively for conservation purposes."
- Donee approval of a surface mining method does not rectify the problem.
- Treas. Reg. §1.170A-14(g)(4)(i), which provides an exception to the disallowance rule where the impact of the mining has a limited, localized impact but is not irremediably destructive of significant conservation interest does not apply to surface mining methods of unsevered mineral interests.
- The only exception to the IRS rule would be if the mineral rights were severed from the surface estate and the likelihood of using surface mining methods to extract minerals passes the "remoteness test" (with the possibility of the mineral rights being exercised being so remote as to be negligible, as required by I.R.C. section 170(h)(5)(B)(ii)).

The IRS's Memorandum bases its analysis on the [Great Northern Nekaasa Corp. v. United States](#), 38 Fed. Cl. 645 (Fed.Cl.1997), a case in which the court held that the grantor of the easement retained a "qualified mineral interest" pursuant to §170(h)(6) because sand and gravel were "subsurface minerals." Therefore, the easement was not "exclusively for conservation purposes," under §170(h)(5)(A) and (B), and the grantor's charitable deduction was denied in its entirety.

According to the court, the so-called "limited and localized" exception under Treas. Reg. §1.170A-14(g)(4)(i) was incongruous with the statute. The statute prohibits "extraction or removal of minerals by any surface mining method." §170(h)(5). The regulations, in contrast, provide a limited exception for mining that has a "limited, localized impact on the real property but that are not irremediably destructive of significant conservation interests." The court did not factor into its determination elements such as pre-existing uses, state law definitions of minerals, or the size and scale of the surface extraction.

Despite the holding of *Great Northern Nekoosa*, many deductible easements in the ensuing years did continue to include a reserve right for limited and localized sand and gravel extraction, and the IRS did not seem interested in challenging deductions on that ground. However, the recent IRS Memorandum may signal a renewed focus on this issue, and heightened risk of a denied deduction.

Practical and legal considerations

Land trusts that address removal or extraction of materials such as gravel, sand, or hard rocks by surface mining methods in their templates or that are working with a specific donor interested in such removal or extraction may wish to reassess. Talk with the landowner and explain the risks without giving tax or legal advice. The decision about what to include in the easement as to extraction and removal will be determined by how much risk the donor is willing to take that their deduction might be audited and disallowed on this basis. Without more guidance from the IRS, land trusts and landowners must evaluate the risks and options in the context of these practical and legal considerations:

- *The definition of subsurface minerals and surface mining under state real property and federal tax law.* The IRS's Memorandum refers to "surface-mining methods" and "subsurface minerals" but does not define those terms creating confusion about what uses and substances might fall into these categories. The interaction between state real property and federal tax law definitions of minerals and/or surface mining is unclear. For example, what happens if the right to remove or extract is of substances not classified as minerals under state law? What constitutes a prohibited "surface mining method"?
 - The court in *Great Northern Nekoosa* did not look to state real property law definitions of these terms. Instead, it looked to the federal tax code and regulations and ultimately applied an ordinary meaning analysis to "minerals," but the IRS's analysis may conflict with the ordinary meaning of critical definitions under state laws.
 - Are there ways to draft conservation easements to allow de minimis removal of surface materials by methods that should not be considered surface mining? For example, state law may not regulate small-scale gravel pits, especially if the materials produced are not sold commercially or transported off the property. Those activities are not considered regulated "surface mining" under state law. Could a conservation easement state that sand and gravel produced as by-products of permitted activities shall not be considered surface mining, and the by-products can be removed from the property?
- *The interplay between the conservation purposes and surface mining.* How will the IRS treat a surface mining method of subsurface minerals which supports a protected conservation value? Can the conservation easement, for example, allow gravel extraction to maintain agricultural roads on an agricultural conservation easement conducted pursuant to a clearly delineated governmental conservation policy and that creates a significant public benefit?
- *Surface mining method as a pre-existing use.* Can the continuation of surface mining of subsurface minerals as historically practiced on farms and ranches meet the pre-existing use language of Treas. Reg. §1.170A-14e3 ("A donor may continue a pre-existing use of the property that does not conflict with the conservation purposes of the gift.")? Or does the

explicit prohibition against surface-mining methods in the statute take precedence over the more general language of 14e3?

- The pre-existing use exception in the regulation likely would fail a contest with the statute's surfacing mining prohibition if the *Great Nekoosa* rationale is used. The court said the *limited and localized* exception in the regulation contradicted the statute and the statute prevails over regulations. The *pre-existing use* regulation would, most likely, have the same problem.
- *The size of the area, scope or scale for surface mining.* Would small-sized individual "Maintenance Areas" where materials are gathered and not necessarily mined, with a capped percentage of the eased property and a remediation requirement be treated differently by the IRS than a large-scale commercial aggregate operation?

Land trusts, attorneys and landowners cannot know in advance how the IRS would respond to these queries so uncertainty and risk exist. The following risk spectrum may assist you in your analysis.

Risk Spectrum

The uncertainties associated with what the IRS might consider for disqualifying reserved rights to engage in surface mining methods, the holding in *Great Northern Nekoosa Corp.* and the IRS Memorandum cause concern about drafting tax-deductible conservation easements. Factors to consider are the landowner's risk tolerance for potential audit and disqualification of the easements for deduction, the amount of deduction at stake, land trust stewardship preferences, land trust missions and the particular attributes of the protected properties.

LOWER RISK APPROACHES

- Prohibit extraction of unsevered mineral interests by any surface mining method
- Sever mineral rights and pass the remoteness test of I.R.C. section 170(h)(5)(B)(ii)
- Exclude extraction site from the conservation easement protected property. Consider restricting that site with a nondeductible easement or restrictive covenant that is tied to the deductible easement to prevent division of the property (but see risks with commercial operations below)

HIGHER RISK APPROACHES

- Allow continuation of pre-existing use that does not conflict with the conservation purposes of the gift e.g., use of gravel from an already-existing small pit to fill potholes on agricultural or forest management roads.
- Allow surface mining methods with explicit provisions in the easement addressing scale and scope of surface mineral extraction and use to assure scale and scope of removal pose no adverse impact to the conservation purposes. Tie to managing the resources and to

complement land conservation goals but in a manner that will not adversely impact the deductible easement to avoid an IRS claim of an inconsistent use.

- Allow private, noncommercial surface operations. State that surface minerals may be produced as a by-product of other permitted reserved rights such as excavations of foundations for permitted residences, barns, or other structures, or development of ponds and wetlands for wildlife habitat enhancement.
- Exclude a perimeter lot with historic commercial surface extraction. Commercial surface operations present serious and substantial risks. The excluded lot might be controlled by a restrictive covenant that runs to the benefit of the conservation easement, which is a real property interest. There is a benefitted property which should make the covenant enforceable. The covenant could provide for restoration and revegetation with native species, building restrictions, a restriction on selling the land separate from the conservation easement protected property, and a promise to add the land into the conservation easement after restoration.

HIGHEST RISK APPROACHES → NO DEDUCTION

- Allow surface mining methods with holder approval
- Allow surface mining methods with the application of the limited and localized exception
- Allow surface mining methods for future use such as reserving the right to engage in development of new gravel or sand sources for commercial sale for off-site uses, or uses on the property that do not complement protection of conservation goals.
- Allow interior commercial gravel extraction or any other extraction for commercial use.

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