

Date of Meeting: December 4, 2018

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**BOARD OF SUPERVISORS
BUSINESS MEETING
ACTION ITEM**

SUBJECT: **FINANCE/GOVERNMENT OPERATIONS AND
ECONOMIC DEVELOPMENT COMMITTEE REPORT:
Response to Board Member Initiative:
Conservation Easement Assistance Program**

ELECTION DISTRICT(S): Countywide

CRITICAL ACTION DATE: At the pleasure of the Board

STAFF CONTACT(S): Erin McLellan, Management and Budget
Kenny Young, Planning and Zoning
Kristin Brown, Mapping and Geographic Information

PURPOSE: The purpose of this item is to provide staff recommendations and seek guidance on a proposal to provide grants to Loudoun County residents who wish to place qualifying undeveloped property under a permanent conservation easement.

RECOMMENDATIONS:

Finance/Government Operations and Economic Development Committee (FGOEDC): At its November 13, 2018, meeting, the FGOEDC recommended (4-0-1: Saines absent) the Board of Supervisors (Board) direct staff to implement a conservation easement program for calendar year 2019 based on the recommended land and income requirements in the Action Item and give the County Administrator authority to enter into Memorandums of Understanding with land trusts with approved applications. The FGOEDC further recommend the Board direct staff to give priority to applications that relinquish the greatest number of development rights and/or have documented historic and/or cultural resources or attributes, in the event of multiple requests for funding are received which require staff to rank applications.

Additionally, during the meeting, the Committee requested additional information on the Commonwealth's conservation program. The Income Eligibility section of this item has been updated to include some additional information.

Staff: Staff concurs with the FGOEDC recommendation.

BACKGROUND: At the July 19, 2018, Board of Supervisors Business Meeting, Supervisor Buffington presented a Board Member Initiative (BMI) to support land conservation easements through the creation of a conservation easement program¹. Staff was directed to review, research, and develop recommendations for implementing a program to offset upfront landowner costs associated with donating a conservation easement.

The BMI sought \$150,000 from General Fund balance to partner with conservation organizations to establish a cost-share program, with County funds covering no more than 50 percent of upfront costs for placing land under conservation easement, capped at \$15,000 per landowner. The BMI also recommended that staff consider preparing a request for proposal (RFP) to solicit qualified conservation organizations. The RFP could provide land and income eligibility guidelines. The BMI further recommended that participating conservation organizations undertake all activities in negotiating the terms of the easement, selecting candidate landowners for program consideration, and responsibility for ensuring long-term stewardship of the easement; in effect, Loudoun County would not be directly responsible for stewardship of the conservation easements.

Conservation Easements

A conservation easement is an agreement between a landowner and a land trust organization or government entity. This agreement permanently prevents certain uses of the land to retain or protect natural and historical resources, air or water quality, and agricultural, forestal, or recreational uses. A landowner generally receives tax credits and/or deductions related to the estimated value of the development rights which the landowner foregoes via the easement.

In Virginia, government entities may accept easements under the Open-Space Land Act². Qualifying private land trusts operate under the Conservation Easement Act³. Any qualifying organization that accepts a conservation easement must ensure terms of the easement are followed through with periodic site visits also known as stewardship.

Most conservation easements are gift easements⁴, which are donated to either a public body or a land trust by an individual land owner. Some conservation easements are development easements, which are created as part of a local land development approval through the rezoning process or through a public program under which public funds are used to purchase development rights. The majority of County-held easements in Loudoun County are development easements. Creation of a rural village or hamlet, a low density waiver subdivision, or rezoning proffers may generate these easements.

Loudoun County is one of the top three counties in Virginia in the number of conservation easements (about 750) and the total acreage (about 72,000) under conservation easement. Those numbers include development easements. For purposes of this analysis, only the non-development

¹ [July 19, 2018, BMI: Conservation Easement Program](#).

² Va. Code § 10.1-1700 et seq.

³ Va. Code § 10.1-1009 et seq.

