LAND USE POLICIES

REPORT OF THE

VIRGINIA ADVISORY LEGISLATIVE COUNCIL

To

THE GOVERNOR

And

THE GENERAL ASSEMBLY OF VIRGINIA

House Document No. 26

COMMONWEALTH OF VIRGINIA
Department of Purchases and Supply
Richmond
1974

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Land Use Policies Report

of the

VIRGINIA ADVISORY LEGISLATIVE COUNCIL

to the

GOVERNOR AND GENERAL ASSEMBLY

Richmond, Virginia
January , 1974

TO: HONORABLE MILLS E. GODWIN, JR., *Governor of Virginia*
and
THE GENERAL ASSEMBLY OF VIRGINIA

In the 1972 Session of the General Assembly, House Joint Resolution No. 44 was adopted directing the Virginia Advisory Legislative Council to study land use policies, economic and population growth and changing population patterns in the Commonwealth. The following is a copy of that Resolution.

HOUSE JOINT RESOLUTION NO. 44

Directing the Virginia Advisory Legislative Council to study land use policies, economic and population growth and changing population patterns of the Commonwealth.

Whereas, the use of land and other natural resources are primary factors in determining economic development and environmental quality; and

Whereas, Virginia needs to increase the acreage of land devoted to parks and open space areas, schools, housing, transportation, industrial location, and sites for dams to provide flood control, water storage, and generation of hydroelectric power while preserving prime agricultural land; and

Whereas, conflicts in land use arise when major shifts in population settlement patterns occur and policies should be developed to determine the manner of making decisions as to where and under what circumstances certain kinds of land uses and developments are beneficial; and

Whereas, policies should be developed as to the nature and extent of authority, if any, to be vested in appropriate governmental units for the influencing or control of the changing character of many communities and changing population settlement patterns; and

Whereas, the rights of the owners of the property must be considered and fairly protected in a legal manner; and

Whereas, important ecological, historic, and aesthetic values of critical environmental concern are being irretrievably lost through conversions of land use; and

Whereas, certain key facilities such as major airports, highway interchanges, and recreational facilities have widespread impact on the land use of the surrounding region; and

Whereas, all of the foregoing matters affect the public interests; and

Whereas, there is a need to determine the role of the State or its political subdivisions in enacting legislation and assuming responsibilities for land use and development in general and particularly in relation to its impact upon the policies and considerations stated above; now, therefore, be it

Resolved by the House of Delegates, the Senate of Virginia concurring,

That the Virginia Advisory Legislative Council is directed to make a study and report on land use policies, economic and population growth, and changing population patterns in the Commonwealth.

The Council shall consider the most appropriate means and policies for the State and its political subdivisions in fulfilling their proper responsibilities in promoting and governing the wisest and most beneficial use and development of land and shall review all legislation pertaining to land use and development including relevant laws concerning transportation, utilities, zoning, taxation, building codes, and shall recommend such legislation as it deems advisable in connection therewith.

It shall consider the effect of land use and development and the requirements of law applicable thereto in relation to its influence or control upon changing population settlement patterns, the changing character of communities and the appropriate roles of any governmental authority with relation to these matters.

It shall take into account considerations of public interest and the rights of the owners of property and the means considered most desirable for the protection of such rights.

It shall consider the feasibility and desirability of legislation or policies to provide for the balanced and harmonious development of rapidly changing areas, the preservation and protection of the quality of the natural environment, preservation of prime agricultural land, the location of major facilities of substantial regional or Statewide significance, the desirable distributions of population settlement patterns and the fostering of a desirable urban-rural population balance. The Commission may also consider procedures for protecting the proper use of critical land areas deemed to be of irreplaceable value.

It may consider the long-range requirements for land in meeting future needs for housing, transportation, agricultural production, industrial sites, commercial facilities, open space and recreation.

It may further consider such other matters in connection with the policies and considerations mentioned above as it may consider pertinent.

All officers and agencies of the Commonwealth and of its political subdivisions shall assist the Council in this study upon request.

The Council shall complete its study and report to the Governor and the General Assembly not later than September one, nineteen hundred seventy-three.

Your Council appointed Delegate D. French Slaughter, Jr., to act as Chairman of the Committee. Delegate Slaughter appointed the following individuals to serve on the Committee: Mr. FitzGerald Bemiss of Richmond; Senator Elmon T. Gray of Waverly; Delegate Joseph A. Leafe of Norfolk; Mr. John T. Hazel, Jr., of Fairfax; Delegate W. L. Lemmon of Marion; Mr. Rosser H. Payne, Jr., of Warrenton; Delegate Thomas J. Rothrock of Fairfax; Delegate Frank M. Slayton of South Boston; Senator David F. Thornton of Salem; and Mr. Hiram Zigler of Richmond.

The Committee began its work in the fall of 1972. After many hours of deliberation, the Committee submitted its report to your Council in November of 1973. The Land Use Policies Committee stated to the Council that many of its recommendations were debated long and hard for many hours. The members of the Land Use Policies Committee informed the Council that each Committee member reserved the right to voice his reservations about a particular recommendation or portion of a recommendation, even though the report as a whole was endorsed by all the members of the Committee.

Your Council studied and discussed this Report and determined that it would need further study because of the complexity of its subject matter. Your Council further determined that this was one of the most timely reports in recent history and should have the close scrutiny of the members of the General Assembly and the general public. Therefore, the Council releases this report for the information of the General Assembly and the general public without any action by the Council. A copy of the Land Use Policies Committee Report is appended to the report of your Council. Your Council further requests that its study of land use policies and related matters be continued. The appropriate resolution is appended to this report.

The Council is aware that the Congress of the United States is considering an act dealing with land use policies in the nation as a whole. The Senate of the United States passed Senate Bill 268 which provides that federal grants will be made to states which develop land use plans. As in all federal legislation, the grants must be subject to federal guidelines. These federal guidelines by necessity must be uniform and cannot take into consideration the unique governmental, geographic, demographic and economic characteristics of each of the several states. In addition, the House of Representatives has before it a bill which will provide for withholding of federal funds for highways, public works, environmental management, airport construction and other similar programs if a land use plan for the State is not adopted. This bill is most dangerous as it would usurp the power of a state to regulate the use of the land within its boundaries in the best interest of all its citizens. The Congress has not taken into consideration that a number of states already have comprehensive land use planning and numerous other states are considering the best course of action to follow in land use planning. Your Council, therefore, respectfully requests that the General Assembly adopt a resolution which will memorialize Congress not to take any legislative action on the National Land Use Policy Act of 1973 or any other legislation of similar purport. A copy of this Resolution is appended to this report.

Respectfully submitted,

LEWIS A. MCMURRAN, JR., *Chairman*

WILLARD J. MOODY, *Vice-Chairman*

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HOUSE JOINT RESOLUTION NO. —

Directing the Virginia Advisory Legislative Council to continue study of land use policies, economic and population growth and changing population patterns of the Commonwealth and to commence study on relation of real estate tax policies on land use and the water resources of the Commonwealth in relation to land use.

Whereas, the Virginia Advisory Legislative Council, pursuant to House Joint Resolution Number 44, of the 1972 Session of the General Assembly, has been directed to study all problems related to land use in Virginia; and

Whereas, the Virginia Advisory Legislative Council has undertaken such a study and has made its report to the General Assembly and determined that there is a need for further study of the problems related to land use; and

Whereas, the Virginia Advisory Legislative Council's Committee on Land Use Policies determined that there was a need to make further study of the effect of real estate taxation and assessment practices on land use; and

Whereas, real estate taxation is a major factor in influencing the rehabilitation and maintenance of existing structures in an inner city area and the conversion of prime agricultural lands to other uses; and

Whereas, the growth of population and commercial and industrial development in Virginia has placed substantial pressure on the water resources of the Commonwealth; and

Whereas, in certain areas of the Commonwealth, the availability of water is a critical matter; now, therefore, be it

Resolved by the House of Delegates, the Senate of Virginia concurring, That the Virginia Advisory Legislative Council is directed to continue its study initiated pursuant to the direction of House Joint Resolution Number 44, of the 1972 Session of the General Assembly.

It shall consider the feasibility and desirability of legislation or policies to identify various types of large scale development having impact beyond the boundaries of the local political subdivisions in which it may be located and to develop standards and guidelines which should be applicable to such development to assure that it may be harmoniously accommodated without serious adverse impact on citizens in surrounding political subdivisions.

It shall consider the feasibility and desirability of legislation or policies for the management of land resources in the heavily populated metropolitan areas of the Commonwealth looking toward a desirable mechanism to balance the

development to meet the needs of growing populations and economies and the need to preserve and protect the environment in urban areas.

It may further consider such other matters in connection with the policies and considerations mentioned above and in House Joint Resolution Number 44, of the 1972 Session of the General Assembly as it may consider pertinent.

Resolved further, That the Virginia Advisory Legislative Council is hereby directed to study the effect of real estate taxation and assessment practices on the use of the land in the Commonwealth. The Council shall study alternative methods of taxation and assessment to determine whether such methods would assist the Commonwealth in properly utilizing its lands for the benefit of all its citizens. The Council shall study real estate assessment practices generally.

Resolved finally, That the Virginia Advisory Legislative Council is hereby directed to study the water resources of the Commonwealth and how to best protect and conserve these resources and to coordinate planning and development of water resources with the planning and development of land use. The Council shall review and recommend any necessary changes in the laws of the Commonwealth governing the use of and the right to water as may be provided by the Constitution, statutory law and case law.

All officers and agencies of the Commonwealth and of its political subdivisions shall assist the Council in these studies upon request.

The Council shall complete its study and submit its report to the Governor and General Assembly not later than September one, nineteen hundred seventy-five and shall provide an interim report to the Governor and the General Assembly not later than November one, nineteen hundred seventy-four.

HOUSE JOINT RESOLUTION NO. __

Memorializing Congress to take no legislative action on the National Land Use Policy Act of 1973 or any other legislation of similar purport.

Whereas, traditionally, the power to regulate the use of land for the promotion and protection of the health, safety and welfare of all citizens has been exercised at the state level in our federal system; and

Whereas, in recent years, the federal government pursuant to acts of Congress has increasingly preempted the states' control of their own land; and

Whereas, any federal law must necessarily be applied on a uniform basis to all the states in the Union regardless of the differences in their geographic, demographic and economic characteristics; and

Whereas, only the several states can properly assess their own needs and requirements to insure that their lands are properly used for the best interests of all their citizens; now, therefore, be it

Resolved by the House of Delegates, the Senate concurring, That the Congress of the United States is respectfully memorialized to take no legislative action on the National Land Use Policy Act of 1973 or any other legislation of similar purport.

Resolved further, That the Clerk of the House of Delegates is directed to forward a copy of this resolution to the Clerks of the Senate and the House of Representatives of the United States, and to each member of the Virginia delegation to the Congress.

LAND USE POLICIES

Report of the Land Use Policies Study Committee

To

The Virginia Advisory Legislative Council

October 31, 1973

MEMBERS OF COMMITTEE

D. FRENCH SLAUGHTER, JR., *Chairman*

FITZGERALD BEMISS

ELMON T. GRAY

JOSEPH A. LEAFE

JOHN T. HAZEL, JR.

W. L. LEMMON

ROSSER H. PAYNE, JR.

THOMAS J. ROTHROCK

FRANK M. SLAYTON

DAVID F. THORNTON

HIRAM ZIGLER

STAFF

COURTNEY R. FRAZIER, *Office of Legislative Services*

CONSULTANTS

FRED P. BOSSELMAN
DUANE A. FEURER

Ross, Hardies, O'Keefe, Babcock & Parsons
Chicago, Illinois

MARY SUE TERRY
ROBERT A. NELSON
JONATHAN A. SINNREICH

University of Virginia Law School

LAND USE POLICIES

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I

The Task of the Committee

A. *Introduction*

Throughout Virginia and the United States in recent years there has been a swelling public cry for better public and private measures to preserve and protect the environment from the ravages of pollution and the uncontrolled conversion of agricultural, forest and other open lands to commercial, industrial and residential development. One response to this cry in Virginia came with the adoption in 1971 of a new Constitution, which in Article XI states:

> To the end that the people have clean air, pure water and the use and enjoyment for recreation of adequate public lands, waters and other resources, it shall be the policy of the Commonwealth to conserve, develop and utilize its natural resources, its public lands, and its historical sites and buildings. Further, it shall be the Commonwealth's policy to protect its atmosphere, lands and waters from pollution, impairment, or destruction, for the benefit, enjoyment, and general welfare of the people of the Commonwealth.

In recognition of the close relationship between land use and environmental values, House Joint Resolution No. 44 was adopted by the General Assembly in 1972. This resolution directs the Virginia Advisory Legislative Council to study patterns of population growth and economic development, particularly as they affect the need to modify and make more effective the complex web of State and local regulations concerning the use of land resources. The Land Use Policies Study Committee was appointed to undertake this study and make appropriate legislative recommendations.

The Committee has undertaken a careful review of land use problems and the existing programs and mechanisms affecting the use of land in Virginia. It has solicited the views of and has heard from representatives of State and local agencies involved in matters affecting land use, from spokesmen of interested industry and citizens groups, and from concerned individual citizens throughout the Commonwealth. We have also reviewed the land use related activities of the Division of State Planning and Community Affairs, the Task Force on Environmental Management and other State agencies as well as the land development control programs and initiatives adopted and employed in other states.

The use of land is involved in virtually all human activity and is influenced directly and indirectly by an extraordinarily diverse set of policies at the local, regional, state, and national levels. For this reason, it is virtually impossible to deal comprehensively in a single report with all activity which affects land use. The Committee has attempted to identify programs having the greatest impact on land use and to direct attention to the most critical land-related environmental problems now facing the Commonwealth. We have made recommendations for immediate adoption of specific legislation to deal with several problems and have also suggested certain avenues for further study for it has become clear to the Committee that we have not had time to deal comprehensively with all the major land use problems facing Virginia.

Virginia has experienced very rapid growth in the demand for land resources over the last several decades. Led particularly by increases in general manufacturing and Federal governmental activity, Virginia's industrial growth was 50 percent above the national average during the 1960's, while its population grew at a rate 30 percent above the national average and personal income grew at a rate 40 percent above the national average. This growth, while desirable for many reasons, has exerted great pressures on all of Virginia's natural resources, including land. Increases in population and the

expansion of industrial activity have required massive quantities of new housing, space, raw materials, energy and public services and facilities of all kinds including sewerage and waste disposal facilities, airports, schools and highways. The rapid growth of personal income has compounded these pressures by creating a much greater demand per person for goods and services, particularly luxuries including second homes and recreational opportunities.

The problems presented by this overall growth have been exacerbated by the fact that the growth has not been evenly distributed across the Commonwealth. Certain patterns to the growth can be seen throughout the State in that the growth can be found concentrated in urban areas, along interstate and major highways or river, lake and other water fronts, in or near utility corridors such as water and sewer lines and facilities, and in areas where industry is located. Despite the similarity of these patterns from one region to another in Virginia, the seriousness of Virginia's land use problems varies greatly from one region to another.

