Va.'s reliance on tax credits for land conservation is 'certainly not equitable,' review finds

95% of conservation spending goes to private tax credits, report finds

BY: **SARAH VOGELSONG** - AUGUST 24, 2021 3:00 PM

Wise County, Va. (Sarah Vogelsong/Virginia Mercury)

Nearly all of Virginia's $1.8 billion in spending on land conservation over the past two decades has gone toward tax credits for private land, with a state agency review finding that "a large number" of those credits are likely "being used to help reduce the tax burden of high earning individuals and corporations."

Additionally, more than 30 percent of that spending, amounting to more than half a billion dollars, has gone toward land conservation in five counties: Loudoun, Albemarle, Fauquier, Culpeper and Orange. All of the counties except Loudoun have White populations far above the state average of 69.4 percent and all five have Black populations below the state average of 19.9 percent.

"In fairness, rural areas are where the land is, and many rural areas have lower minority populations," said Virginia Secretary of Natural Resources Matthew Strickler. "But rural places like the Eastern Shore, western Hampton Roads and some parts of Southside Virginia have higher than average African American populations and are not even in the top 10 localities" for tax credit spending.

The findings were presented by Strickler Tuesday morning to the state's Commission to Examine Racial and Economic Inequality in Virginia Law, a body convened by Gov. Ralph Northam "to examine the intersection between institutional racism and economic inequality."

"Land ownership and land conservation incentives in Virginia are really at this point relics of a past that has actively discriminated against people of color and didn't allow them to benefit from land ownership or in many cases even land access," said Strickler.

"Simply continuing to give huge tax breaks to a largely White landowning class in order for them to continue to keep doing what it is that they're already doing is not a 21st-century land conservation policy, and it's certainly not equitable," he added.

The report, which was conducted at Strickler's request by the Department of Conservation and Recreation, looked at the state's four primary conservation programs: the land preservation tax credits, Virginia Land Conservation Foundation grants, the Virginia Battlefield Protection Program and Virginia Outdoor Foundation Preservation Trust Fund grants.

Of the $1.8 billion in spending by the four programs, over 95 percent – or more than $1.7 billion – has gone to the tax credits, which the agency found are "the most generous in the country."

Today, participating landowners receive a tax credit equal to 40 percent of the value of their easement, with the statewide allocation for the program capped at $75 million. Credits can also be sold and combined with federal conservation incentives.

"Somewhat in the neighborhood of half of the tax credit deals that are happening in Virginia are happening through some kind of LLC or entity as opposed to an individual directly claiming it," Deputy Secretary of Natural Resources Joshua Saks said Tuesday. "We know the credits are being transferred a lot. We don't know exactly who is benefiting from that."

Additionally, while the state's other conservation programs include varying provisions aimed at ensuring water quality and providing public access to lands, the tax credit program only places water quality requirements on easements with a tax credit of $1 million or more and includes no public access provisions. Nor are participants required to demonstrate that their property is under threat of development.

An agency review of 29 easements found that 65 percent did not meet minimum conservation standards outlined by the Virginia Land Conservation Foundation.

"These are really lost opportunities to provide clean water to the citizens of the commonwealth and frankly are the bare minimum that we as taxpayers and citizens should be able to expect for our investment," said Strickler.

A July report from the Office of the State Inspector General also cast doubt on the value provided by the credit program to taxpayers. OSIG found that "lower quality conservation" was occurring for easements linked to tax credits between $500,000 and $999,999 and that taxpayers were taking reduced credits to avoid triggering agency review required by law for tax credits of $1 million or more.

At one conservation easement property visited by OSIG during its review, auditors "observed trash, scrap metal pile, old tires, old campers, inoperable vehicles and a manure storage area that contained deceased cattle parts."

Strickler contended Tuesday that the state's vast expenditures on the tax credit program have diverted funds from the more targeted conservation programs that DCR found "provide more regional diversity and more opportunities for minority populations."

Demand for Virginia Land Conservation Foundation grants in particular has been consistently high: in 2019, requests totaled more than $106 million, while in 2020 they were just shy of $80 million. Ultimately, only $5.9 million and $3.4 million, respectively, were awarded.

A 2012 report by the Joint Legislative Audit & Review Commission, a state watchdog agency, noted that Virginia's reliance on tax credits as the primary conservation driver "has the effect of emphasizing acreage goals over conserving priority land" and that "Virginia could adopt a more balanced approach" by distributing a greater share of conservation revenue to grant and land acquisition programs.

However, while the General Assembly reduced the cap on state spending on the tax credit program from $100 million to $75 million annually in 2015, tax credit investment has continued to dominate the state's approach. In 2017, the most recent year for which complete data are available, more than 90 percent of all state conservation investment went toward tax credits.

"The land conservation tax credit is responsible for the vast majority of land placed under conservation easement in Virginia over the past couple of decades," said Strickler. "The question is: who benefits?"

Jill Hanken, a commission member and former health attorney with the Virginia Poverty Law Center called the findings "pretty distressing."

"Honestly, to see the money that's being diverted to the tax credits, it's taking away from Virginia tax revenues that can be used for other purposes," she said.

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Sarah was Editor-in-Chief of the Mercury until March 2024 and previously its environment and energy reporter. She worked for multiple Virginia and regional publications, including Chesapeake Bay Journal, The Progress-Index and The Caroline Progress. Her reporting has won awards from groups such as the Society of Environmental Journalists and Virginia Press Association, and she is an alumna of the Columbia Energy Journalism Initiative and Metcalf Institute Science Immersion Workshop for Journalists.

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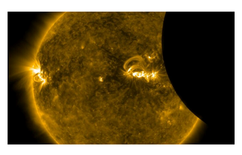

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