⁴ For purposes of this item, “conservation easement” shall refer to an easement created pursuant to either Va. Code § 10.1-1700 et seq. or Va. Code § 10.1-1009 et seq.

easements in the County are considered, as most counties do not count development easements. Without the development easements, Loudoun County still ranks third in total acreage in the Commonwealth, with about 47,300 acres and 417 easements. Loudoun County ranks seventh in percentage of acreage under easement, with 14 percent of the County under conservation easement. The ranking of percentage of acreage under easement is below:

1. Fauquier County: 26 percent
2. Clarke County: 24 percent
3. Albemarle County: 22 percent
4. Rappahannock County: 20 percent
5. Orange County: 19 percent
6. Essex County: 15 percent
7. Loudoun County: 14 percent

Loudoun County’s easements by type are provided in Table 1. Table 2 provides Loudoun County’s conservation easements in relation to counties with the most robust and well-developed conservation easement programs.

Table 1. Loudoun County easements by type.

Type of Easement in Loudoun County	Acreage	Number
Gift ⁵	44,649	403
Development	24,968	324
Total	72,246	741
Total without Development Easements	47,279	417

Table 2. Loudoun County compared to select counties.

County	Total Acres Under Easement	Total County Acres	Percent Under Easement
Albemarle ⁶	101,526	464,638	22%
Clarke	27,881	113,920	24%
Fauquier	107,087	416,638	26%
Loudoun	47,279	333,439	14%

⁵ Gift easements include easements from the County’s Purchase of Development (PDR) Program. The goal of the PDR program was to protect agricultural land and natural, historic, and scenic resources with the voluntary restriction of development rights by a property owner through the establishment of a permanent conservation easement. With this program, the County was the holder or co-holder of the conservation easement. The program was ran from 1999 to 2004, and was funded through the County.

⁶ Data for Albemarle, Clarke, and Fauquier Counties are derived from ArcGIS data set from the Virginia Department of Conservation and Recreation: <http://www.dcr.virginia.gov/natural-heritage/clinfo>. Loudoun County’s data come from the Office of Mapping and Geographic Information.

The Virginia Outdoors Foundation holds most of the conservation easements in Loudoun County (140 easements with approximately 24,000 acres), followed by the Land Trust of Virginia (93 easements with approximately 8,300 acres). Many easements have co-holders, both of which are listed on the deed and equally share the stewardship obligation. Attachment 1 provides the organizations holding conservations easements in Loudoun County.

Over the last five years, an average of ten gift easements per year were established in the County, representing approximately 1,400 acres annually. Table 3 shows easement holders from 2013 to 2017. Attachment 2 presents the current conservation easements in Loudoun County as of July 2018.

Table 3. Gift conservation easement holders in Loudoun County from 2013 to 2017.

Calendar Years 2013-2017	2013	2014	2015	2016	2017	Total
Old Dominion Land Conservancy	3	2	7	7	8	27
Land Trust of Virginia	5	2	1	1		9
Northern Virginia Conservation Trust		2	1	1		4
Virginia Board of Historic Resources	1	2	1			4
Virginia Outdoors Foundation		1		1	1	3
Piedmont Environmental Council	1					1
Total	10	9	10	10	9	48

ISSUES:

The Board’s charter for the Envision Loudoun process for the development of the County’s Loudoun 2040 Comprehensive Plan (Loudoun 2040 Plan), states the intention to “seek a balance between preserving rural areas (Rural and Transition Policy Areas) and revitalization of other areas (Suburban Policy Area).”

Both the Rural and Transition Policy Areas have potential for additional residential dwelling units to be developed under the current Revised General Plan (Plan), and the draft Loudoun 2040 Plan, is currently under review by the Planning Commission with final adoption by the Board of Supervisors anticipated in 2019

Potential Fiscal Impact of Conservation Easements

In order to assess the potential fiscal impacts of placing land under conservation easement in Loudoun County, staff examined a scenario using the average yearly acreage of conservation easements added to the County each year. The examination compares the result of placing this land under conservation easement against the same land being developed to its maximum potential number of dwelling units (without rezoning activity), though staff acknowledges that the total maximum dwelling units may not necessarily ultimately be developed. Staff assumed the conserved land was from the Rural Policy Area as land in this area (Northwest, Southwest, Rt. 15 North, and Rt. 15 South planning subareas) is more likely to be placed under conservation easement based on trends from previous years.