In the urban crescent from northern Virginia through Richmond to the Tidewater linked by Interstate Highways No. 95 and 64, a majority of the population of the State is located and it is in this urban crescent that a great majority of the growth during the decade of the 1960's has occurred. More and more people, jobs, homes, automobiles, schools and pollution of all sorts are being concentrated in this small area, with the consequent expenditures of millions of dollars of tax money. Indeed, it has been predicted that this area will become part of the continuous stretch of urbanization from Boston to Norfolk, popularly known as "Megalopolis". Although there appears at present to be ample open-space along the corridor between Prince William County and Richmond to separate the Northern Virginia area from the Richmond area, forces are operating with deceptive speed and strength to close this gap. The same is true of the area between Richmond and the Newport News-Hampton area. The difficulties in the rapidly expanding Northern Virginia area are compounded by the heterogenous nature of the population, its demand for services, the power and expansion of the federal employment base and the complexities and diverse objectives offered by two states, the District of Columbia and a multiplicity of counties, cities and towns in Virginia.

The Blue Ridge Mountains of Virginia are a scenic and environmental feature which are threatened by careless or unregulated second home and recreational development, natural resource exploitation and other forms of utility and industrial development. The increasing popularity of camping and skiing, the commercial development opportunities along the heavily traveled Blue Ridge Parkway, and the need for timber, mineral and water resources that exist in the area are creating pressures which can have a seriously adverse impact on this beautiful and unique area of Virginia.

The Piedmont section of the State is predominantly agricultural in character, particularly in the southern part of the Piedmont. However, the decline of agricultural jobs over the past decade has resulted in an out-migration of people of greatest productivity toward the urban centers leaving behind the elderly, unskilled and dependent. The necessity of finding ways to improve the quality of economic opportunity and facilities and services in these rural parts of Virginia is obvious but care must be taken to assure that any such development is accomplished in a manner most consistent with the natural, scenic, historic and other resources of this area so that the components of a good life already existing will not be unreasonably interfered with.

Other parts of Virginia have different types of problems too numerous to set forth in a single report. However, the foregoing illustrates the diversity and complexity of the problems with which this Committee has had to deal. More often than not, "growth" is called the culprit and much talk is directed at

stopping growth or treating the immediate symptoms of undesirable growth rather than the causes of undesirable growth. One need only look to the overwhelming rhetoric regarding growth, particularly in the Northern Virginia area, to realize that growth, whether or not it is in fact the real culprit behind land use problems in Virginia, is a matter which must be dealt with effectively and rationally.

However, two points in particular with respect to growth have struck the Committee. First, there is little or nothing the State can do to simply stop or even significantly control the movement of people into and around the State. Federal and State constitutional limitations on interference with the right of the people to travel and own and use property simply will not permit the government to say "there shall be no growth" either with respect to the State as a whole or with respect to particular areas within the State.

Second, a substantial factor in the growth of the Northern Virginia and the Tidewater areas has been the role of the federal government in expanding its facilities and employment base. There is little Virginia can do to prevent the federal government from growing, and when the federal government grows, additional homes, services and public facilities must be provided by Virginia to accommodate the growing federal complex. Also, a substantial factor in the growth of the Charlottesville and Blacksburg areas has been the expansion of the University of Virginia and the Virginia Polytechnic Institute and State University.

Land use problems in many communities in the State would not be as acute if governments — federal, State and local — would give greater considerations to land use implications in the expansion of their employment base and the location of facilities. Such policy considerations in the initial decision-making processes in many instances would be more helpful and effective than subsequent land use legislation or regulations of various levels of government designed to deal with land use problems after they have been created by the governmental action. For example, even on the local level, location of public high schools could have an impact upon the generation of highway traffic and the transportation complex in general.

B. *Recent Legislative Activities*

In recent years, the public has become very sensitive to the need to compromise unbridled residential and economic development with the preservation of natural, scenic, historic, cultural and other environmental amenities in the State. There has been a growing realization that economic welfare consists of more than unchanneled growth and that some attention must be paid to finding the best methods of accommodating that growth while avoiding undue strain on our limited land, air and water resources. The people of Virginia and the General Assembly have shown their awareness of these problems in recent years with the adoption of the new Constitution in 1971 containing Article XI quoted above and the enactment of a variety of significant pieces of legislation designed to bring about more effective planning and utilization of our limited natural resources.

The Critical Environmental Areas Act (§§ 10-187 to 10-196) declares it to be the policy of the Commonwealth to preserve and protect irreplaceable areas of natural, scenic and historic value for the benefit, use and enjoyment of the citizens of the Commonwealth by limiting the development and use of such areas and the land surrounding them. This Act led to the report of the Division of State Planning and Community Affairs identifying critical areas of various kinds in the State. The 1973 session of the General Assembly directed the Committee to consider the Division's report and one of the Committee's recommendations is based in large part on that report.

The Wetlands Act (§§ 62.1-13.1 to 62.1-13.20) recognizes tidal wetlands as a natural resource essential to the ecology of the Commonwealth with great

economic value as well. Local governmental units are authorized to adopt the wetlands ordinance prescribed by the Act designed to channel necessary economic development into wetlands of "lesser ecological significance." Permits for development in wetlands areas must be obtained from local wetlands boards or, if no local ordinance has been adopted, from the Marine Resources Commission. The Commission is provided adequate authority to enforce the purposes of the Wetlands Act should local permit decisions not adequately consider the general State policy with respect to wetlands.

A 1972 amendment to the public service company provisions (§ 56-46.1) directs the State Corporation Commission to take environmental impact into account when evaluating proposed extensions of electric utility facilities. Before approving certain large projects and after adequate notice and opportunity for public hearings, the Commission must determine that a proposed project will be constructed in a manner designed to minimize adverse impact on the scenic and environmental assets of the area concerned and may impose reasonable conditions upon the project to minimize environmental impact.

The Erosion and Sediment Control Law (§ 21-89.1 to 21-89.15) declares that rapid shifts in land use have accelerated the processes of soil erosion and sedimentation and have threatened the ecological stability and value for recreational and other uses of lands and waters comprising the watersheds of the State. It provides for a comprehensive control program which is to be implemented primarily by local soil and water conservation districts but subject to conservation standards of statewide application.

Under legislation passed in 1973 (§§ 10-17.107 to 10-17.112) environmental impact reports are required for all State facilities (except roads) costing over one hundred thousand dollars which any part of the executive branch of the Commonwealth proposes to construct. These reports must include analysis of the environmental impact of the proposed construction, including inevitable adverse environmental effects, possible alternatives, and measures proposed to minimize the potential harm caused by the construction.

The Environmental Coordination Act (§§ 10-17.31 to 10-17.65) was enacted in 1973 to provide greater coordination between the many parts of State government which make decisions relating to the environment. No substantive changes were made in the regulations or regulatory processes of the agencies affected by the Act. Rather, attention was focused on reorganizing the executive branch so the development of policies and implementation of regulatory measures would comprehend all of the various agency inputs. The bill provides for the creation of a new executive department, a conversion of certain agency staffs into operating divisions, and continued recognition of the important contributions made by citizens boards. It must be reenacted in 1974, and is currently being studied by the Task Force on Environmental Management with a view toward further changes.

Virginia is not the only governmental jurisdiction which has been reacting to the increasing demands by the public for greater protection of the environment. In recent years, the United States Congress enacted legislative landmarks including the National Environmental Policy Act, the Coastal Zone Management Act, the Clean Air Act, the Federal Water Quality Improvement Act, and there is presently pending a Land Use Policy and Planning Assistance Act before the House of Representatives. A similar act has already passed the Senate. The Clean Air Act and the Federal Water Quality Improvement Act in particular will have substantial impact on land use in Virginia because regulations promulgated or proposed by the Environmental Protection Agency to implement these laws will require states to have sufficient control over land use so as to prevent air and water quality standards promulgated under those Acts from being violated by development within the state. While these regulations do not require states to adopt any particular land planning

mechanism or, indeed, to undertake any type of land use planning at all, they do require states to have control over land use so as to prevent the construction or alteration of a source of air or water pollution when the construction or alteration would result in violation of the air or water quality standards. Such authority may be exercised by a state or local government totally apart from any type of land planning considerations, but rational and effective implementation of a variety of public policies will require state and local governments to give serious consideration to the appropriate planning of land use to assure that water and air quality standards can be met while some reasonable level of growth and development is accommodated.

The Land Use Policy and Planning Assistance Act in the form in which it passed the Senate would not require states to undertake land use planning programs but would provide financial assistance to those states which choose to do so. Proposals have been made to reduce federal highway and other funds for states which do not undertake appropriate land use programs but the Senate refused to adopt any such proposals. Whether the House of Representatives will approve a land use law and whether or not it will have any punitive provisions with respect to federal funding is not known at this time.

The Committee also has reviewed and considered recent legislative initiatives in various other states dealing with land use planning generally throughout the states and with respect to particular areas within the state. Among the initiatives reviewed were the Vermont Environmental Control Law, Maine Site Location of Development Law, Florida Environmental Land and Water Management Act of 1972, California Environmental Quality Act of 1970, California Coastal Zone Conservation Act, New York Adirondack Park Agency Act and New Jersey's 1972 Flood Plain Law. Further description of these laws can be found in the report to the Key Geographic Areas Subcommittee of this Committee dated April 20, 1973 prepared by Fred Bosselman, Duane A. Feurer and John S. Banta of Ross, Hardies, O'Keefe, Babcock & Parsons, Chicago, Illinois, consultants to the Committee, with assistance from Robert A. Nelson of the University of Virginia Law School.

C. *Need for Further Action*

Despite the recent farsighted legislative initiatives in Virginia to provide additional protection to the environment, it has become apparent to the Committee that more must be done if the rising demands of the citizens of the Commonwealth for a better environment are to be met while accommodating the increased growth and development which is occurring and will in the future inevitably continue. Virginia and its political subdivisions have an impressive lot of good land use laws and programs in addition to those cited above. However, the evidence shows the available land use planning mechanisms are too often not put to good use. For example, of the 95 counties, 39 cities and 191 towns in Virginia, only 72 counties, 38 cities and 60 towns have enacted subdivision ordinances; 37 counties, 31 cities and 49 towns have adopted comprehensive plans; and 44 counties, all the cities and 91 towns have adopted zoning ordinances. Even where subdivision or zoning ordinances or comprehensive plans have been adopted, planning may still be inadequate because of the lack of an appropriate planning staff. For example, although 72 counties have adopted subdivision ordinances, only 14 of the counties have local staffs spending a majority of their time on planning matters.

In addition to the failure on the part of many localities to exercise the planning authority they have, a variety of other reasons have appeared which complicate the issue. One reason is that the environmental impact of many developments simply does not coincide with the boundaries between political subdivisions. Thus, a Great America Park, large regional shopping center, major airport or a variety of other large developments may be located wholly within a single political subdivision but the impact of such a development is going to extend far beyond the local boundaries. Part of this problem is being

addressed under the Environmental Coordination Act of 1973 but a mechanism must be found to deal with such problems on a level below the State agency level. This means a process must be found to assure that decisions of local political subdivisions which will have an impact beyond the local boundaries will be made not only to reflect the interests of the local constituents but will also adequately take into consideration the broader interests to be affected.

Another reason present land use policies and practices have been less than adequate is that decisions on land development are too often made without adequate understanding and consideration of the relevant economic and social costs. A community eager to increase its real estate tax base may be anxious to attract new industry and development but if care is not taken in the handling of that development, it may end up costing the community more in tax dollars to provide needed services than the development generates in tax revenues. Some areas have come to recognize this problem as evidenced by the adoption in Loudoun County of Article 12 under its Zoning Code to require the payment of money by developers to ostensibly pay for "growth". However, without adequate study of the needs of a community and related development, and without appropriate planning for capital improvements, such efforts to make developers pay for "growth" may become arbitrary and bear little relationship to true costs of development.

Some may and have suggested many additional reasons why the present land use mechanisms in Virginia have not been adequate or adequately used to protect the public interest. The Committee believes Virginia has built a good foundation of laws and processes for getting about the business of assuring that the natural, scenic, historic and cultural heritage of the Commonwealth is maintained and protected but we believe some changes are necessary as will be pointed out in this report. Of major importance is the need to protect areas of critical environmental concern and to assure proper and adequate planning and consideration of subdivisions and other substantial residential, commercial and industrial development. The State cannot, nor does the Committee believe the State should, take unto itself all decision-making responsibility with respect to such matters and therefore the proposed legislation, while providing for the promulgation of standards and guidelines by appropriate State agencies (after consultation with local governments), does leave the primary implementation and decision-making functions to local government.

A variety of other suggestions are made for additional changes in Virginia law with some recommendations for further study of problems the Committee was unable to fully consider up to this point. Virginia has a great opportunity to show the Nation that continued economic development can be maintained while preserving a healthy, bountiful and beautiful environment. But we must act soon, before unchannelled growth has irreparably damaged our land and thereby air and water as well. With thoughtful management of land resources, growth can be properly accommodated so the standard of living of all Virginians will continue to rise in terms of tangible economic wealth *and* in terms of tangible and intangible environmental and social amenities of all kinds. One witness speaking at a public hearing held by the Committee said it well: "As a still quite recent resident of both the Commonwealth of Virginia and County of Rappahannock, I still marvel at the opportunity awaiting both that this awesomely lovely corner of the earth, smack in the middle of the heavily industrial east coast, still boasts mile upon mile of glorious green spaces that, with care, can be a permanent legacy to our children and beyond."

II

Administration of Land Development Regulations in Virginia

Along with the variety of legislation in the Code of Virginia dealing with the use and development of land is a similar variety of State and local boards, commissions and other agencies with their administrative procedures which have been established to implement and administer the legislation. One of the early complaints heard by the Committee as it began its work concerned the costs and delays in securing land development decisions in light of the maze of State and local agencies which may deal with different aspects of the same development. To get a better prospective on the problems of administration of the laws, ordinances and regulations affecting land development, the Committee established a Subcommittee on Administrative Procedures which held a public hearing and solicited comments and suggestions from various sources about the administration of State and local land development laws and regulations and their administration and implementation in practice.

Some of the findings of the Subcommittee are graphically illustrated by the charts in Appendix 1. Chart No. 1 is designed to illustrate some of the lines of authority the developer of private property must contend with both at the State and local level in getting approval of a proposed development. At the local level, in political subdivisions which have enacted land use control ordinances, a developer may be faced with the need for obtaining (1) appropriate zoning clearance, variances, special exceptions or changes, (2) approval of a plat of subdivision, and/or (3) building and occupancy permits with the related compliance reviews and inspections. The number of these steps and the thoroughness of the local review and decision-making process varies greatly from locality to locality. Furthermore, certainty and clarity in local procedures is lacking in many cases because of the lack of comprehensive local ordinances and regulations. Thus, matters bearing more directly on the approval of a subdivision plat may be taken into consideration by a zoning administrator in his determination as to the appropriateness of zoning variances and special exceptions.

In addition to local government approvals and permits, developers may be required to obtain approvals or permits from a variety of State agencies depending in part on the type of development. Unless appropriate local ordinances have been adopted vesting erosion control responsibilities in the local government, a developer will have to have a soil erosion and sediment control plan approved by the relevant district of the Soil and Water Conservation Commission before undertaking land grading and excavation. If it is intended to use open burning to assist in clearing a site for development, a permit from the Air Pollution Control Board will be required. For development in areas of critical groundwater supplies, permits for water wells must be obtained from the State Water Control Board. Installation of septic tanks requires appropriate permits from the State Health Department. If a development is not connected to an existing sewage or waste treatment facility but is going to rely on treatment facilities associated with the development, permits for sewage facilities may be required from the State Health Department or the State Water Control Board depending on the size of the facilities. Where these facilities are used in the operation of a public utility by a private company, certification by the State Corporation Commission will be required.

