

Joint Subcommittee to Study Long-Term Funding Sources for the Purchase of Development Rights to Preserve Open-Space Land and Farmlands (HJR 133/SJR 94 - 2006)

August 23, 2006

The Joint Subcommittee to Study Long-Term Funding Sources for the Purchase of Development Rights to Preserve Open-Space Land and Farmlands (HJR 133/SJR 94 - 2006) held its first meeting on August 23, 2006.

The members of the Joint Subcommittee are: Senator Emmett W. Hanger, Jr. (Co-chairman); Delegate Lynwood W. Lewis, Jr. (Co-chairman); Senator John Watkins; Senator Mark R. Herring; Delegate Robert D. Orrock, Sr.; Delegate Thomas C. Wright, Jr.; Delegate Benjamin L. Cline; Delegate Edward T. Scott; and Delegate Albert C. Eisenberg.

The first order of business was the nomination and election of Senator Hanger and Delegate Lewis as Co-chairmen.

Presentations

Ms. Nikki Rovner, Deputy Secretary of Natural Resources -

Ms. Rovner began the meeting with an overview of the state and federal programs currently in place for land conservation. Under these programs land is protected from development by landholders donating development rights to governmental entities and private land trusts (conservation easements) or by landholders selling land outright to these same entities (fee simple sales). Fee simple sales typically include sales of land that is preserved as parks, wildlife management areas, and forests. Donations of property development rights or conservation easements are usually perpetual and under state law can only be held by land trusts, conservation agencies, and local governments.

Governmental agencies that are the beneficiaries of conservation easements or that are purchasers of fee simple estates include the Department of Conservation and Recreation, the Department of Forestry, the Department of Game and Inland Fisheries, The Nature Conservancy, Middle Peninsula Land Trust, the Virginia Outdoors Foundation, federal agencies, local governments, and soil and water conservation districts. The Virginia Land Conservation Incentives Act of 1999 provides income tax credits to landholders who donate conservation easements or sell their lands outright to some of these same entities. The attractiveness of the credit helps to promote land conservation.

Governmental funds that are used to purchase fee simple estates come from state general fund appropriations, treasury loans, state general obligation

bonds, bonds issued by the Virginia Public Building Authority, and federal grants and appropriations.

Currently, the Virginia Outdoors Foundation holds conservation easements on 330,000 acres relating to 1900 different properties. The Department of Historic Resources holds conservation easements on 20,000 acres relating to 400 different properties.

The Virginia Land Conservation Foundation administers a competitive matching grant program under which state grants for land preservation are made on a matching basis to state agencies, local governments, and nonprofit organizations. As part of the program, 25 percent of available unrestricted funds are automatically transferred to the Open-Space Lands Preservation Trust Fund and the remaining 75 percent of unrestricted funds are divided equally among the following four uses: (i) natural area protection; (ii) open spaces and parks; (iii) farmlands and forest preservation; and (iv) historic area preservation. Eligible entities can apply for a matching grant and all grant applications are then ranked by an interagency team. Final grants are awarded by the Foundation's Board of Trustees. For both the 2007 and 2008 fiscal years, \$2.5 million has been appropriated by the Commonwealth to the Foundation for the grant program.

Mr. Bill Dickinson, Deputy Secretary of Agriculture and Forestry -

Mr. Dickinson addressed the joint subcommittee in regard to preserving Virginia's working farms and forest lands by purchasing the development rights of such property. Mr. Dickinson stated that the average age of a Virginia farmer is 56 and that two-thirds of farmers have no retirement plan.

Some local government initiatives to preserve working farms and forest lands include use value taxation utilized by local governments, zoning for agricultural and forestal districts, and purchase of development rights programs. State initiatives include the establishment of the Office of Farmland Preservation in 2001. Among other things, the Office is responsible for assisting retiring farmers in transferring their businesses and farmlands to persons seeking to become farmers. The Office is also responsible for developing (i) model policies that may be used to establish local purchase of development rights programs (PDR programs), (ii) criteria for the certification of local PDR programs as being eligible to receive grants from public sources, and (iii) methods and sources of revenue for allocating funds to localities to purchase agricultural conservation easements.