The construction and occupation of new homes on previously vacant land will increase County expenditures in order to provide public services to these residents. The County will realize additional revenue from these homes in the form of various taxes and fees as well as transfers from state government. The difference between the additional revenue realized by the County minus the additional expenditures is the net fiscal impact. A net fiscal benefit (cost) results if the property generates more (less) revenue for the County than the resulting increase in public service expenditures.

In order to estimate the impact from potential development, staff used data developed by the consulting firm TischlerBise in support of fiscal analysis for the Loudoun 2040 Plan. These data are for single-family detached units built in the Northwest, Southwest, Rt. 15 North, and Rt. 15 South planning subareas.⁷ The net fiscal cost per household is \$7,584 for single-family detached units built in these planning subareas.

Each year, an average of approximately 1,400 acres of conservation easements are added to the County. For a broad conceptual example of fiscal impact and a generalized consideration of lot yield and associated costs, the following scenarios are described:

If all of these acres were zoned as AR-1, this land could be subdivided by right into 20-acre parcels (70 lots) or with the cluster subdivision option with a maximum yield of one lot per five acres (280 lots); developing this acreage would have a net fiscal cost of about \$531,000 (20-acre lots) or \$2,123,000 (cluster subdivision) a year to the County.

If all of these acres were zoned as AR-2, this land could be divided by-right into 40-acre parcels (35 lots) or with the cluster subdivision option with a maximum yield of one lot per 15 acres (93 lots); developing this acreage would have a net fiscal cost of about \$265,000 (40-acre lots) a year to the County or \$705,312 (cluster subdivision).

Note: this analysis provides theoretical scenarios potentially unlikely to occur in reality as a) all conserved lots will not be zoned exclusively AR-1 or exclusively AR-2 and b) the inherent characteristics of unique parcels such as topography, floodplain, and soil constraints may limit development potential.

Since the Plan was established in 2001, approximately a third of the authorized, by-right housing units were developed⁸. Incentivizing a conservation easement program may prevent the maximum build out in the future. However, given the rate of development within the Rural Policy Area over the last two decades, staff does not anticipate a full build out of the Rural Policy Area over the

⁷ The fiscal model uses the average value of relevant attributes (e.g., home value, household income, persons per household, vehicles per household, etc.). The model's estimates of revenues and expenditures are also reported in constant dollars and do not reflect price inflation. Revenues capture not only property tax on the home, but personal property tax on cars, anticipated sales tax revenue generated by the household, and other revenues. Expenditures capture the annual debt service costs of capital facility needs for each typical rural single family detached home, and also resulting County operating costs. Capital facility needs reflect needs under the Revised General Plan.

⁸ As of July 1, 2017.

next 20 years. Therefore, staff would not base an estimate of the cost avoidance from incentivizing conservation easements using the entirety of the remaining developable units.

Regardless of the potential cost avoidance of preventing residential development, the nature of permanent easement does restrict short-term and long-term flexibility of land use decisions for future Boards and citizens.

Proposed Conservation Easement Assistance Program

Land Requirements

An essential component of a conservation easement program is determining what land is desirable for permanent easement. These conservation easements will be created pursuant to Virginia Code § 10.1-1009 et seq. The Plan⁹ outlines several Green Infrastructure policies that identify the County's priorities in relation to land conservation. The Plan prioritizes the conservation of properties that contain unique or sensitive environmental, cultural, and historical characteristics. Further, the Green Infrastructure policies set as a priority the preservation and reclamation of farm buildings and structures to maintain agricultural infrastructure for future rural economy uses.

Practically, a potential program should establish baseline requirements for land to qualify. Based on review of priorities stated in the Plan as well as research into other conservation programs, staff recommends the following criteria:

1. The property must be located in Loudoun County;
2. The property must be capable of being subdivided, except parcels in the Agricultural and Forestal District Program;
3. The proposed use of the property as permanent open space should conform with the policies set forth in Loudoun County's Comprehensive Plan, and the expectation of future uses should be clearly understood by all parties;
4. The property must not currently be under conservation easement or otherwise restricted from development, except parcels under the Land Use Assessment program or enrolled in the Agricultural and Forestal District program.