The foregoing are merely some of the highlights of the kinds of permits and approvals developers may need to undertake even small developments having no particular impact beyond the local neighborhood. The problem with these various requirements is not so much that a variety of reviews from agencies with different types of expertise are required, but rather, that there is little or no way to coordinate much of the review in a meaningful way. Thus, a developer can find himself faced with a situation of securing many of the

permits or approvals required only to find one crucial permit will not be issued or will be issued subject to conditions requiring such changes in the proposed development as may possibly require the developer to go back to the agencies which have already approved the development.

Private developers are not the only ones who can get caught in the web of numerous and sometimes confusing requirements of the land development decision-making process. As illustrated by Chart 2 in Appendix 1, local governments and state agencies as well are subject to a variety of requirements of State (and federal) law which can significantly affect the types of development governmental bodies can undertake themselves or can permit others to undertake.

Into this mixture of State and local procedures and requirements must also be thrown the increasingly stringent federal requirements under such laws as the Clean Air Act, the Federal Water Pollution Control Act and a variety of other laws designed to protect the environment. The lack of coordination of the roles played by various agencies in the development decision-making process, and the lack of clarity and certainty in decision-making processes and the standards to be applied in reaching decisions (particularly with respect to the role of local governments) has led the Committee to believe it is not unlikely that the day may soon come when some types of development simply will not be permitted where they are needed because of the conflicting requirements of different agencies or different laws. Thus, an airport may not be permitted in an urban area where air quality is such that the airport could be accommodated without significantly affecting air quality because noise standards under the Noise Control Act may preclude placing an airport near population concentrations. Noise Act requirements may encourage placement of airports in rural areas but airports can be a significant source of air pollution since they are likely to attract large numbers of cars thus degrading air quality. Airports can also be significant sources of water pollution as storm water runoff from runways is often polluted with petroleum remnants from aircraft engine exhausts. Thus, under the air and water pollution laws, airports may be precluded in rural areas. Airports and other developments will be subject to sometimes conflicting requirements of various land use and environmental control laws but will be necessary despite such conflicts. To meet these needs, some mechanism must be found to resolve such conflicts and to handle land use questions in a more comprehensive and coordinated manner.

An additional element which should be considered in seeking better mechanisms to handle land use decisions is the likely enactment of federal land use legislation. The United States Senate has already passed The Land Use Policy and Planning Assistance Act (S.B. 268) sponsored by Senator Jackson which would provide financial and other assistance to states undertaking land use planning programs in compliance with the Act. Similar legislation is pending in the House of Representatives. Although Senate Bill 268 as passed by the Senate would not require states to adopt any sort of land use planning programs, the financial inducements under the Act coupled with Environmental Protection Agency regulations requiring state air and water quality implementation programs to include controls over land use to prevent violations of pollution standards are going to lead most, if not all, states into land use planning programs.

The Committee is aware of the work of the Task Force on Environmental Management formed to study, plan and develop recommendations on the proposed Department of Conservation, Development and Natural Resources. Since much of the work that Task Force is doing concerns agencies having a direct impact on land development decisions, this Committee is interested in its progress but we believe it best to leave it to that Task Force to make specific recommendations for coordinating and consolidating the work of the various environmental agencies encompassed by the study. However, we believe a few observations are worthy of consideration.

It appears inevitable to the Committee that at some point in time Virginia is going to have to establish an agency with responsibility for dealing with land use policies and issues. Such an agency should probably be a part of the proposed Department of Conservation, Development and Natural Resources or one of the environmental agencies which emerges from the recommendations of the Task Force on Environmental Management. Among other things, such an agency could (1) be the responsible agency under any federal land use legislation including the Coastal Zone Management Act of 1972, (2) provide some policy guidelines or be the responsible agency with respect to land use elements in state air and water quality control programs as required in Environmental Protection Agency regulations, (3) be the agency responsible for developing and implementing a program for State review and control over large scale development (see Section IV A regarding a program to control development of regional impact), (4) serve as a clearinghouse for programs or actions of State agencies affecting land use, and (5) act as an appellate review agency to resolve conflicts between various State and local agencies with respect to land development decisions. This appellate review responsibility should encompass decisions affecting land development by all State agencies and not just those made by agencies in the proposed new Department.

The Committee has recommended the establishment of a Land Use Commission in the Department of Conservation, Development and Natural Resources which would be responsible for administering a critical environmental areas program. The Land Use Commission could be the agency in which the responsibilities suggested above could ultimately be lodged. We realize the internal structure of the new department is the subject of intense scrutiny by the Task Force. A variety of factors must be considered by the Task Force before any final decision is made as to the make-up of the new Department and it may well be that some agency or mechanism other than what we are suggesting would be most appropriate.

We have recommended establishment of a Land Use Commission to deal with critical environmental areas for the reasons set out in Section III A of this report and we have not suggested giving that Commission other specific responsibilities because of the uncertainties of what the Task Force will recommend and what any federal land use legislation will look like. However, the various proposals for federal legislation including S.B. 268 have generally contained provisions for preservation and protection of critical environmental areas, and in recommending establishment of a Land Use Commission, the Committee sought to recommend an agency which could with appropriate additional authority serve as the designated land use agency for purposes of federal legislation. The Committee does not believe such a commission should be set up just for the sake of having a land use commission, but rather, it should be established for specific purposes with specific duties. The commission's duties may be expanded in light of the Task Force's recommendations or the enactment of federal legislation but we believe any such additional responsibilities should be more specifically spelled out in the future when the scope of such responsibilities is more clear.

The Committee also believes more study and work must be undertaken to assure that administration of land development regulations at local levels is made more effective. The Committee's Administrative Procedures Subcommittee merely had time to scratch the surface of the problems of administering land development regulations at local levels but enough has been heard to indicate that existing practices are satisfying to neither the local governmental official, the developer nor the local citizen. The government official, often without any land development expertise or staff assistance, is in many instances faced with the necessity of reviewing and making a decision about a well financed and highly polished development proposal which may be claimed to add significantly to the real estate tax base. The developer may be faced with the necessity of obtaining zoning or subdivision approvals and building permits from agencies seeking to limit growth and development or

which have few, if any, regulations or guidelines to indicate what is expected from him or how the decision-making process will operate. The local citizen may be distrustful of local officials who approve big developments the citizen believes to be favors to political friends, as further drains on tax resources, or as adversely affecting the environment the citizen used to enjoy.

Established procedures and readily available standards and guidelines for development or various phases of development can go a long way to alleviate many of the problems and uncertainties in the local administration of land use laws. However, the Committee is going to need additional time to get into this matter further to make recommendations which it can be confident will make administration of land use laws more fair and effective without adding undue and burdensome formalities.

APPENDIX 1

CHART 1. LAND USE AUTHORITIES AFFECTING INDIVIDUALS

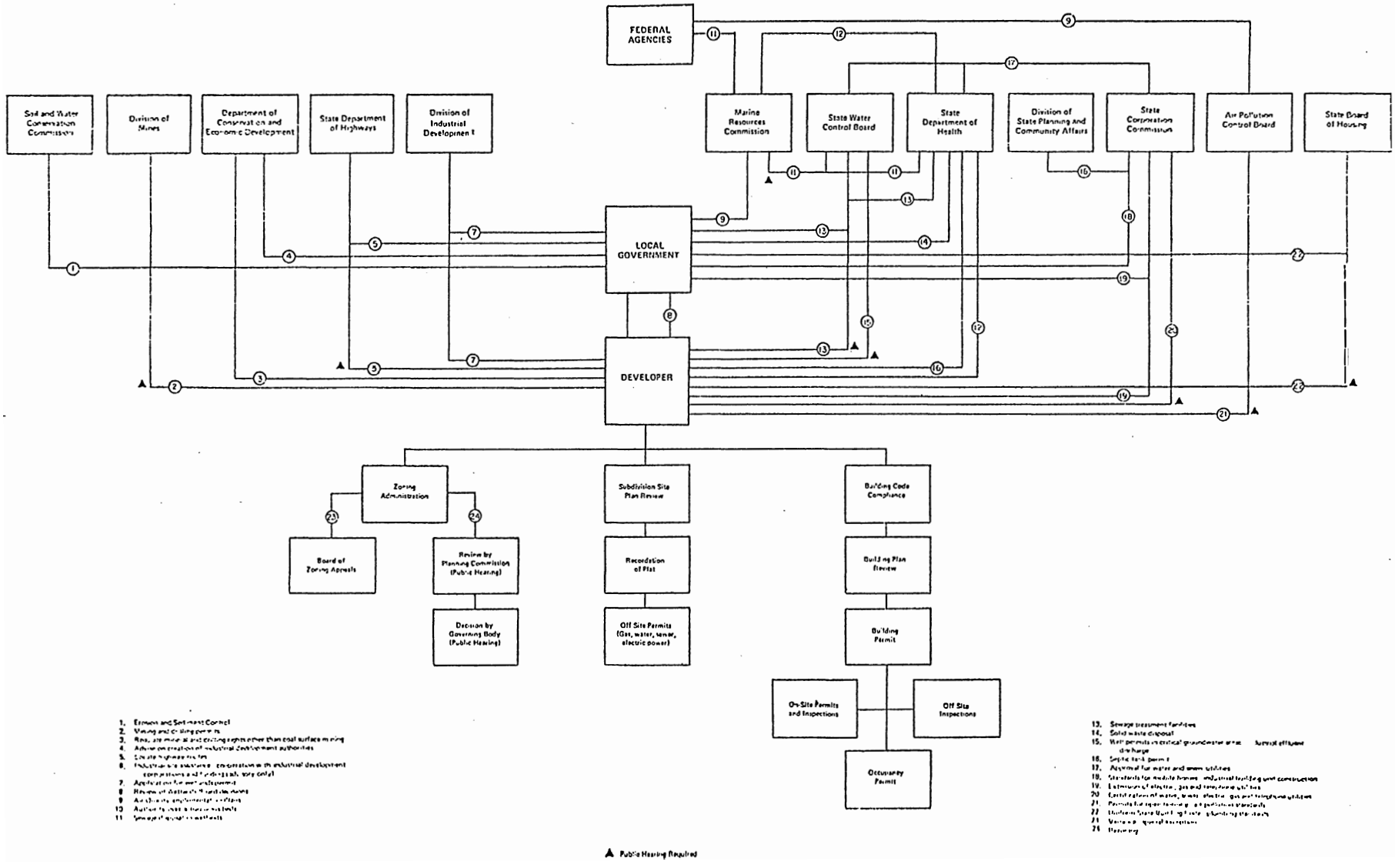
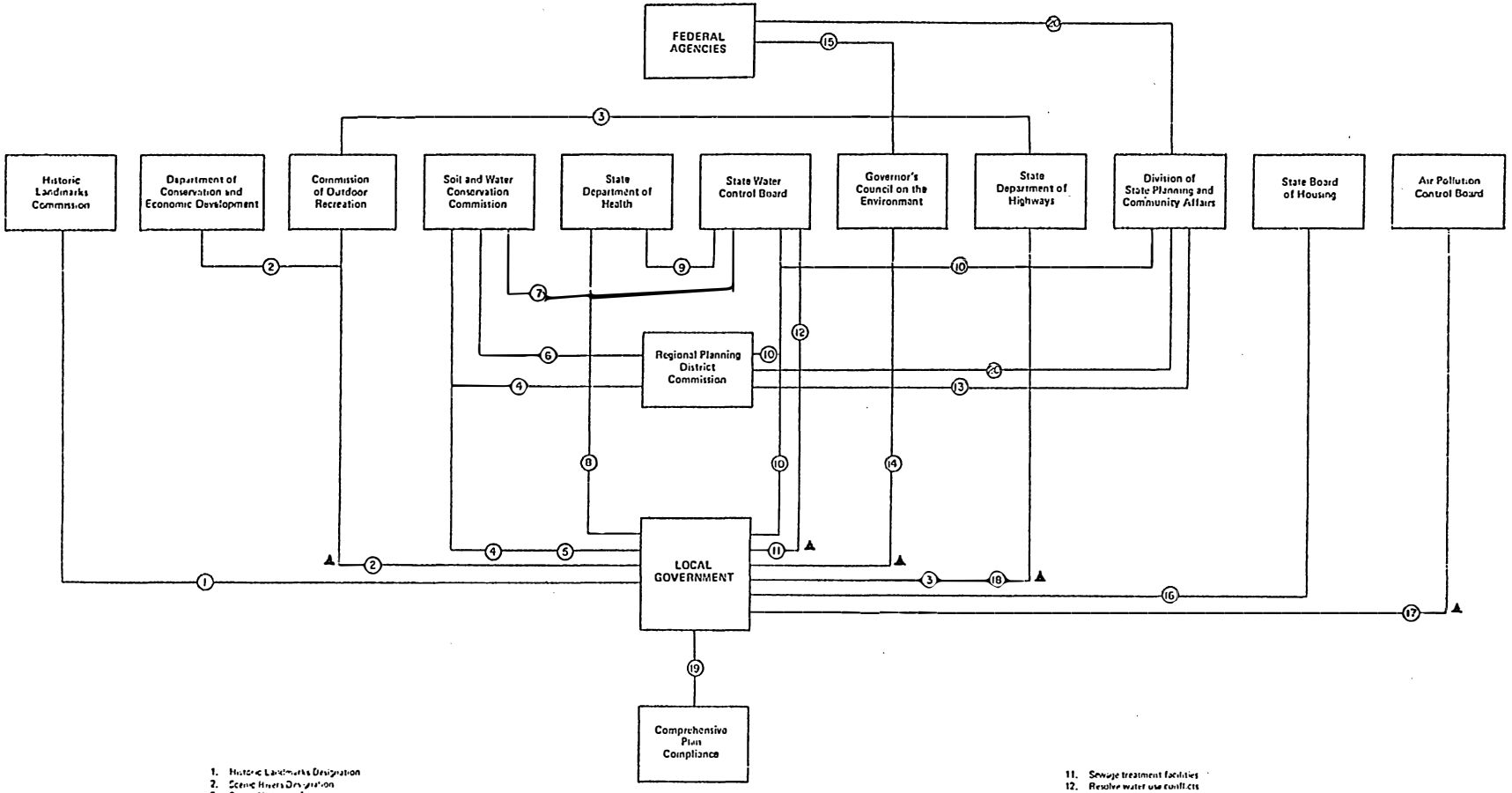


CHART 2. LAND USE AUTHORITIES AFFECTING GOVERNMENTAL AGENCIES



1. Historic Landmarks Designation
2. Scenic Rivers Designation
3. Scenic Highways Designation
4. Erosion and Sediment Control Standards
5. Funds for Water Storage
6. Council note conservation districts
7. Consultation on erosion control programs
8. Regulate sewage disposal
9. Consultation on sewage treatment facilities
10. Regional water quality programs
11. Sewage treatment facilities
12. Resolve water use conflicts
13. Comprehensive plan review
14. Environmental consultation
15. Environmental consultation and coordination
16. Establish building code and plumbing standards
17. Establish minimum local air quality standards and permits for construction and operation of sources
18. Locate highway routes
19. Compliance with comprehensive plan for local development
20. A 95 Review (Reports From Concerned State Agencies)

▲ Public Hearing Required

Land Use Responsibilities of Various State Agencies

The following is a brief summary of the responsibilities of the various State agencies represented on Charts 1 and 2 as they affect land use matters.

