

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

November 28, 2006

The Joint Subcommittee Studying Long-Term Funding Sources for the Purchase of Development Rights to Preserve Open-Space Land and Farmlands (HJR 133/SJR 94 - 2006) held its third meeting on November 28, 2006.

The members of the Joint Subcommittee in attendance were: Senator Emmett W. Hanger, Jr. (Chairman); Delegate Lynwood W. Lewis, Jr. (Vice-Chairman); Senator Mark R. Herring; Delegate Robert D. Orrock, Sr.; Delegate Benjamin L. Cline; Delegate Edward T. Scott; and Delegate Albert C. Eisenberg.

The Chairman and Vice-Chairman of the Joint Subcommittee began the meeting with opening remarks. Next, Mark J. Vucci, Senior Attorney at the Division of Legislative Services, espoused a brief overview of the meeting's agenda.

Presentations

Mr. Larry Smith, *Natural Area Program Manager*, Natural Heritage Program, Virginia Department of Conservation and Recreation -

The topics of Mr. Smith's presentation were threefold: (1) land conservation data collection, (2) the conservation lands website, and (3) land conservation planning.

Mr. Smith began the first segment of his presentation on land conservation data collection by explicating the mission of the Department of Conservation and Recreation (DCR), i.e., identifying, protecting, and conserving Virginia's biological diversity. In doing so, Mr. Smith discussed Governor Kaine's goal of protecting 400,000 acres of land. In keeping with this goal, Mr. Smith reported that the Commonwealth of Virginia has protected 65,763 acres of land in fiscal year 2006 and 15,084 acres of land since July 1, 2006. Thus, Mr. Smith concluded that the Commonwealth of Virginia must protect 319,153 acres of land to achieve Governor Kaine's goal of protecting 400,000 acres of land.

The second part of Mr. Smith's presentation centered on access and use of the DCR Conservation Lands Database. The database is the Commonwealth of Virginia's "first comprehensive, continually maintained GIS data layer for Virginia's protected conservation lands." Mr. Smith explained that the database includes mapped boundaries and attributes for public and certain private lands in Virginia that have potential significance for serving a variety of conservation, recreation, and open-space roles. Moreover, Mr. Smith demonstrated the website's ability to display the location of protected lands. The URL for the DCR Conservation Lands Database is:
<http://www.dcr.virginia.gov/dnh/conslandindex>.

Land conservation planning was the final topic of Mr. Smith's presentation. During this segment, Mr. Smith discussed how land conservation planning is furthered by DCR's reporting requirements and its designated categories for biodiversity management.

Presentations

Mr. Pat O'Connell, *President*, Evergreen Capital Advisors -

Next, Mr. O'Connell delivered a presentation entitled "Financing Land Preservation in the Commonwealth of Virginia." Specifically, Mr. O'Connell proposed three "tools in [the] local preservation toolbox."

First, a locality may acquire loans or issue bonds and use the proceeds of such loans or bonds to pay cash at closing to the owner of the land over which the locality acquired fee simple or a permanent easement. This "tool" is somewhat problematic, however, because a county, which generally contains the desirable land for preservation because of its rural characteristics, is constitutionally forbidden to contract debt (e.g., acquire loans; issue bonds) for land preservation purposes unless the county first obtains voter approval at a referendum.

Second, a locality may enter into installment purchase agreements. An installment purchase agreement (IPA) is a contract between the buyer (i.e., locality) and the landowner. Under the IPA, the buyer promises to buy the land or an easement thereon for land preservation purposes. Moreover, the buyer agrees to pay the purchase price of the land or easement at the end of the IPA term, which does not exceed 30 years. Furthermore, the buyer promises to pay semi annual tax-exempt interest during the term of the IPA. The benefits to landowner are manifold. Namely, a landowner who enters into an IPA with a locality may (1) use the cash to pay the estate tax, (2) deduct the charitable contribution discount from 100% of income for up to 16 years, (3) sell the IPA to bond investors for cash prior to maturity, (4) receive tax-exempt interest on full sale price, and (5) defer capital gains tax associated with the land/easement purchase over his land. Currently, the City of Virginia Beach enters into IPAs with land owners for land preservation purposes. Mr. O'Connell also stated that the City of Chesapeake is likely to enter IPAs with landowners for the same purposes within the next few months.

Finally, a locality may create a pension program, in which it pays cash to the owner of land of which the locality acquired in fee simple or a permanent easement. Under this pension for preservation program, the landowner establishes when his payments will begin, how long his payments will continue, and any rights of his survivors. Though the value is set at closing, the locality is responsible for paying for any incremental value in the owner's land before his retirement.

Presentations

Mr. Mark J. Vucci, *Attorney*, Virginia Division of Legislative Services -

Mr. Vucci began his presentation with an overview of the several key issues facing the joint subcommittee. First, Mr. Vucci recommended that the joint subcommittee set objective standards for a purchase of development rights program. Because the number of participants in the Virginia Land Conservation Tax Credit program is likely to balloon within the next several

months, Mr. Vucci concluded that additional study time, which would yield better figures as to preservation costs, is necessary for the joint subcommittee to set such objective standards.

In addition, Mr. Vucci stated that the joint subcommittee may wish to consider the appropriate level of cost sharing, *if any*, between the Commonwealth and local governments in establishing a statewide purchase of development rights program. Possible options include a 50-50 cost sharing, allocation of state grants to local governments, and fixed, annual appropriations to each Virginia locality.

Mr. Vucci further recommended that the joint subcommittee consider (i) proposing financing options for the Commonwealth's cost share, *if any*, in a statewide purchase of development rights program; and (ii) proposing financing options for local governments' cost share, *if any*, in a statewide purchase of development rights program. The Commonwealth *may* finance its share by appropriating funds from the annual surplus, dedicating revenue from an existing tax, making a general fund appropriation, appropriating funds from a new source of revenue, or issuing bonds for up-front capital to meet the January 1, 2010, Chesapeake Bay preservation objective. Likewise, local governments *may* finance their respective cost-share by borrowing for land preservation without first conducting a referendum, borrowing from the Virginia Resources Authority (VRA) if VRA is statutorily permitted, and dedicating revenue from an existing local tax for land preservation/tourism purposes.

Furthermore, Mr. Vucci recommended steps that the joint subcommittee could take. One, Mr. Vucci proposed, and the joint subcommittee formally agreed to, the reauthorization of the study. Two, Mr. Vucci suggested, and the joint subcommittee formally proposed, a bill that authorizes the VRA to raise capital for land preservation purposes. Three, Mr. Vucci put forward the idea of amending the Constitution of Virginia to allow counties to borrow for land preservation without first conducting a referendum. Several members of the joint subcommittee in favor of the idea spoke of (1) the desire for poorer counties to raise more money for land preservation purposes; and (2) the desire to treat urban counties, which resemble cities, as cities for borrowing purposes. Finally, Mr. Vucci asked the joint subcommittee to consider recommending (a) funding for the Office of Farmland Preservation and the Virginia Farm Link program; and (b) start-up appropriation in 2007 for a statewide purchase of development rights program. The joint subcommittee formally agreed to recommend such fund in the resolution reauthorizing the study.

Joint Subcommittee web page

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