Beyond the above baseline requirements for land to qualify for consideration, the program could consider other criteria, for the purposes of prioritization and evaluation of proposed parcels including:

- Acreage to be conserved;
- Presence of sensitive or unique natural resources, such as watersheds, habitat, and geological features;
- Presence of documented historic, cultural, and/or scenic/viewshed resources;
- Percent of land with Prime Agricultural Soils or Soils of Statewide Importance, as defined by the Natural Resources Conservation Service (NRCS) soil survey;
- Proximity to trail and/or greenway corridors;

⁹ Loudoun County Revised General Plan Amended through September 12, 2018

- Proximity to other Green Infrastructure;
- Proximity to towns;
- Potential for public access;
- Subdivision activity precluded.

Staff recommends assigning a point system or yes/no matrix to clearly set out land requirements and priorities for the program and making these requirements clear in the application process.

Income Eligibility

The upfront costs associated with placing land under conservation easement vary and generally range from \$20,000 to over \$40,000. These upfront costs could include appraiser, attorney, stewardship, and processing and documentation fees. It is possible that these fees could deter interested landowners from placing their land under conservation easement because of the initial cost burden. After review of the average fees associated with conservation easements, staff recommends that the total grant award per applicant for this program be established at \$15,000 or 50 percent of costs (whichever amount is lower) for a total not to exceed \$15,000.

Additionally, in order to focus the program's funds on landowners who need financial assistance to make land conservation possible, an income eligibility criterion should be established. To establish an income requirements, staff evaluated the Open-Space Lands Preservation Trust Fund (PTF), which is a similar program with income requirements. The Virginia General Assembly created the PTF in 1997, which assists landowners with the costs of placing land under a conservation easement. The PTF funds two different types of grants: Cost-Only and Partial Purchase. Cost-Only grants most closely resemble the grants in the proposed conservation easement assistance program for Loudoun County. Cost-Only grants cover some or all of the cost of donating an easement. In 2016, land owners with an average income¹⁰ of \$63,000 or less received priority funding for Cost-Only grants. Some lower amounts of funding were available for incomes over \$63,000 for specified costs. This income is tied to the definition of low income established by the Virginia Housing Development Authority, which is 80 percent of the State's median state income.

According to VOF Board of Trustees meeting documents, no landowners from Loudoun County have applied since 2012. Because the PTF is administered statewide, its income requirements establish a minimum baseline, as the median income in Loudoun County and Northern Virginia is higher than the remainder of Virginia, thereby disqualifying most County residents. The PTF general guidance for award amounts are below in Table 4. Table 5 shows the counties with the most Cost-Only grants applications since March of 2016 according to VOF Board of Trustees meeting documents.

¹⁰ Total income and taxable income

Table 4. PTF Income/Award Guidelines

Annual Income	Recommended Award
Up to \$63,000	\$11,500
\$63,001-\$79,000	\$8,000
\$79,001-\$100,000	\$2,250-\$3,000

Table 5. Top jurisdictions with landowners applying for PTF Cost-Only Awards¹¹

County	Number of applications
Smyth	6
Essex	5
Bland	4
Augusta	3
Bedford	3
Frederick	3
Louisa	3
Middlesex	3

According to VOF’s Director of Administration, awards are granted on a first-come, first-served basis with priority going to the lowest income category. The incomes for awardees are usually under the \$63,000 guidelines and are very often under \$30,000. Those applying in the lowest category are rarely denied funding.

Funding for the PTF and Cost-Only grants have fluctuated over the years. In FY 2019, the PTF received no funding from the General Assembly, though the PTF had other funding sources through existing grant awards not using the full funding allocation. So far in FY 2019, \$63,000 have been awarded in Cost-Only. Table 6 provides funding information for the PTF and Cost-Only Awards for Fiscal Years 2015 to 2019.

Table 6. PTF and Cost-Only Award Totals

Fiscal Year	PTF Total ¹²	Cost-Only Awards
2019	\$0	\$63,000
2018	\$900,000	\$393,350 ¹³
2017	\$2,000,000	\$193,250
2016	\$1,000,000	\$343,400
2015	\$250,000	\$139,000

Between 1997 and June of 2017, VOF awarded 338 Cost-Only awards totaling approximately \$2 million for a total of 76,650 acres.