1. *Division of State Planning and Community Affairs.*

The Division is the agency responsible for encouraging, assisting and coordinating Statewide planning efforts and functions primarily as a coordinating, advisory and technical assistance agency. Its duties include the development of a master plan for the State incorporating population, transportation, commerce, agriculture, resources and land use elements, and assisting and coordinating planning efforts and State and local governmental agencies and subdivisions. The Division operates the Clearinghouse prescribed by Circular A-95 of the Federal Office of Management and Budget and serves a similar function with respect to many State funded projects.

2. *Council on the Environment*

The Council is an advisory body in the Office of the Governor consisting of three citizens appointed by the Governor plus the chairmen of the State Water Control Board and the State Air Pollution Control Board. The Council is to hold statewide hearings on environmental problems and issue an annual report on the state of the environment which includes an assessment of State policies as they affect the state of the environment and recommendations to the Governor as to policies needed to insure a proper balance between environmental protection and economic well-being.

3. *State Corporation Commission.*

The State Corporation Commission is responsible to the General Assembly and has general authority over domestic and foreign corporations. Its most direct influence on land use comes from the need of public service companies to obtain Certificates of Convenience and Necessity from the Commission for the construction and extension of utility facilities. The General Assembly in 1972 directed the Commission to take environmental factors into account when certificating certain transmission line and power plant siting proposals and to establish such conditions as deemed desirable or necessary to minimize adverse environmental impact. The Commission is also responsible for developing and administering standards for mobile homes and industrialized building units.

4. *Department of Conservation and Economic Development*

The Department of Conservation and Economic Development is under the Secretary of Commerce and Resources and has several divisions each with separate functions. The Division of Mined Land Reclamation exercises control over surface mining of coal by issuing permits for prospecting and mining operations, requiring bonds to assure proper reclamation procedures, establishing operation and reclamation procedures, and requiring a Plan for Reclamation and Method of Operation as a condition precedent to any permit. The Division of Forestry is responsible, among other things, for the enforcement of all forest and forest fire laws and for encouraging use of good forestry practices on private, municipal, county or State forest lands. The Division of Mineral Resources performs informational and technical functions with respect to geological matters including the preparation of geologic maps which are tools for the exploration for fuels, mineral deposits, ground-water resources and for the engineering and planning of highways, buildings and other construction. The Division of Parks establishes and operates State parks

and seeks to preserve and protect areas of exceptional scenic value and historic and scientific sites of Statewide importance.

5. *Marine Resources Commission.*

The Marine Resources Commission promotes and regulates the seafood industry through its rule-making and enforcement powers and it controls the State's subaqueous lands granting leases to Virginia residents permitting them to use such lands for planting and propagating oysters or for other purposes. The Commission also has the authority and responsibility to administer the 1972 Wetlands Act. In this capacity the Commission can override decisions of local wetlands boards with respect to developments in Wetlands.

6. *State Water Control Board.*

The State Water Control Board has general authority to establish standards of quality for all State waters. It issues the certificates for the discharge of effluents pursuant to requirements of the Federal Water Quality Improvement Act, has special authority to issue cease and desist orders against anyone permitting or causing pollution and can seek judicial enforcement of such orders.

7. *State Air Pollution Control Board.*

The SAPCB has statutory authority to issue rules and regulations for the control, abatement or prohibition of air pollution. Under its regulatory powers, the SAPCB requires any owner intending to build or modify a plant which may cause pollution to obtain a permit from the SAPCB. The Board can issue special orders requiring compliance with these rules or requiring the use of pollution abatement procedures approved by the Board. Such orders can be enforced by appropriate court action initiated by the Board.

8. *Commission of Outdoor Recreation.*

The Commission of Outdoor Recreation performs the functions of planning, coordinating and leading the State's outdoor recreation program. Among other duties, it prepares a comprehensive Outdoor Recreation Plan, receives and allocates State and federal funds to implement the Plan, coordinates plans of local, State and federal agencies relating to the Virginia Outdoors, and has responsibilities with respect to identification, designation and protection of scenic rivers and scenic highways.

9. *Department of Highways.*

The Department of Highways has a substantial impact on land use for the availability of highways is a powerful stimulant to development. Conversely, the lack of adequate highways limits development opportunities. The necessity that developers meet Department requirements with respect to subdivision streets in order to assure acceptance into the State highway system imposes substantial constraints on developers. The Department also cooperates with the Commission of Outdoor Recreation in the designation of scenic highways under the Scenic Highways and Virginia Byways Act.

10. *Historic Landmarks Commission.*

The Historic Landmarks Commission has authority to designate and with the consent of the landowner certify, sites meeting certain requirements as historic landmarks, to establish standards for care of the sites and to seek restrictions from landowners on the use of such property consistent with preservation of those features of the site making it of historical value. Tax assessors are required to take the fact that property is a certified landmark into account in assessing property taxes.

11. *Soil and Water Conservation Commission.*

The Commission has the responsibility to establish, coordinate, and assist

local soil and water conservation districts and to establish and enforce minimum statewide standards for erosion and sediment control programs. It also can make funds available to local authorities for soil and water conservation purposes. Each District may prepare a comprehensive plan for the conservation of its soil resources which may be published after approval by the Commission.

12. *Division of Industrial Development.*

The Division has no regulatory responsibility with respect to land use but plays an important role in overall land use planning since it has as its function the promotion of industrial development in the State, including funding of efforts to encourage and assist industries wishing to locate sites within the Commonwealth.

13. *Board of Housing.*

The Board of Housing formulates the general policies of the Office of Housing with the purpose of determining the need for and encouraging adequate production of housing. It also is responsible for promulgating a uniform statewide building code and other regulations including plumbing standards and is the first forum for review of local enforcement actions under the uniform building code.

14. *Division of Mines.*

The Division has licensing power over operation of mines (other than coal strip mining) and over oil and gas drilling. It also deals with the problem of reclamation and can require that a bond be deposited in advance of mining operations. Local governments are not pre-empted from enacting more stringent requirements.

15. *Department of Health.*

The Department of Health has rule-making, permit and supervisory power over sewage disposal facilities serving less than 400 persons, solid waste disposal sites and septic tank construction. It maintains close contacts with local officials and operators of public water supplies and shares responsibility with the State Water Control Board for general supervision of major domestic sewage systems and treatment plants. Solid waste disposal plans of local governments are subject to review by the Department.

III

Land Use Problems in Virginia — Recommendations for Legislative Action

One of the things which quickly became evident to the Committee as it proceeded in its study was that there were more land use problems in Virginia than the Committee could effectively come to grips with in the short time it has had to prepare this report. Indeed, at the same time this Committee has been carrying on its work, various other legislative committees or executive agencies and task forces have been working on various other topics directly related to land use problems. Therefore, for purposes of this report, the Committee has endeavored to avoid duplicating work being done by other committees, agencies or task forces and to provide some analysis of and recommendations for dealing with what appeared to be the most pressing problems which were not otherwise being addressed.

A. *Protection of Critical Environmental Areas*

Virginia is a State rich with natural, scenic, historic, cultural and other environmental resources which until the explosions in population, the federal government and the economy in general in the past decade did not appear to be threatened in any siginficant, large scale manner. Today, however, with an expanding and increasingly affluent population making greater and greater demands for housing, public services, shopping and commercial centers, recreational facilities, second homes and other amenities, many unique and special areas and features of the State are being threatened with commercial exploitation and even extinction.

Being blessed with exceptional natural beauty and an unparalleled historical heritage, Virginia contains a wide range of areas of unique environmental significance. Development in these areas must take place in a manner consistent with the maintenance of environmental values, and thoughtless development of such areas may be particularly undesirable because of the likelihood of irreversible damage, the risk of creating unpredictable and dangerous effects on life and property, and the possibility of vastly reducing the future productivity of the area. Such vulnerable areas of special value can be called critical environmental areas.

The 1972 General Assembly recognized that critical environmental areas in Virginia were not always adequately protected by existing environmental and land use controls and that immediate remedial action was necessary. As a result, the Critical Environmental Areas Act was passed declaring it to be the policy of the State to preserve and protect irreplaceable areas of natural, scenic and historic value for the benefit, use and enjoyment of the citizens of Virginia by limiting the uses made of land in and around such places. The Act directed the Division of State Planning and Community Affairs to develop criteria for the selection of areas, to designate particular locations as critical, and to recommend protective standards and mechanisms to control the use of land in specified areas.

In December, 1972, the Division submitted its Critical Environmental Areas report in which 134 areas were identified as critical, generally on the basis of satisfying one or a combination of several of five criteria employed by the Division. Areas were chosen which have unusual features worthy of protection, are crucial to an ecological system, are significant natural, scenic or historic areas in danger of destruction, are appropriate for future public use through governmental acquisition, or contain a primary State resource.

We are recommending legislation (see Appendix 2) which we believe will permit vigorous implementation of the policy the General Assembly enunciated in the Critical Environmental Areas Act while providing adequate standards, guidelines and safeguards to assure that public and private interests in critical environmental areas can be protected and preserved from arbitrary and capricious actions by government.

In §10-200(b) of the legislation proposed by the Committee three general categories of areas which may be designated as critical environmental areas are set out including the following:

(1) an area where uncontrolled development could result in irreversible damage to important historic, cultural, scientific, or esthetic values or natural systems, which are of more than local significance;

(2) an area where uncontrolled development could unreasonably endanger life and property;

(3) an area where uncontrolled development could endanger future water requirements of more than local concern.

A critical area plan must be prepared for each designated critical environmental area which must include among other things "reasonable standards and guidelines for the future development of the area" and "a precise, comprehensive definition of the public interest in the critical environmental area" (§10-202).

Legislation such as the Committee is proposing can at best be rather general in delineating the types of areas which can be designated as critical environmental areas and the standards and guidelines applicable to development of such areas. Many of the critical areas are likely to be so designated because of some unique feature or combination of features and an attempt to define precise categories of critical areas and standards and guidelines for development in such areas is simply not workable. Thus, the Committee has recommended a process for designating critical areas, preparing critical area plans, and administering the whole critical areas program which it believes will provide for adequate input from all levels of government and from the public in the process of designating and planning for critical environmental areas.

By their very nature, critical environmental areas are going to be of significance beyond the boundaries of the local political subdivisions in which they may be located. Thus, the Committee believes it essential that the State retain the ultimate responsibility for the implementation of the critical areas program. However, with widely diverse critical areas being scattered all over Virginia it would be inappropriate for all planning for critical areas to be undertaken by State employees in Richmond. Therefore, the Committee recommends the establishment of a State Land Use Commission as part of the Department of Conservation, Development and Natural Resources which is to consult with State and local governmental officials (including planning district commissions) in making critical area designations and promulgating critical area plans and to hold public hearings prior to the effective date of critical area plans. In appropriate situations, the Land Use Commission may request planning district commissions to prepare critical area plans, and it may delegate the functions of administering critical area plans to local governments which agree to administer the plans as if they were a part of the local land development regulations. Through this structure, local knowledge and expertise with respect to critical environmental areas should become an integral part of the administration of the critical areas program.

The Committee gave considerable thought to the most appropriate method of handling the critical areas program at the State level and finally concluded that the establishment of a new independent Land Use Commission would be most appropriate. The Land Use Commission recommended is not unlike the Critical Areas Review Board which was contemplated by the recommendation of the Division of State Planning and Community Affairs in its Critical Environmental Areas Report although the proposed Land Use Commission would not be so closely related to the Division as it would have been under the Division's recommendation. The Committee believes the Division will have a vital role to play in the critical areas program but that that role should be as a

consultant and planning expert. The Land Use Commission will have broader responsibilities; it will in appropriate instances issue development permits or orders to halt development and will review local land development decisions on proper appeals. It would be inappropriate for the planning agency to involve itself so deeply in administration. Thus, the Commission should have a status independent of the Division.

Suggestions have also been made that the General Assembly approve final designations of critical environmental areas and critical area plans. The Committee is not recommending such an approach because it believes it to be much too cumbersome in light of the recommendation being made. We recommend that the Land Use Commission have one member of the Senate and one member of the House of Delegates as ex officio members to provide a point of contact between the General Assembly and the Commission. In addition, the Commission is to make its critical area designations and critical area plans public on November 1 of each year with public hearings to follow within sixty days. The Critical area designations and plans would not become effective until the following June 1. As the General Assembly meets annually in January, it would have ample time to consider critical area designations and plans promulgated by the Commission before they become effective, and if it deemed it necessary, appropriate legislation could be enacted modifying any such designation or plan. Critical area designations will be of vital interest to all Virginians including the members of the General Assembly and the Committee believes its recommendation will provide adequate opportunity for the General Assembly to monitor the critical areas program and to take any action deemed necessary to protect the public interest without requiring that each critical area designation go through the legislative process.

One problem with this approach is the seven month hiatus between the announcement of the critical area designations and plans (November 1) and their effective date (June 1). Once the critical area designation has been made public, it may simply become a magnet attracting development to the critical area prior to the effective date of the designation and critical area plan. To guard against this possibility, the Land Use Commission is given authority to issue orders delaying or imposing conditions on development during the interim period before the effective date of a critical area plan. This will permit the Commission to assure that whatever development takes place between a critical area designation and the effective date of a final critical area plan will be undertaken in a manner not incompatible with the promulgated critical area plan, yet will avoid freezing development altogether.

Following the effective date of a critical area plan, no development could take place without a development permit from the Commission or the local land development agency administering the critical area plan. A developer would file a development application with the relevant local land development agency if it is administering the critical area plan or the Commission if no local agency is responsible for administration. Copies of the application would be made available to State and local agencies having an interest in the critical area for comment and a public hearing would be held. A development would be approved if it is consistent with the critical area plan, the developer has the financial and technical ability to complete the project and to meet State and federal pollution requirements, adequate provision for traffic has been made and the development will be on suitable soil types. Where development decisions are made by local land development agencies, the Commission would be entitled to review such decisions, and appeals could be taken by specified persons to the Commission which could reverse a local decision only if the local decision is "substantially inconsistent with the critical area plan" (§10-206(d)). Judicial appeal would be available from all decisions by the Commission to the appropriate court in the county or city where the development would be located.

In recommending the establishment of the Land Use Commission, the Committee did not contemplate that the Commission would have to establish a whole new staff to assist it in carrying out its functions. There already exists in the Division of State Planning and Community Affairs, Commission of Outdoor Recreation, Department of Conservation, Development and Natural Resources and other State agencies considerable expertise which would be invaluable to the Commission and could be more effective than if the Commission were to hire a separate staff of its own. The recommended legislation authorizes the Commission to employ consultants, engineers, attorneys and other employees and agents as it will undoubtedly be necessary that the Commission have some permanent staff. However, the legislation requires the Commission to seek staff assistance from other State agencies and requires other State agencies to cooperate with the Commission in the preparation and implementation of critical area plans. The Commission would have authority to allocate portions of funds appropriated to it to reimburse other agencies for any such staff assistance provided.

The critical areas program will be no more effective than the quality of administration by the Commission and cooperation and participation by State and local agencies having an interest in promoting a healthful and pleasing environment. The Committee believes the legislation it is recommending can enable Virginia to achieve the policy objectives set forth by the General Assembly in 1972 in the most expeditious and fair manner.