In 2004 the Farmland Preservation Task Force of the Virginia Department of Agriculture and Consumer Services developed a model purchase of development rights program for Virginia. Elements of the model program include a local ordinance or resolution establishing the program, valuation processes, an

agricultural enhancement strategy, deeds of easement, mandatory monitoring programs for easement donations, periodic evaluations of the local program, and required reporting.

In 2005 the Farmland Preservation Task Force proposed a state level program to complement local PDR programs. A key objective of the state level program is for the Commonwealth, through the Office of Farmland Preservation along with public and private partners, to have the capacity to provide farm and forestland protection assistance to all requesting localities by 2007. Another key objective of the state level program is for 30 additional localities to establish a PDR program consistent with state guidelines by 2010, and for at least 70 localities to have established such a program by 2020.

Staff presentations -

The next part of the meeting focused on funding land preservation through the use of tax preferences. Staff discussed the elements of Virginia's land preservation tax credit as it existed on August 23 and the amendments to the credit proposed by the General Assembly and the Governor.

The Virginia Land Conservation Incentives Act of 1999 established an income tax credit for the donation of land for preservation purposes. Under the Act, any allowable, unused tax credit can be sold or transferred to other taxpayers who then may use the transferred tax credit. Qualifying donations under the Act will qualify for a federal income tax charitable deduction and a state income tax charitable deduction in addition to the state income tax credit.

As a result of legislative changes adopted by the General Assembly on August 28, 2006, beginning January 1, 2007, the credit will equal 40 percent of the fair market value of the donation. For donations that take the form of a conservation easement, the value of the donation is the loss in value from giving up development rights altogether or giving up the right to develop at a higher density.

The August 28 legislative changes brought about several other changes to the tax credit program effective January 1, 2007. Tax credits may be carried forward for 10 years, an increase over the previous five-year carryforward provisions. Beginning with calendar year 2007, the Department of Taxation will issue the tax credits but may not issue more than \$100 million in tax credits in any calendar year (the \$100 million will be adjusted annually by the Consumer Price Index beginning in calendar year 2008). Donations that will generate \$1 million or more in tax credits must be approved by the Department of Conservation and Recreation with respect to their conservation value. Land dedicated as open space in residential or commercial developments will no longer qualify for tax credit. Existing zoning requirements, housing needs,

existing roads, slopes, flood plains, and soil conditions will factor into the fair market value determination. Finally, a fee equal to 2 percent of the value of the donation, but not to exceed \$10,000, will be charged on the transfer of any tax credits.

The final staff presentation concluded with a discussion of local use-value assessment ordinances. Under a local use-value assessment ordinance, eligible agricultural, horticultural, forestal, and open space lands may be valued for taxation purposes based upon the current use of the property and not the highest and best possible use of the property. Local governments are authorized to enact use-value assessment ordinances; however, land used in agricultural and forestal production within an agricultural district, a forestal district, or an agricultural and forestal district may be assessed at its use-value, regardless of whether a locality has adopted a use-value assessment ordinance. Recommendations of values of agricultural, horticultural, forestal, or open space lands provided by the State Land Evaluation Advisory Council must be considered by assessors before use-value assessment decisions are made.

Lands used in connection with, or under, (i) the farmhouse or home or (ii) any structure that is not related to agricultural, horticultural, forestal, or open space use are valued at fair market value as opposed to use value. Landowners who participate in use value taxation agree to maintain their land as agricultural, horticultural, forestal, or open space land for a period of time. Such persons will be subject to rollback taxes if the land reverts to a nonqualifying use prior to the expiration of such period.

Currently, 72 counties, 19 cities, and 32 towns have use-value assessment ordinances in place.

Joint subcommittee web page

The joint subcommittee's Internet web page is at:
<http://dls.state.va.us/land.htm>.