¹¹ Since March 2016

¹² Total funding allocated from the General Assembly for PTF

¹³ Funds approved in previous fiscal years were released from projects uncompleted and approved for new projects.

In addition to the PTF’s income guidelines, the VOF has easement guidelines under which these applications would fall. Though there is no minimum acreage for VOF easements, properties under 100 acres must have strongly significant or multiple conservation values and development potential which would be substantially reduced. Generally, properties over 200 acres have required open-space value through size alone. Exclusion of a small parcel in the center of the property from going under easement is discouraged by the VOF. Additionally, smaller house sizes are encouraged for dwellings on easements, though larger houses could be acceptable dependent upon the easement’s location. All VOF easements proposals (and Cost-Only grants) are approved by the VOF Board of Trustees during a quarterly meeting.¹⁴

About 10,000 households, or about half of western Loudoun County households, are at or below 100 percent AMI, which is \$117,200 for Loudoun County. Western Loudoun is defined as the County west of Route 15 and the rural area north of Leesburg east of Route 15. As of April 1, 2017, the Department of Planning and Zoning estimated that there were 21,819 households in this area. Table 7 provides a breakdown of income distribution in Western Loudoun.

Table 7. Western Loudoun Household Income¹⁵

Western Loudoun Household Income (In 2016 Dollars)	Percent of Households
\$0 to \$29,999	7.4%
\$30,000 to \$49,999	7.5%
\$50,000 to \$74,999	10.7%
\$75,000 to \$99,999	10.1%
\$100,000 to \$124,999	11.5%
\$125,000 and More	53.0%
Total Households	100.0% ¹⁶

Staff recommends that grants for conservation easement assistance should be awarded to applicants with annual gross household incomes at or below 100 percent AMI (currently \$117,200¹⁷).

Program Process

Staff proposes the following process to administer the program (see Attachment 3 for flow chart):

1. Staff will advertise and market the program to land trusts active in the area. A clear list of land requirements and any scoring system established for funding will be part of advertisements. The County will advertise and make available on its website resources for land owners to find information on land trusts and conservation easements.
2. Land trusts will determine viable candidates based on the County’s land requirements and priorities and land owner income.

¹⁴ VOF Easement Guidelines updated January 2017

¹⁵ Source: U.S. Census Bureau 2012-2016 American Community Survey Five-Year Estimates.

¹⁶ Sum may not equal due to rounding.

¹⁷ HUD effective April 1, 2018

3. The County will make an online application available for one month twice a year: March 1 and September 1. Half of the \$150,000 funding will be reserved for each application process. Should the March application process not use the entire \$75,000, the remaining funds will roll to the September application process. The County will accept applications from land trusts qualifying as a “Holder” as defined by Virginia Code § 10.1-1009 et seq.
4. Land trusts will submit the online applications on behalf of the landowners. The application will respond to the Board’s list of land priorities and requirements. Land trusts must attach documentation of income and estimates for upfront costs.
5. Staff will receive and evaluate the applications, ensuring documentation of necessary items (estimates, income) and accuracy.
6. Staff in the Department of Planning and Zoning will review and rank the applications against the land requirements to determine if a property is eligible using a point system. A ranking and point system will prioritize applications should funds not be available for all applications.
7. Staff will determine the appropriate award amount for eligible properties based on the estimates of upfront costs provided.
8. The County Administrator on behalf of the County will enter into a Memorandum of Understanding (MOU) with the land trusts representing the properties.
 - a. The MOU will set out:
 - i. Amount County will pay land trust organization for the purpose of assisting the landowner with the upfront cost of placing land under a conservation easement. These costs may include stewardship, attorney, appraisal, and processing and document fees.
 - ii. Requirement that land trust must provide proof of recordation and final invoice(s) to the County.
 - iii. The County will provide payment to the land trust within two weeks of proof of recordation submittal.
9. Once the conservation easement is recorded, the land trust provides proof of recordation to the County.
10. The County provides payment to the land trust organization¹⁸.