B. *Subdivision and Site Plan Review*

Chapter 11 of Title 15.1 of the Code of Virginia contains adequate provisions to enable counties and municipalities to implement land development control and planning programs. However, as indicated earlier in this report, the available subdivision, zoning and planning mechanisms are not always implemented by local governments, and even where local control ordinances are adopted, there is often a lack of staff capability and expertise to do an effective job. The problems with the failure of local government to adequately utilize existing land management tools have become more and more obvious in the past decade as the rapid growth in Virginia's population and economy have led to vast increases in the construction of residential subdivisions and commercial and industrial developments. From all parts of the State the Committee heard voices of concern about the seemingly endless gobbling up of farmland and other open space for various kinds of development, some of which is well planned and executed with adequate public facilities to serve the development, and some of which is not.

It is not necessary for the Committee to go to great lengths to document the problems created by the expansion of developments of all types throughout the State. In the brief period in which this Committee has been functioning a variety of counties in Virginia, including Orange, Culpeper, Madison, Louisa, Rappahannock, Fauquier, Loudoun, Mecklenburg and Prince William Counties, have been reported to have adopted or imposed moratoria of one kind or another on land development. Such moratoria may have been in the form of bans on sewer hookups or the refusal to grant zoning changes or approve new subdivisions. In some situations, as in Loudoun County, local officials have sought to require developers to pay at least a portion of the cost of public facilities necessary to serve a new development.

Some have suggested growth should be stopped, at least in some areas, and indeed, local elections have in some instances featured "growth" versus "no-growth" candidates. The Committee does not believe there is any point in talking about "growth" versus "no-growth" because the basic factors influencing the growth and movement of population are largely beyond the control of state and local governments. Rather, the question is how best to accommodate and deal with the growth that Virginia is likely to experience whether it is desirable or not. The vast majority of land development decisions

which are going to be required as a result of growth are decisions which individually are of no more than local concern. However, the cumulative effect of a large number of local decisions can be of great concern to a broader region and to the State so the Committee believes it essential that some form of guidance and assistance be made available to local governments and that some minimum standards be developed to lead to more effective local land development decision-making processes.

In short, what the Committee is recommending is that the present laws that *authorize* local governments to exercise control over subdivisions be revised to *require* local governments to exercise control over subdivisions and various other forms of development subject to certain minimum development standards to be promulgated by the State. The Committee does not believe it advisable at this time to require local governments to undertake planning programs even though long range planning would appear beneficial for most, if not all, political subdivisions. However, as more fully explained below, the Committee believes that a county or municipality should adopt a comprehensive plan and a capital improvements program if it wishes to make a developer dedicate land or contribute money to offset some portion of the cost of public facilities needed to serve a new development (§15.1-485.1). The Committee also does not believe it necessary or advisable to require communities to adopt zoning ordinances. Zoning has proven over the years to be of limited value in dealing with problems associated with rapid population growth.

The legislation recommended by the Committee (See Appendix 3) is intended to require counties and municipalities to review proposed subdivisions, commercial or industrial developments and other nonagricultural developments including two or more principal buildings or three or more residential dwelling units (§15.1-465.1). All such subdivisions and developments would be subject to certain minimum standards contained in a model subdivision and site plan review ordinance to be promulgated by the Secretary of Commerce and Resources after consultation with the Division of State Planning and Community Affairs, Department of Highways, Soil and Water Conservation Commission, State Water Control Board, Department of Health and other State and local agencies. Such standards would involve consideration of such matters as the size, configuration and characteristics of the areas to be developed and the structures to be built, provisions for off-street parking, the character and location of roads, drainage facilities and other utility facilities, provisions for acceptance of dedication of roads and streets, and procedures for administering the review process (§15.1-485.4(a)).

It is not the intent of the legislation to have a model ordinance promulgated which is to be the ordinance used throughout the State as in the case of the ordinance prescribed by the Wetlands Act. Conditions, both economic and geographic, vary greatly throughout the State as do the pressures for further development and the Committee believes local governments should be left with the maximum reasonable flexibility to adopt ordinances which will best suit their particular needs so long as the minimum standards developed by the State are incorporated. Thus, some counties and municipalities may do little more than adopt the model ordinance promulgated by the Secretary or comparable provisions while other counties and municipalities may adopt far more sophisticated and detailed ordinances. The proposed legislation doesn't necessarily mean counties and municipalities which presently have subdivision ordinances will have to scrap them and start all over. The existing ordinances may meet the minimum standards to be promulgated or might be brought into conformity with a few amendments.

A number of problems in subdivisions and other forms of development which have been highlighted to the Committee involve matters beyond the expertise of local officials and within the primary responsibility of State

agencies. In particular, such matters include soil erosion and sediment control, adequacy of roads and highways, availability of adequate water supplies and sewage treatment and disposal facilities, and measures to control and abate water, air, noise, solid waste and other forms of environmental pollution.

In some instances in the past local officials under pressure to expand real estate tax bases have approved proposed developments without giving adequate consideration to or taking sufficient account of some of these matters for which State agencies have the primary responsibility. Thus, the approval of a large commercial shopping center along with other types of intense development at a small interchange on Interstate Highway #95 in Dale City in Northern Virginia can create very serious traffic problems if appropriate provisions are not made for handling the traffic generated by such development. Similarly, the approval of the Marriott Corporation's Great America Park in Prince William County can have serious consequences on the water supply for neighboring counties if appropriate protective measures are not undertaken.

In an effort to provide better coordination of matters significantly bearing on land development decision-making processes, the proposed legislation requires as a part of the subdivision and site plan review process that proposed developments be reviewed and approved by the Department of Highways and Department of Health; erosion and sediment control plans be approved pursuant to the Erosion and Sediment Control Law (§15.1-485.4(b)). Some of this coordination may already take place in practice but the Committee believes it essential to require the coordination in a single development decision-making process to avoid the likelihood of conflicting decisions being made by various agencies.

To assure that the subdivision and site plan review contemplated by the proposed legislation is implemented in accordance with the minimum standards promulgated pursuant to the legislation, counties and municipalities are to prepare and adopt appropriate ordinances and submit them for review and approval by the Secretary on or before January 1, 1976 (§15.1-485.8). If the Secretary disapproves an ordinance and the defects resulting in such disapproval are not cured, the Secretary may promulgate the model ordinance with such provisions deemed necessary or advisable in light of the particular circumstances in the county or municipality as the subdivision and site plan review ordinance to control development in that political subdivision (§15.1-485.8(c)). The Secretary would also administer such an ordinance.

C. *Permit Fees For Capital Facilities*

One of the problems for which the Committee has found no solution it believes entirely satisfactory is that of measuring the relative economic costs and benefits to a community of a new development and providing some method for assuring that a new development pays its own way. As a matter of practice some counties and municipalities have sought and obtained dedication of lands from a developer for school or other purposes or cash contributions to offset at least a portion of the capital costs to a local government for providing schools, parks and other capital facilities necessary to serve the new development. The legality of such demands on the part of local governments has never been definitively ruled on by the Virginia Supreme Court. However, the problem for local governments is a very real one for a large development can require the construction of public facilities at a substantial cost, and although a development may return all or much of that cost over a long period of time, the local government has the problem of finding funds at a very early stage to install the facilities. This need of "front-end" money often leads local government officials to seek land dedication or cash contributions as an alternative to increasing real estate tax levies across the community to pay for facilities to serve the new development.

The political problem facing local officials is very real indeed and the

pressure to exact whatever is possible from a developer is great. This can generally be expected to have the effect of increasing the cost to the developer which is passed on to the purchaser or user of property in the development while reducing the pressure to increase real estate taxes. Loudoun County has attempted to formalize such a procedure in adopting Article 12 to its zoning ordinances. The difficulty with such programs is that they must be based on a realistic assessment of the cost of providing capital facilities to a local government but too often no such realistic assessment is or can be made. One reason such an assessment cannot be made in many instances is that a community has no comprehensive plan and capital improvements program which are necessary to determine what facilities are going to be needed where, when and at what cost. In addition, when a land dedication or cash contribution is made by a developer, there is no assurance the land or cash will be used to provide facilities to serve the development. Therefore, in an effort to provide a greater degree of fairness than exists today, the Committee recommends that the present system of land dedications or cash contributions from developers be replaced by a law (§ 15.1-485.1) which authorizes (but does not require) a county or municipality to impose a fee as a condition of issuance of a building permit or approval of a subdivision plat or site plan. This authority is conditioned upon the local government having adopted a comprehensive plan pursuant to § 15.1-466, a capital outlay program pursuant to § 15.1-464 and a subdivision and site plan review ordinance pursuant to the legislation proposed by the Committee and would be further conditioned requirements that:

(1) an ordinance specifying definite standards for determining the amount of the fees based on appropriate and relevant studies of a nature and type approved by the Secretary of the communities need, if any, for park, recreational, school, sewerage, drainage and other capital facilities would be in effect 30 days prior to a development application;

(2) the fees could be used only for park, recreational, school, sewerage, drainage and other capital facilities to serve the development and must be used within five years from the date of approval of the development or be returned to the developer;

(3) the capital facilities would be in accordance with the comprehensive plan and capital outlay program or will be privately maintained and protected pursuant to approved restrictions; and

(4) the amount of the exaction must bear a reasonable relationship to the use of the capital facilities by the residents or users of the development but may not exceed 2% of the market value of the developed land.

Upon mutual agreement of a county or municipality and a developer or builder, the fees to be imposed could be satisfied by dedicating land having a market value (after construction) not greater than the fees to be imposed.

Any dwelling units constructed outside of developments as that term is defined in the Act must also be assessed with a fee for the issuance of a building permit. This would prevent the inequity of new home owners in certain developments being assessed with capital costs while other new home owners in the same localities would not be so assessed.

The Committee recognizes this provision may be utilized by some local governments which do not now exact any land or cash from developers of land and that this will increase the cost of housing in particular. On the other hand, the restrictions imposed may reduce the amount of funds now being required in other communities. Perhaps in time a better method can be found to provide local government with the necessary funds to cover the early costs associated with new development, but until such a method is found, the Committee believes its recommendation is a more effective and fair way to obtain

contribution to the cost of capital facilities from the development which will be served by those facilities rather than the present informal practices. A dissent to the Committee's recommendation by John T. Hazel, Jr. and a separate statement by Rosser H. Payne, Jr. are made a part of Appendix 4.

D. *Control of Slope and Flood Plain Development*

To make the subdivision and site plan review more effective, the Committee has deemed it advisable to recommend a few amendments to the Erosion and Sediment Control Law (See Appendix 5.) First, to make it clear, developments subject to the subdivision and site plan review ordinance must submit erosion and sediment control plans, the definition of "land disturbing activity" in §21-89.3(a) of the law is amended to revise the last exception from the coverage of the law to read:

> (vi) preparation for single family residences separately built, unless in conjunction with a subdivision or development requiring approval of a plat of subdivision or site plan pursuant to the Subdivision and Site Plan Review Act (Article 7 of Chapter 11, Title 15.1, Code of Virginia).

Second, one of the problems which many witnesses brought before the Committee concerning land use was the problem of second-home subdivisions in mountain areas. With the Subdivision and Site Plan Review Act many of the problems associated with such developments hopefully can be avoided. However, local officials may not have the expertise to adequately deal with the problem of how to proceed with development on slopes. To assure that certain problems of slope development are given consideration in the approval of subdivisions and site plans, it is recommended that §21-89.4(b), which indicates the kind of guidelines to be included in an erosion and sediment control program, be amended to include slopes as an additional factor to be considered.

The last series of amendments to the Erosion and Sediment Control Law deals with the establishment of a program for control of development in flood plains. Devastating floods in the past few years have dramatized the need to look closely at the kind of development which is to be permitted along rivers and streams, particularly if that development may have the effect of reducing the flood carrying capacity of natural river and stream channels to the detriment of downstream development. The "carrot" of the National Flood Insurance Act has encouraged some counties and municipalities to adopt specific flood plain programs to become eligible for federal flood insurance but this leaves many political subdivisions without any kind of flood plain control.

The Committee believes the public interest as a whole can best be served by developing a flood plain control program which has some consistency throughout the State. Rivers and streams have no respect for political boundaries and when they flood, all political subdivisions along their channels can expect to suffer. Since what one community does to control flood plain development has a direct and immediate impact not only on its own development but on other development along the river or stream, a program must be devised to cover entire rivers or streams. The Soil and Water Conservation Commission has the expertise to deal with flood plain matters and it has the legislative mandate under the Erosion and Sediment Control Law to develop a State erosion and sediment control program which is to be implemented through local soil and water conservation districts and local governments. The mechanisms for setting up such a program are already in existence and the Committee believes the erosion and sediment control program is a logical place to include matters affecting flood plain development.

E. *Development As It Affects Highways*

Numerous examples were cited to the Committee of instances where developments which generated or had associated with them large amounts of vehicular traffic were approved without adequate consideration being given to

the capacity of roads and highways in the vicinity of the development to handle the expected traffic load. The previously cited problem of the development of Dale City and two large shopping centers dependent on one small inadequate interchange in Northern Virginia is but one example. Roads within subdivisions are critical concerns as evidenced by the provisions in the subdivision law with respect to the acceptance of dedication of roads within subdivisions, but the Committee believes that the problem of access to and the manner of development near State highways leading to a development are of equally critical concern when dealing with subdivisions and other kinds of development. No program involving control of land use can achieve maximum effectiveness without adequate consideration of transportation problems. Land use and transportation planning must go hand-in-hand to avoid the chaotic situations which exist near many highway interchanges especially along the beltway in Northern Virginia. However, in many situations, land use plans and patterns may be substantially changed after a highway network is constructed to accommodate development and growth which was expected under the original land use plans and patterns with adequate coordination of the impact of the land use change on the transportation picture.

One of the problems is that unlimited access is permitted to the arterial highway system from adjoining property. The proposed Subdivision and Site Plan Review Act authorizes the limitation of the number and location of the points of access from developments requiring a permit under that Act. The Act does not permit the prohibition of access to highways (except in cases of limited access highways) but allows control of the points of access to the highways. This means that a developer may be required to provide service roads or other limited points of access so that all traffic from a development will enter the highway at designated points which can be controlled to provide for the greatest possible degree of traffic coordination and safety. In appropriate circumstances, developers may be required to "back up" their developments to the main highway and to provide access to the highway through interior roads within the development. In addition, it may be necessary to require certain setbacks of development from the highway.

However, it is not only the subdivisions or large scale developments which cause problems with respect to highway access. Indeed, the parcel by parcel strip development with each separate parcel having access to the arterial highway causes every bit as much if not a more serious problem to highway safety and design. In addition, the adequacy of roads within subdivisions and developments is also of serious concern. If access to the highway is limited to certain designated points but the access or service roads are not adequate to handle the traffic likely to be generated, serious problems can ensue.

The Committee believes the Department of Highways should be given more authority to control the points and type of access to State highways and §15.1-466(b)(2) of the proposed legislation grants the Department such authority. If such authority is to be effective, the Department must adopt regulations that take into account the differing conditions in various parts of the State. Thus, what may be required and appropriate in the crowded but relatively flat Northern Virginia area may not be appropriate in the mountain areas of Western and Southwestern Virginia. In addition, the Department's regulations and guidelines must take into consideration not only development immediately adjacent to highways, but also must consider developments such as subdivisions, airports, recreational centers and other facilities which may be some distance from the highway but which will generate considerable amounts of traffic. These regulations must be made readily available so that local officials and private developers can know what they must expect.

The Department is not given authority to veto proposed developments, but rather, to place reasonable conditions and requirements to assure that access from new developments to the highway system is adequate and safe. In exercising this authority the Department would be expected to work closely

with State and local agencies having land development decision-making responsibilities to assure coordination of land use and transportation needs.

Granting such additional authority to the Department with respect to highway access will also bring with it additional responsibilities which the General Assembly should be prepared to support. If rational transportation and land use planning indicates a service or frontage road should be constructed at some point to eliminate multiple access points, the State, through the Department, should accept the responsibility for maintaining such roads.

The Committee recommends that the Highway Department begin to systematically acquire access rights along nonlimited access highways, particularly, arterial primary highways so as to preserve highways now being used for thru traffic for this purpose. With the rapid development and increase of access points to highways, it is apparent that arterial and other highways which are actually primarily used for thru traffic, will be obsolete as arterial roads if rights to control access cannot be acquired and controlled by the Highway Department. The Committee realizes that this involves substantial additional expense on the part of the Highway Department in acquiring such rights by purchase or condemnation but it believes in the long run such a program will save the taxpayers money by lessening the number of miles of arterial highways that will have to be relocated and replaced in the future. No legislation is needed for the Highway Department to undertake this kind of program.

The Committee has also considered various suggestions that the Department of Highways be required to prepare environmental impact statements with respect to all projects undertaken by the Department. The Department now has the obligation to prepare environmental impact statements with respect to projects involving use of federal funds — approximately one-third of the projects the Highway Department undertakes. Thus, a requirement of environmental impact statements for all of the remaining projects would roughly triple the burden now facing the Department. While environmental impact studies of highways can in many situations be very useful and significant, the Committee does not believe it has the adequate information upon which to base a conclusion that the type of environmental impact studies required under the National Environmental Policy Act should be required for all highway projects undertaken in Virginia. However, the kinds of considerations the Department must deal with in preparing environmental impact statements are important and the Committee would recommend that the Department be required to publish a summary of the factors which the Department examines in preparation of an environmental impact statement. If such information is made readily available to the public and to developers, environmental planning can be enhanced.

The question of the environmental impact of highways is an important one which deserves continuing consideration. Therefore, in recommending that the Committee be continued in existence for another year, one of the matters which should be given further consideration is the most appropriate handling of the environmental impact of the construction of State highways.

F. *Scenic Highways*

The Scenic Highways and Virginia Byways Act was enacted as a part of the Virginia Outdoors Plan for the purpose of preserving and providing for the appropriate development of scenic roads in Virginia. Under the Act, the State Highway Commission in designating scenic highways and byways is required to cooperate with the Commission of Outdoor Recreation and any designation of a scenic highway or byway is subject to approval by the local governing body. Efforts have been made to obtain such designations and a great deal of time has gone into the appropriate development planning for such highways and byways by various State agencies. However, experience has indicated that

local governing bodies have been reluctant to approve scenic highway designations as they see such action as a surrender of their authority to control development along highways within their jurisdiction. The result has been that no scenic highway or byway designations have become effective.

Part of the reason for the reluctance on the part of local governments to approve a scenic highway designation is the fear that such a designation will result in the freezing of all land uses and development along the highway with a consequent lowering of land values. This is not the necessary result and it may be that the converse is true. Property along scenic stretches of highways has added value because of the scenic surroundings, but this value can be decreased to the extent scenic values are reduced by unplanned and uncoordinated development. Indeed, the example of Virginia Route 5 through Charles City County is one which should be noted. Were that highway to have been designated as was proposed, with development allowed to proceed according to the plan developed for the highway, there is reason to believe land values along that highway would have been enhanced more than has been true with the relatively scattered unplanned strip development which has taken place. In addition, there would have been preserved for the State and the public in general a beautiful scenic highway which would have a value not readily translatable into economic terms.

Virginia's natural and scenic resources are limited and if the purpose of the Scenic Highways Act is to be carried out for the benefit of all of the citizens of the State, the Committee believes it is essential to eliminate the requirement that scenic highway or byway designations be made subject to the approval of local governing bodies. However, the State Highway Commission should be required to consult with local governing bodies as well as the Commission of Outdoor Recreation in making such designations. The recommended amendment to the Act would strike the phrase "shall be subject to the approval of" from §33.1-62 and insert the phrase "after consultation with." The Section would then read as follows:

> The State Highway Commission is hereby authorized to designate any highway as a scenic highway or as a Virginia byway. Such designation shall be made after consultation with the Commission of Outdoor Recreation and with the local governing body.

G. *Tax and Economic Factors Affecting Land Use*

To better understand some of the economic reasons as to what, when and how land is developed, the Committee established a subcommittee to review tax and economic considerations as they affect land use. One matter in particular the subcommittee sought to obtain information about was the impact and effectiveness of the Use-Value Assessment Tax Act enacted in 1972. As of the date of this report, only four jurisdictions, Loudoun, Fauquier, and Prince William Counties and the City of Virginia Beach, are reported to have adopted the local ordinances making the Use-Value Assessment Tax Act effective in those jurisdictions. As 1973 is the first year the Use-Value Act has been effective (it is not effective in Loudoun County until 1974), the subcommittee has found it too early to make sound judgments as to the impact of the law on real estate tax revenues in counties adopting the Act. Furthermore, there has not been enough experience under the Act to adequately judge its effectiveness as a device to encourage the continued use of agricultural, horticultural, forest and open-space land.

Despite the limited experience under the Use-Value Act, the subcommittee received a number of suggestions for changes in the law which might make the law more effective. One of the concerns is that the law may provide a shelter for land speculators who have no intention of maintaining land in a use qualifying for preferential treatment for an extended period of time but will simply hold the land until the price is right and then sell or develop it. One step was taken by the 1973 session of the General Assembly to limit the value of the

Use-Value Act as a tax shelter for speculators by requiring the payment of 6% interest on roll-back taxes which become due upon a change in use. However, it has been contended that the 6% interest on the roll-back taxes is not a sufficient deterrent to speculators who in many instances can invest the money saved in taxes while the land qualifies for the preferential treatment and earn far more than the 6% interest they will have to pay on the roll-back taxes. Some of the suggestions which have been made for tightening up the Act include:

(1) Requiring a certain minimum period of ownership of land prior to its being eligible for reduced assessment.

(2) Authorizing a landowner and taxing jurisdiction to enter into an agreement whereby the owner agrees to keep the land in a qualifying use for a specified period of time. The extent of the tax reduction to a landowner would depend upon the length of time over which the landowner agrees to maintain the land in an eligible use.

(3) Eliminate the provision in the Act which permits a landowner to change the use of a portion of eligible land without affecting the eligibility of the remainder of the land.

(4) Land owned by corporations or land on which the owner or a member of his family does not reside should be made ineligible for reduced assessments.

(5) Where a state agency or other entity, such as a public utility, condemns property which is subject to the Act, the condemnor should be held responsible for paying the roll-back taxes as the condemnor is responsible for the change in use.

The Committee is not prepared to endorse any of the above suggestions for changes but believes more experience is necessary before any substantial changes should be made in the Act or in the way it is administered. In general, the Committee supports the purpose of the Act and believes it can be an important tool in preserving various kinds of rural and open-space land, but one recommendation is made with respect to administration and enforcement of the Act. Under the Act, the owner of land qualifying for reduced assessment is responsible for notifying the Treasurer of the taxing jurisdiction of any change in use and paying any roll-back taxes which may become due owing to the change in use. However, changes in use of land may go unreported and the Commissioner of the Revenue will have no practical way of discovering a change in use short of physically inspecting each eligible parcel until it may be too late to find the party owing the roll-back taxes. As an aid in identifying land on which a change of use may have occurred, the Committee recommends amending the Act to require clerks of the circuit or corporation courts to transmit copies of the recordation tax receipts which are issued when conveyances of land are recorded to the Commissioner of the Revenue. (See Appendix 6.) In addition, planning or zoning commissions, building permit authorities or any other local agencies having the authority to issue permits with respect to the alteration in the use of land, zoning changes or construction of buildings of any type would also be required to provide the Commissioner of the Revenue copies of any permits issued or other adequate notice of any action by such agency which may affect the use of the land.

This information should be transmitted to the Commissioner of the Revenue within ten days after the end of each month. Under present practice, the Commissioner of the Revenue is to receive copies of recordation tax receipts by January 15 of each year with respect to all transactions for which such receipts are issued during the preceding calendar year. However, the Committee believes the Commissioner should have such information on a more current and regular basis and thus recommends monthly reports to the Commissioner. On receipt of these documents, the Commissioner can initiate

appropriate investigations to determine if the use of land has been changed particularly if he does not receive appropriate notice from the owner of the land.

The subcommittee did not limit its study to the Use-Value Act but also considered real estate tax assessment practices in general with an emphasis on how such practices may influence development decisions of landowners. In particular, the subcommittee was concerned with how existing real estate tax practices may contribute to the spread of urban blight by discouraging rehabilitation and maintenance of existing buildings and property in inner city areas. The suggestion that real estate tax practices can have such an effect was supported by a study prepared for the subcommittee by Professors J. Freman Jones and Ralph E. Anderson from Old Dominion University in Norfolk who concluded the property tax is inequitable in that it places "an especially heavy burden on taxpayers in blighted neighborhoods, thereby distorting land-use patterns." (Jones & Anderson, *Perspectives on Land Use Optimization and the Tax System*, p. 27 (1973).) Further supporting this conclusion was testimony presented to the subcommittee that many landowners in urban areas would refuse or delay making major repairs or improvements because of the fear the tax assessor would come calling and increase the assessed value of the property.

Among the suggestions to deal with the effects of present taxing policies, is a suggestion there should be no reassessment of property until it is sold or a change of use of the property occurs. Under such a system, the assessed value of real estate would not be increased until the property is sold at which time the assessment could be revised in accordance with the sale price of the property. In addition, whenever a substantial change in use of property would occur, such as a landowner expanding a two-flat building to a three-flat building or a single-family residence to a multi-family residence, or changing the zoning of a parcel, reassessment would then take place. The idea behind this suggestion is that so long as one person owns the property, his taxes will not be increased when he makes improvements to the property without changing the use of the property. It is contended that if assurance can be given to landowners, particularly in core city areas, that their real estate tax assessments will not be increased simply because they improve their existing structures rather than letting them deteriorate, much more rehabilitation of existing structures will take place and one of the causes of the spread of urban blight with the associated fleeing of many persons to the suburbs can be eliminated. There are, of course, problems with such a method of taxation. Two persons owning identical homes on the same street could wind up paying substantially different amounts of real estate taxes because one person had owned his property for a substantial period of time during which there had been no reassessment while the other person would have purchased the property very recently at a higher market price.

Another suggestion made to the subcommittee was that the present practice of placing a large part of the real estate tax burden on improvements to land rather than on the land itself is a substantial contributor to urban blight. Proponents of this theory suggest changing present taxing policies to place the real estate tax burden principally on the value of the land rather than on improvements. By doing so, it is contended the tax impediments to rehabilitating and improving property in urban areas can be removed.

On the other hand, it has been argued that preservation of open space lands would be encouraged by taxing open space lands generally at their use value and emphasizing the tax on structures rather than on land.

These suggestions as well as others for changing present real estate tax assessment practices are made to achieve certain social or other ends in addition to the collection of tax revenues. In terms of the number of people whose daily lives are affected by the quality of their environment, improving

living conditions in urban areas is every bit as important, if not more so, as dealing with critical environmental areas. The Committee is neither ready to accept or reject the foregoing suggestions with respect to revising tax assessment practices but it believes real estate tax assessment practices are an important part of the problem of preserving and improving inner city areas. While there are other factors, such as the federal income tax laws, which also have a significant bearing on the economics of rehabilitating property rather than tearing down old and building new or simply letting the old deteriorate, the Committee believes further study of the impact of real estate tax policies on land use, particularly in urban areas, is essential and recommends the initiation of a separate study of real estate tax assessment practices as they affect land use.

A number of suggestions were brought to the subcommittee with respect to various aspects of real estate tax assessment practices which dealt with those practices generally as opposed to their particular impact on land use. For example, the only qualifications a person needs to be appointed a real estate tax assessor in Virginia is that the person be a resident of the locality and an owner of real estate. The appraisal and assessment of real estate is not a simple matter. Although the Department of Taxation provides assistance to localities in assessing land, no regular program exists for training local assessors in real estate appraisal techniques. Thus, the suggestion has been made that the Department of Taxation establish a program available to all local assessors to provide training and information as to real estate tax assessment methods. Another alternative would be to require that assessors have some experience in appraising property.

One of the concerns frequently heard by the subcommittee was about the substantial variation among the various taxing jurisdictions in Virginia of levels of assessed value of real estate. Under Virginia law, land is supposed to be assessed at its fair market value. However, statistics compiled by the Department of Taxation show that land may be assessed at anywhere from 12% to almost 100% of its fair market value. Under the present Virginia Code, cities have the option of adopting a continuous reassessment policy or assessing on a four-year cycle. Counties may reassess at any time but are supposed to reassess at least every six years. Experience indicates that with respect to jurisdictions on a four or six year reassessment cycle, reassessments often do not occur frequently enough to reflect substantial changes in market value of property. Where a taxing jurisdiction does not reassess but every fourth or sixth year, market values can change so substantially that when a reassessment takes place, real estate tax assessments may more than double. On the other hand, cities which have adopted a continuous reassessment policy may, in fact, use that device simply to avoid the requirement that all property be reassessed every four years.

It has been recommended to the subcommittee that real estate tax assessments should be revised no less often than every four years. In addition, it has been suggested that provision should be made to allow, and in appropriate cases require, reassessment of property on a more frequent basis where changes in market value warrant reassessment. Proper evaluation and possible implementation of those suggestions require the collection of sufficient supporting data. The Department of Taxation's studies with respect to variations between assessed value of property for tax purposes and market or sale prices of property were found useful by the subcommittee and such information will be needed to properly evaluate real property tax assessment practices in Virginia. The Department would be aided in preparation of such studies by a requirement that the clerks of the circuit or corporation courts file copies of the recordation tax receipts reflecting the transfer of property with the Department of Taxation on a monthly basis. The Committee recommends appropriate amendments be made to the Code of Virginia to provide such a requirement. (See Appendix 6.)

The Committee well recognizes that most landowners are more concerned with the total dollars they must pay in taxes than with the assessed value or the tax rate. However, an effective real estate property tax system should be a credible system. The Constitution of Virginia requires that the property be taxed on the basis of its market value and the Committee believes tax practices should be structured in such a way that the constitutional objective is indeed achieved. There are, of course, a variety of factors which have influenced localities to assess property at less than its market value. For example, the assessment of public utility property has long been at less than market value and local taxing jurisdictions do not have the authority to establish the assessment of public utilities. That function is carried out by the State Corporation Commission. Although under present law utility assessments are to be revised over a twenty year period of time to bring them in line with local tax assessment ratios, the existing system of assessing public utility property has been a contributing factor to the failure of taxing jurisdictions to assess property at its market value. An additional problem is the problem of adequately and accurately assessing land and improvements on land. Too often, increased assessments are made on improvements while the assessment of the land on which the improvements are located is not appropriately reassessed.