Staff recommends beginning the program with \$150,000 available. This would allow a minimum of 10 grant awards in the first year. As noted previously, an average of 10 gift easements are added to Loudoun County each year. It is unclear what the demand would be for this program’s funding. Staff recommends piloting this program and reporting to the Board on outcomes after the first year at which time the Board can determine what level of funding is needed for the program.

FISCAL IMPACT: Staff recommends funding this program on an annual basis from year-end fund balance as is currently done with economic development incentive funds. Using fund balance allows this program to operate without impacting the real property tax rate and accommodates the one-time nature of this program as it pertains to individual properties.

¹⁸ All easement holders are 501(c)(3) organizations and entitled to grant awards. The dollar amount will not be counted as income.

The anticipated impact of reviewing any additional easements added to the County as a result of incentivizing conservation easements in departments such as Planning and Zoning would be minimal. Therefore, the program would not result in additional operating resources to support additional conservation easement review.

ALTERNATIVES: The Board could direct staff to implement a conservation easement program for calendar year 2019 based on the recommended land and income requirements in this item and authorize the County Administrator to enter into Memorandums of Understanding with land trusts with approved applications.

The Board could request that staff review these recommendations with other advisory bodies such as the Heritage Commission or the Rural Economic Development Council for further refinement and recommendations.

Alternately, the Board could change the recommended program requirements or funding amounts, or not recommend a conservation easement assistance program.

DRAFT MOTIONS:

1. I move the recommendation of the Finance/Government Operations and Economic Development Committee that the Board of Supervisors direct staff to implement a conservation easement program for calendar year 2019 based on the recommended land and income requirements in this item and give the County Administrator authority to enter into Memorandums of Understanding with land trusts with approved applications.

I further move that, in the event multiple requests for funding are received which require staff to rank applications, staff will give priority to applications that relinquish the greatest number of development rights and/or have documented historic and/or cultural resources or attributes.

OR

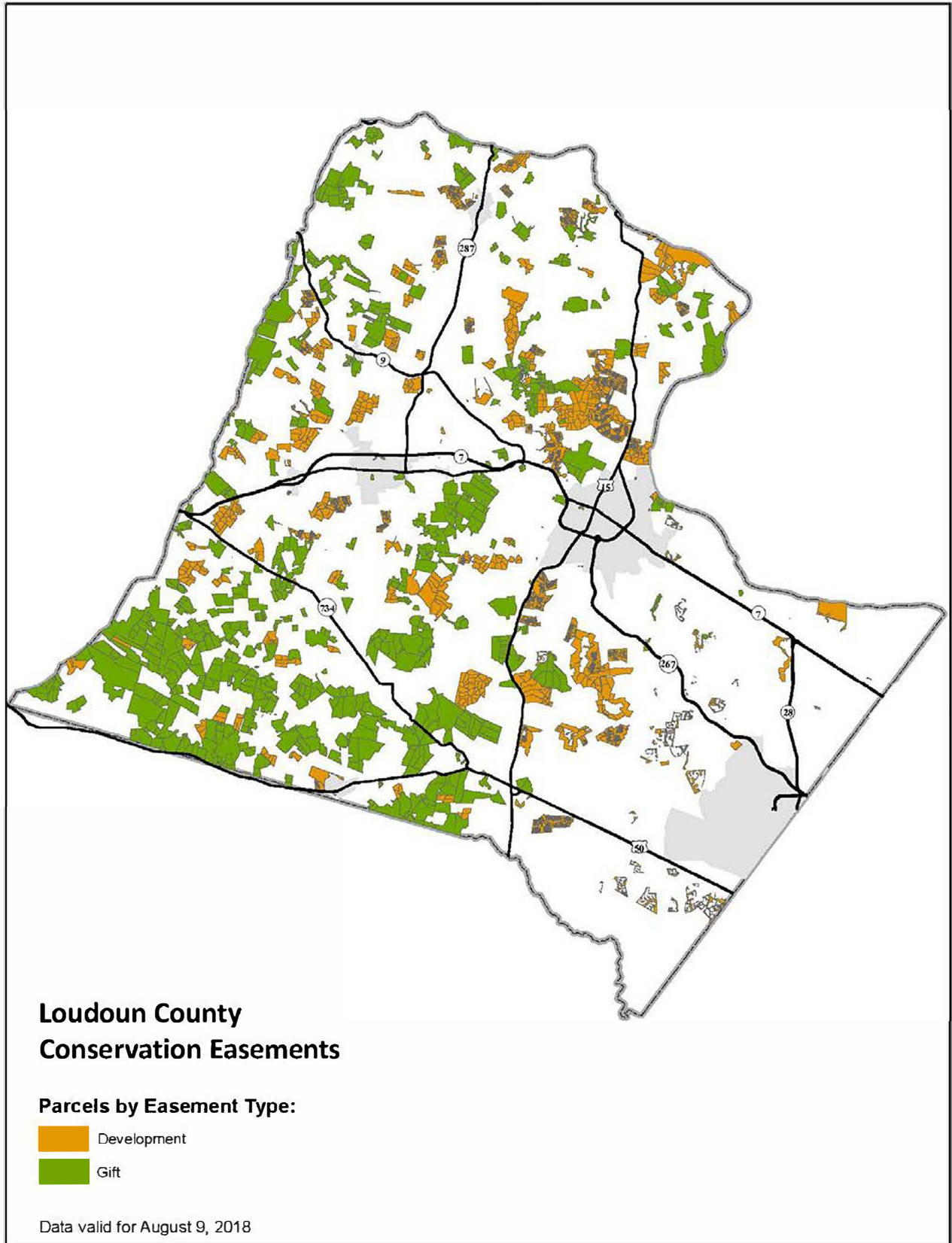
2. I move an alternate motion.