Except with respect to the two items previously noted, the Committee does not believe it has sufficient information to make specific recommendations with respect to revisions of real estate tax assessment practices. However, the Committee is convinced that such practices have a substantial impact on the use and development of land. Therefore, the Committee recommends the initiation of a new study to look into real estate tax assessment practices as they affect the use and development of land. Such a study would not focus particularly on the Use-Value Assessment Tax Act since more experience is needed under that Act to determine its effectiveness in achieving its objectives before considering significant changes.

H. *Open-Space Land Act*

As a part of the Virginia Outdoors Plan, the General Assembly in 1966 adopted the Open-Space Land Act which was designed to provide for the preservation of permanent open-space land in an effort to curb urban sprawl and the spread of urban blight and deterioration, provide and preserve necessary park, recreational, historic and scenic areas, and conserve land and other natural resources. Under the Act, public bodies in the State are authorized to acquire by purchase, gift, or otherwise title to any interest or rights in real property "that will provide a means for the preservation or provision of permanent open-space land." While the Commission of Outdoor Recreation and other agencies have achieved significant success in acquiring scenic easements and other open-space land, it has become apparent to the Committee that many persons who would be ready and willing to donate scenic easements in land for limited periods of time are simply unwilling to do so if the grant must be in perpetuity. Thus, a public benefit for at least some limited period is foreclosed.

Under the present income tax laws, the donation of an easement for a limited term, such as 30 years, will not enable the donor to take a charitable contribution deduction from his income tax as the Tax Reform Act of 1969 requires that any easements contributed to qualified recipients be permanent easements. (See Section 170 of Internal Revenue Code.) However, an amendment to the Internal Revenue Code has been introduced into the United States House of Representatives which would authorize a charitable deduction for contributions of certain qualifying easements which are of not less than 30 years duration. This amendment is part of a broader package drafted by the U.S. Department of the Treasury and the Council on Environmental Quality. The Committee met with Mr. Boyd Gibbons, Executive Secretary of CEQ, who

explained the purpose of the legislation indicating it is the belief of CEQ that the legislation would be a valuable tool in promoting conservation of land resources. No action has been taken on the proposed amendment as of the date of this report but the Committee supports the objectives of the legislation and has so indicated to the Virginia members of the United States Senate and House of Representatives.

When taxes become a major consideration in determining land use, tax legislation should provide an incentive for the type of land use that is considered desirable. The Committee believes that the acquisition of open space easements is highly desirable and that efforts should be made to provide tax and other economic incentive for the preservation of open space lands. In the long run such indirect action by governments is likely to be more effective than direct action in the form of regulations.

The Committee believes the public interest would be served by amending the Open-Space Land Act to authorize the acquisition of open-space easements or other interests in land under the Act for periods of not less than 30 years rather than requiring such easements or interests to be permanent for we believe a substantial number of scenic easements may be obtained for such a limited term which would not be obtained if the requirement that the easement be perpetual is retained.

There are sound arguments for retaining a requirement that scenic easements under the Open-Space Land Act be permanent. In many instances, if the donor has the opportunity to donate a 30-year easement rather than a permanent easement, he is likely to do so since he then has the option at the end of the 30th year to again donate an easement or to make such other disposition of the land as he chooses to make. Some success has been achieved in obtaining permanent interests in open-space land and it might be expected that the number of contributions of permanent interests in open-space land may decline if interests for a period of not less than 30 years are permitted. However, the Committee believes that the authorization of 30-year easements will better serve the public interest by encouraging many more persons to make grants of such easements and that many of those donors who would otherwise grant permanent easements may still be prevailed upon to do so. Indeed, until the income tax law is amended, the grant of a permanent easement is the only way a charitable contribution deduction will be available to such donor.

Nobody can know what Virginia's situation will be in 30 years and what today may be valuable open-space land may in 30 years be of no value as open-space land at all. On the other hand, land use planning and development over that 30 year period may have advanced to such a point where with or without a scenic easement, open-space land would be preserved. In any event, the Committee believes substantial public benefits would accrue by amending the Open-Space Land Act to permit the acquisition of easements or interests in land of not less than 30 years. A copy of the proposed amendment is attached hereto as Appendix 7.

I. *Virginia Outdoors Plan Bond Issue*

The Commission of Outdoor Recreation is recommending the issuance of $84 million in General Obligation Bonds to finance the Virginia Outdoors Plan during the five-year period 1975-1980. We estimate that we will receive $18 million in Federal Land and Water Conservation funds within that period, making available a total sum of $102 million.

Of the total, $73 million would be spent on acquiring 15 new State Parks and developing 10 for the use and enjoyment of the public and on providing hiking and bicycling trails throughout the Commonwealth. Local and regional agencies would receive $25 million to assist them in implementing their park and open-space plans. The Commission of Game and Inland Fisheries would

receive $4 million in Federal Land and Water Conservation matching funds for use in expanding recreational opportunities on lands and waters under the Commission.

Since 1966 and through June 30, 1973, the Commission of Outdoor Recreation has allocated approximately $36.5 million in State general fund appropriations and Federal Land and Water Conservation funds and this has generated an additional investment of approximately $6.8 million in local and regional funds to carry out the program of the Virginia Outdoors Plan. These funds have been put to good use in acquiring seven new State Parks, making improvements to some of the older parks and beginning development on some of the newer parks. These funds have also been instrumental in providing local and regional parks close to where the people are. Over 4,500 acres of local and regional parks have been acquired, and through 1974 over 40 new local and regional parks will be in operation across the State due to this program.

The demand for outdoor recreation facilities has exceeded our earlier estimates and continues to rise with continuing prosperity, mobility, leisure time and population increase. Use of Virginia's State Parks has grown from less than 1/4 million visitors in 1940 to over 2-1/2 million visitors in 1972. Our State Parks are turning away people because of the lack of adequate space and facilities to accommodate their recreational demands and needs.

The process of uncertain and piecemeal annual or biennial appropriations is a costly and ineffective way to accomplish this program. We are far short of our original goal of acquiring 36 new State Parks and developing 20 by 1976. If we still want to pursue the goals of the Virginia Outdoors Plan, preserve significant open-space, meet the demands for parks, enjoy the benefits of those parks, and do so economically, we must accelerate the financing of this program through a General Obligation Bond Issue.

The $84 million in General Obligation Bonds we are proposing would be retired in annual general fund charges for interest and principal retirement of $6,405,000.

We can illustrate in substantial detail how many savings we could effect by having these bond proceeds in hand and being able to make commitments on both acquisition and development.

For many, many citizens of Virginia, it is not necessary to spell out a case for an attractive and adequate park system. The wisdom of protecting and preserving for public enjoyment certain distinguished parts of the Virginia landscape seems quite obvious. The support of one person might rest on his concept of stewardship for our inheritance; another's might rest on a simple determination to keep some of these places so he and his family could get away from urban congestion and have a pleasant weekend in natural surroundings. There are all sorts of bases for accord.

One additional aspect should certainly not be overlooked, and that is the economic benefit to the Commonwealth and its localities. The travel business is one of the most productive parts of the Virginia economy. We can supply results of studies which demonstrate what a traveler's stay in Virginia means to our economy. The State Park System is now and can increasingly contribute to this.

APPENDIX 2

A BILL

To amend the Code of Virginia by adding in Title 10 a chapter numbered 18.1 containing sections numbered 10-197 through 10-207 and a chapter numbered 19 containing sections numbered 10-208 through 10-216 and to repeal Chapter 18 of Title 10 containing sections numbered 10-187 through 10-196, the added and repealed chapters relating to the designation of and planning for critical environmental areas, stop orders on developments in such areas, penalties for violations of such orders, permission for development in critical environmental areas, review and appeals of decisions concerning development; and to create a Land Use Commission, its powers and duties, membership, appointment and terms of members, compensation of members, promulgation of rules and regulations.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia be amended by adding in Title 10 a chapter numbered 18.1 containing sections numbered 10-197 through 10-207 and a chapter numbered 19 containing sections numbered 10-208 through 10-216 as follows:

Chapter 18.1

Critical Environmental Areas

§10-197. The General Assembly of Virginia finds that:

(a) the Constitution of Virginia sets forth that it shall be the policy of the Commonwealth to protect its atmosphere, lands and waters from pollution, impairment or destruction, for the benefit, enjoyment, and general welfare of the people of the Commonwealth;

(b) there are certain areas in the Commonwealth which should be singled out for immediate and special attention including coastal zones, estuaries, flood plains, watersheds and other lands having unique and irreplaceable natural, historic, scenic or other special characteristics or which are an integral part of a total ecologic system which are critical to the maintenance of the environment of the Commonwealth;

(c) these areas may not be adequately protected from the destruction of their unique characteristics or critical environmental features by existing air and water quality standards, land use controls, and other programs and policies designed to protect the general welfare of the people of the Commonwealth; and

(d) the boundaries of these critical environmental areas should be identified and delineated and methods of protecting and preserving them should be developed.

§10-198. Policy.

In consideration of the findings in §10-197, the General Assembly hereby declares that it is the policy of the Commonwealth to preserve and protect those irreplaceable areas of natural, scenic and historic value for the benefit, use and enjoyment of the citizens of the Commonwealth and to ensure the protection and preservation of these critical environmental areas by managing and regulating the development and use of land in areas within and surrounding such places of natural, scenic and historic value.

§10-199. Definitions

As used in this Chapter:

(a) *"Commission"* means the Land Use Commission.

(b) *"Division"* means the Division of State Planning and Community Affairs.

(c) *"Secretary"* means the Secretary of Commerce and Resources.

(d) *"Local government"* means any county or municipality.

(e) *"Governmental agency"* means:

(a) The United States or any department, commission, agency, or other instrumentality thereof;

(b) This State or any department, commission, agency, or other instrumentality thereof;

(c) Any local government, as defined in this chapter, or any department, commission, agency, or other instrumentality thereof;

(d) Any school board or other special district, authority, or other governmental entity.

(f) *"Critical Environmental Area"* means those areas of the State designated as critical environmental areas by the Commission pursuant to this Chapter.

(g) *"Person"* means an individual, corporation, governmental agency, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal entity.

(h) *"Developer"* means any person, including governmental agency, seeking to undertake any development as defined in this Chapter.

(i) *"Local land development agency"* means an agency established or designated by a local government to administer and enforce local regulations concerning land development within the local government's jurisdiction.

(j) (1) *"Development"* means the carrying out of any building or mining operation or the making of any material change in the use or appearance of any structure or land and the dividing of land into three (3) or more parcels.

(2) The following activities or uses shall be taken for the purposes of this chapter to involve development, as defined in this section:

(i) A reconstruction, alteration of the size, or material change in the external appearance, of a structure on land.

(ii) A change in the intensity of use of land, such as an increase in the number of dwelling units in a structure or on land or a material increase in the number of businesses, manufacturing establishments, offices, or dwelling units in a structure or on land.

(iii) Alteration of a shore or bank of a seacoast, river, stream, lake, pond or canal, including any construction in wetlands as defined in §62.1-13.2(f).

(iv) Commencement of drilling, except to obtain soil samples, mining, or excavation on a parcel of land.

(v) Demolition of a structure.

(vi) Clearing of land as an adjunct of construction.

(vii) Deposit of refuse, solid or liquid waste, or fill on a parcel of land.

(3) The following operations or uses shall not be taken for the purpose of this chapter to involve development as defined in this section:

(i) Work by a highway or road agency or railroad company for the maintenance or improvement of a road or railroad track, if the work is carried out on land within the boundaries of the right-of-way.

(ii) Work by any utility and other persons engaged in the distribution or transmission of gas or water, for the purpose of inspecting, repairing, renewing, or constructing on established rights-of-way any sewers, mains, pipes, cables, utility tunnels, power lines, towers, poles, tracks, or the like.

(iii) Work for the maintenance, renewal, improvement, or alteration of any structure, if the work affects only the interior or the color of the structure or the decoration of the exterior of the structure.

(iv) The use of any structure or land devoted to dwelling uses for any purpose customarily incidental to enjoyment of the dwelling.

(v) The use of any land for the purpose of growing plants, crops, trees, and other agricultural or forestry products; raising livestock; or for other agricultural purposes.

(vi) A change in use of land or structure from a use within a class specified in an ordinance or rule to another use in the same class.

(vii) A change in the ownership or form of ownership of any parcel or structure.

(viii) The creation or termination of rights of access, riparian rights, easements, covenants concerning development of land, or other rights in land.

(4) "Development," as designated in an ordinance, rule, or development permit includes all other development customarily associated with it unless otherwise specified. When appropriate to the context, development refers to the act of developing or to the result of development. Reference to any specific operation is not intended to mean that the operation or activity, when part of other operations or activities, is not development. Reference to particular operations is not intended to limit the generality of subsection (1).

(k) *"Land development regulations"* include local zoning, subdivision, building, and other ordinances or regulations controlling the development of land.

(l) A *"development permit"* includes any building permit, zoning permit, plat approval, or rezoning, certification, variance, or other action having the effect of permitting development as defined in this Chapter.

(m) *"Major public facility"* means any publicly owned facility of more than local significance.

§10-200. Designation of Critical Environmental Areas.

(a) On the first day of November of each year beginning in nineteen

hundred seventy-four, the Commission may designate specific areas of the Commonwealth as critical environmental areas. Each designation shall be accompanied by a critical area plan prepared pursuant to §10-202 and shall specify the boundaries of the proposed area, the reasons why the particular area proposed is of critical concern to the State or region, the dangers that would result from uncontrolled or inadequate development of the area, and advantages that would be achieved from the development of the area in a coordinated manner. Each designation shall indicate what development, if any, shall be permitted in the designated critical area consistent with the policies of this Act prior to the effective date of the critical area plan. In making a determination of specific areas to be designated as critical environmental areas, the Commission shall consult with the Division and Secretary and with such other State and local governmental agencies and planning district commissions as deemed advisable by the Commission.

(b) A critical environmental area may be designated for:

1. an area where uncontrolled or incompatible development could result in irreversible damage to important historic, cultural, scientific, or esthetic values or natural systems, which are of more than local significance, such lands to include shorelands of rivers, lakes, and streams; rare or valuable ecosystems and geological formations; significant wildlife habitats; and unique scenic or historic areas;

2. an area where uncontrolled or incompatible development could unreasonably endanger life and property, such lands to include flood plains and areas frequently subject to weather disasters, and areas of unstable geological formations;

3. an area where uncontrolled or incompatible development which results in the loss or reduction of continued long-range productivity could endanger future water requirements of more than local concern, such lands to include watershed lands, aquifers and aquifer-recharge areas, mineral deposits, significant agricultural and grazing lands, and forest lands.

(c) Each planning district commission may recommend to the Commission from time to time areas wholly or partially within its boundaries which meet the criteria for critical environmental areas as defined in this Section. Each planning district commission shall seek from the local governments within its district, whether or not such local governments are members of the planning district, suggestions as to areas to be recommended to the Commission. A local government in an area where no planning district commission has been formed or is functioning may recommend to the Commission from time to time areas wholly or partially within its jurisdiction that meet the criteria for critical environmental areas. If the Commission does not designate as a critical environmental area an area substantially similar to one that has been recommended by a planning district commission or local government, it shall respond in writing to the planning district commission or local government as to the reasons therefor.