ATTACHMENT(S):

1. Holders of conservation easements in Loudoun County.
2. Map of conservation easements in Loudoun as of July 2018.
3. Proposed Conservation Easement Assistance Program Process

Holder / Co Holder	Type	# of easements	Acres
Appalachian Trail Conservancy	Gift	6	898
Board of Supervisors (Board)	PDR	2	324
Board	Gift	9	1,262
Board, Land Trust of Virginia	PDR	1	239
Board, Northern Virginia Conservation Trust	PDR	1	27
Board, Potomac Conservancy Inc.	PDR	2	570
Board, Virginia Outdoors Foundation	PDR	7	1,304
Land Trust of Virginia	Gift	90	8,186
Land Trust of Virginia, Northern Virginia Conservation Trust	Gift	2	73
Land Trust of Virginia, Virginia Board of Historic Resources	Gift	1	17
National Land Conservancy Foundation	Gift	1	15
National Trust for Historic Preservation	Gift	10	171
National Trust for Historic Preservation, Virginia Outdoors Foundation	Gift	1	204
Nature Conservancy	Gift	2	852
Northern Virginia Conservation Trust	Gift	15	1,311
Northern Virginia Conservation Trust, Fairfax Land Preservation Trust	Gift	1	20
Old Dominion Land Conservancy	Gift	36	6,061
Potomac Appalachian Trail Club	Gift	1	13
Potomac Conservancy Inc.	Gift	1	8
The Piedmont Environmental Council	Gift	1	68
Town of Middleburg, Windy Hill Foundation	Gift	1	5
Town of Purcellville	Gift	2	193
Trust for Architectural Easements	Gift	1	1
United States of America	Gift	1	20
Virginia Board of Historic Resources	Gift	25	535
Virginia Department of Forestry	Gift	2	221
Virginia Historic Landmarks Commission	Gift	49	115
Virginia Historic Landmarks Commission, Virginia Board of Historic Resources	Gift	1	139
Virginia Outdoors Foundation	Gift	136	22,667
Virginia Outdoors Foundation, Board	PDR	1	166
Virginia Outdoors Foundation, Goose Creek Scenic River Advisory Board	Gift	1	63
Virginia Outdoors Foundation, Virginia Board of Historic Resources	Gift	2	1,029
Waterford Foundation	Gift	4	99
Wetlands America Trust	Gift	1	406
Total		417	47,279

Attachment 1



Proposed Conservation Easement Assistance Program Process