(d) Within sixty days after the designation of a critical environmental area by the Commission, a public hearing or hearings concerning the designation and the critical area plan shall be held by the Commission or a designated hearing officer in a political subdivision in which the critical environmental area or any portion thereof is situated. Notice of any such public hearing shall be given as required by §15.1-431. Testimony and evidence presented at any such public hearing shall be taken into

consideration by the Division and the Secretary in promulgating the final critical area plan to become effective on June 1 of the calendar year following the designation of the critical environmental area.

§10-201. Stop-Orders on Development in Critical Environmental Areas.

(a) Any time after the Commission receives notice of any proposed development in a critical environmental area, or of any development in a critical environmental area undertaken without notice having been given to the Commission as required by subsection (b) of this section, the Commission may issue an order prohibiting such development until the effective date of the critical area plan for the critical environmental area, or permitting such proposed development subject to such reasonable conditions as deemed advisable by the Commission to assure that such development will not be incompatible with the critical area plan promulgated by the Commission. The Commission may order the removal of any development undertaken in a critical environmental area without proper notice having been given pursuant to subsection (b) of this section and the restoration of the property to its original condition to the extent reasonably possible.

(b) At least thirty days prior to undertaking any development in a critical environmental area, the person proposing to undertake the development shall give the Commission written notice of the proposed development in such form as may be required by the Commission which notice shall include a description of the type and size of the development, a subdivision plat or site plan, a description of all structures to be constructed, enlarged or altered, the number of persons and the amount of vehicular traffic expected to be associated with or generated by the proposed development, and the adequacy of roads, highways, water and sewage treatment facilities and other public service facilities. All changes in the proposed development which would affect the size or type of development, the size or location of structures within the development, the number of persons or amount of vehicular traffic expected to be associated with or generated by the development or the adequacy of roads, highways, water and sewage treatment facilities and other public service facilities shall be subject to the requirement of thirty days prior written notice to the Commission. If the Commission fails to issue an order prohibiting or imposing conditions on the proposed development or scheduling a public hearing on the proposed development within thirty days of receipt of written notice from a developer, the development may be undertaken in accordance with the description contained in the written notice to the Commission.

(c) Upon receipt of written notice of a proposed development, the Commission shall publish a copy of such notice in accordance with §15.1-431, in newspapers of general circulation, in the planning district or districts and the county or municipality within which the proposed development shall be located, and shall submit a copy to each State agency having any responsibility or interest which may be affected by the proposed development, and to the planning district commission and local government for the area in which the proposed development would be located. Each recipient of a copy of an application shall respond to the Commission concerning the impact which the proposed development would have upon the critical environmental area within twenty days of receipt of the application.

(d) Within thirty days of receipt of written notice of a proposed development, the Commission may schedule a public hearing or hearings to be held not later than forty-five days following receipt of such written notice. All testimony and evidence presented at the hearing or hearings

and any responses by State agencies, planning district commissions and local governments shall be made part of the record. If the Commission fails to issue an order prohibiting or imposing conditions on the proposed development within thirty days after the final public hearing, the development may be undertaken in accordance with the description contained in the written notice to the Commission.

(e) An order prohibiting or imposing conditions on any development or requiring the removal of any development undertaken without proper notice having been given to the Commission may be issued by the Commission only upon a finding that the proposed development is incompatible with the critical area plan promulgated for the critical environmental area. Any such order may be rescinded by the Commission if a finding is made that there have been changes in the proposed development or the critical environmental area such that the proposed development is not incompatible with the critical area plan.

(f) Any order issued by the Commission pursuant to subsection (a) of this Section shall be deemed served on a developer when a copy of the order has been sent by registered mail, postage prepaid, with return receipt requested, to the developer at the address provided in the notice to the Commission or at the last known address of the developer if no such notice was given the Commission or the notice does not contain an address of the developer.

(g) Any order pursuant to subsection (a) of this Section requiring the removal of any development and the restoration of real estate property to its original condition shall specify a reasonable period of time for such removal and restoration, and in the event any such order is not complied with after the time specified in the order, the Commission, or its agent specifically designated for such purpose, shall be authorized and empowered to enter upon the real estate and take such action as may be reasonably necessary to remove the development and restore the real estate in accordance with the order of the Commission. Any such entry shall be deemed a privileged entry and the Commission may recover from the owner of the real estate or the person responsible for the unlawful development any expenses reasonably incurred by it in effecting compliance with the Commission's order. The amount expended by the Commission pursuant to this subsection shall be a lien on the real estate on which the unlawful development was undertaken at or after the date any such amounts are expended, provided that no such expenditure shall be a lien on real estate as against a purchaser thereof for valuable consideration without notice until and except from the time that notice of such expenditure is duly docketed in the office of the clerk of the circuit court of the county or city wherein such real estate may be.

(h) The Attorney General or the local Commonwealth Attorney shall have the power to seek an injunction to stop any development which has been undertaken without written notice to the Commission as required by subsection (b) of this Section or which is being undertaken in violation of an order issued by the Commission. Injunctive relief may be granted pending a determination by the Commission as to whether or not an order prohibiting or conditioning the development will be necessary.

(i) Any person undertaking any development operating without having given proper written notice, or in violation of an order issued by the Commission, shall be guilty of a misdemeanor punishable by a fine of not less than ten dollars nor more than two-hundred fifty dollars. Each day in violation shall constitute a separate offense and, in addition, the violator shall be directed to restore, to the extent possible, the natural conditions which existed prior to the violation.

§10-202. Critical Area Plan.

(a) Each designation of a critical environmental area by the Commission shall be accompanied by a critical area plan promulgated by the Commission for the protection and development of each area designated as a critical environmental area. A critical area plan shall consist of a map or maps, illustrations, statements of present and prospective land uses, and standards and guidelines to guide State and local governmental agencies in making decisions as to the appropriate protection and development of the critical environmental area and areas surrounding such critical area. Such a plan shall contain the following components:

1. A precise, comprehensive definition of the public interest in the critical environmental area.
2. A description of existing uses of land within the area and the definition in broad categories of the capability of the land for development and use based on ecological considerations.
3. A description of present and projected population trends for the area.
4. A description of the economy and economic trends in the area.
5. A component setting forth reasonable standards and guidelines for the future development of the area which may include but shall not be limited to any of the following applicable related elements:

   (i) A land use element for the integrated arrangement and general location and extent of, and the criteria and standards for, the uses of land, water, air, space and other natural resources within the area, including but not limited to, an indication or allocation of maximum population densities, and agricultural, commercial, industrial, recreational and other uses.

   (ii) A transportation element for the integrated development of an area system of transportation including but not limited to, parkways, highways, transportation facilities, transit routes, waterways, navigation and aviation aids and facilities, and appurtenant terminals and facilities for the movement of people and goods within the region.

   (iii) A conservation element for the preservation, development, utilization and management of the scenic, historic and other natural resources within the area, including but not limited to, soils, shorelines and submerged lands, scenic corridors along transportation routes, open spaces, recreational and historical facilities.

   (iv) A recreation element for the development, utilization and management of the recreational resources of the area, including, but not limited to, wilderness and forested lands, parks and parkways, riding and hiking trails, beaches and playgrounds, arenas and other recreational facilities.

   (v) A public services and facilities element for the general location, scale and provision of public services and facilities, which, by the nature of their functions, size, extent and other characteristics are necessary or appropriate for inclusion in the critical areas plan.

(b) The Commission shall coordinate the preparation of critical area

plans with the Division, Secretary, the planning district commission or commissions encompassing the critical environmental area, local government and other State agencies having an interest in the critical area.

(c) The Commission may request the planning district commission for the district in which a critical environmental area is located to prepare a critical area plan in accordance with the guidelines established pursuant to this section. If a critical environmental area is located within the boundaries of a county or municipality which is not a member of a planning district commission, the Commission may request the local government to prepare a critical area plan, and any such critical area plan shall be submitted to the Commission. The planning district commission or local government shall coordinate its preparation of a plan with the Commission, Division and Secretary and other State and local governmental agencies as required by subsection (b) of this section. Any such plan prepared by a planning district commission or local government approved by the Commission shall be promulgated by the Commission as a critical area plan.

(d) Not later than the first day of February following the designation of a critical environmental area but not before a public hearing on such designation and the critical area plan accompanying such designation as required by §10-200(d) the Commission shall promulgate the final critical area plan, or amendment thereto, which shall be, or become a part of, the critical area plan accompanying the critical environmental area designation with such modifications as deemed advisable by the Commission in light of the evidence and testimony presented at the public hearing or hearings on the critical area designation and plan.

(e) Amendments to final critical area plans may be promulgated by the Commission on the first day of November of each year to become effective on the first day of June next following and shall be subject to the requirements of §10-200(d) and §10-202(d).

§10-203. Effective Date of Critical Area Plans.

A critical area plan promulgated by the Commission pursuant to §10-202 shall become effective on the first day of June next following the designation of the critical environmental area. Upon the effective date of a critical area plan, no development shall be undertaken within a critical environmental area except as permitted pursuant to the critical area plan.

§10-204. Administration of Critical Area Plans.

Critical area plans shall be administered by the Commission, provided, however, the Commission may delegate such administrative authority to a land development agency established by a local government for an area in which a critical environmental area is located by entering into an agreement with such land development agency whereby the agency agrees to administer and enforce the critical area plan as if the plan constituted or was a part of the local land development regulations.

§10-205. Development Permission.

(a) No development shall take place in a critical environmental area following effective date of a critical area plan without a permit from the Commission or the local land development agency which has been authorized by the Commission to administer the critical area plan for the area in which the proposed development would be located. The Commission or the local land development agency shall issue a permit for a development proposal, subject to such reasonable conditions deemed appropriate to assure consistency of the development with the critical area plan, whenever it finds that:

(i) The proposed development is consistent with the critical area plan.

(ii) The developer has the financial capacity and technical ability to complete the development as proposed and to meet all State and federal air and water pollution control standards and has made adequate provision for solid waste disposal, control of noise and offensive odors and the securing and maintenance of sufficient and healthful water supplies.

(iii) The developer has made adequate provision for traffic movement of all types out of and into the development area.

(iv) The proposed development will be built on soil types which are suitable to the nature of the development.

When authority to administer a critical area plan has been delegated to a local land development agency, copies of an application for development permission in an area subject to jurisdiction of a local land development agency shall be submitted to the Commission and to the local land development agency.

(b) Upon receipt of an application for development permit, the Commission or the local land development agency shall submit a copy to the Division, Secretary and to each state agency having any responsibility or interest which may be affected by the proposed development, to the planning district commission or commissions and other local governments which encompass any portion of the critical environmental area in which the proposed development would be located. Each recipient of a copy of an application shall respond to the local land development agency concerning the impact the proposed development would have upon the critical environmental area within sixty days of receipt of the application. Within thirty days of receipt of the application a public hearing or hearings shall be scheduled to consider the application. Hearings shall be advertised in accordance with §15.1-431 of the Code of Virginia, in newspapers of general circulation, in the planning district or districts and in the county or municipality within which the proposed development would be located. All testimony and evidence presented at the hearing or hearings and any responses by State agencies, planning district commissions and other local governments shall be made a part of the record.

(c) Before issuance of a final permit, additional information may be required from the person seeking to undertake the development, which would aid the Commission or the local land development agency in making a determination whether or not to issue the permit.

(d) The Attorney General or the local Commonwealth's attorney shall have the power to seek an injunction to stop any development which he reasonably believes requires a permit. Injunctive relief may be granted pending a determination by the Commission or a local land development agency as to whether such a permit will be necessary.

(e) Any person undertaking any development without a required permit, or in violation of an issued permit, shall be guilty of a misdemeanor punishable by a fine of not less than ten dollars nor more than two hundred fifty dollars. Each day in violation shall constitute a separate offense and, in addition, a violator shall be directed to restore, to the extent possible, the natural conditions which existed prior to the violation.

(f) Upon the failure of any person to comply with an order pursuant to subsection (e) of this Section directing such person to real estate to its

natural conditions within the time specified by such order, the Commission, or its agent specifically designated for such purpose, shall be authorized and empowered to enter upon the real estate and take such action as may be reasonably necessary to restore the real estate in accordance with any such order. Such entry shall be deemed a privileged entry and the Commission may recover from the owner of the real estate or the person responsible for the unlawful development any expenses reasonably incurred by it in effecting compliance with the order. The amount expended by the Commission pursuant to this subsection shall be a lien on the real estate on which the unlawful development was undertaken at or after the date any such amounts are expended, provided that no such expenditure shall be a lien on real estate as against a purchaser thereof for valuable consideration without notice until and except from the time that notice of such expenditure is duly docketed in the proper clerk's office in the county or city wherein such real estate may be.

§10-206. Review of Local Permit Decisions.

(a) Local land development agencies shall transmit a copy of any order granting or denying a permit for development in a critical environmental area, including any stop orders issued pursuant to Section 10-201, together with a copy of each permit issued by such agency to the Commission within ten days after the issuance of any such order. If a decision by a local land development agency granting or denying a permit is appealed or reviewed, then the local land development agency shall transmit the record of its hearing to the Commission. Upon final determination by the Commission, the record shall be returned to the local land development agency. The record shall be open for public inspection at the office of the recording officer of the local government which created the local land development agency.

(b) The decision of a local land development agency granting or denying a permit for development in a critical environmental area may be appealed to the Commission by any of the following parties or persons:

1. the landowner or other person making application for the development permit;
2. the local government which created the local land development agency which made the decision on the permit application;
3. any person or State or local governmental agency permitted to intervene or participate in the proceedings held on the permit application;
4. any local government adjoining the municipality or county in which the proposed development would be located that establishes it has a significant interest in the development;
5. the planning district commission encompassing the area in which the proposed development would be located (whether or not the local governmental body having jurisdiction over the proposed development is a member of the planning district);
6. any planning district commission for a district adjoining the district in which the proposed development would be located that establishes it has a significant interest in the proposed development;
7. any other person or governmental agency establishing a significant interest in the proposed development which has not been or is not otherwise adequately represented in the proceedings.

(c) The Chairman or any two members of the Commission may request the review by the Commission of any decision of a local land development agency granting or denying a permit for development in a critical environmental area where the Chairman or such members reasonably believe that the policy and standards of this chapter have not been adequately achieved or that any guidelines which may have been promulgated by the Commission have not been reasonably accommodated. In order to make such a request, the Chairman or such members of the Commission must notify the local land development agency and the applicant and the county, city or town where the critical environmental area is located within ten days of receipt of notice to the Commission of the decision of the local land development agency.

(d) The decision of the local land development agency granting or denying a permit application may be reversed by the Commission only if the decision is found on the record made in the proceedings before the local land development agency to be substantially inconsistent with the critical area plan for the area. The Commission shall also consider such additional evidence as may be necessary to resolve any controversy as to the correctness of the record and such other evidence as the ends of justice may require. For purposes of an appeal pursuant to this §10-206 any evidence offered to be made a part of the record in proceedings before a local land development agency by any person or party entitled to appeal as set forth in paragraph (b) of this §10-206 but not admitted into the record by the land development agency shall be deemed a part of the record to be considered by the Commission.

(e) The Commission shall cause notice of the review or appeal to be given to the local land development agency, to the applicant, to the party or parties initiating the appeal and to the county, city, or town and the planning district commission for the planning district where the critical environmental area is located.

§10-207. Appeals.

Any person aggrieved by a final determination of the Commission pursuant to §10-206 and who shall have been a party to the proceedings under §10-206 may, within thirty days after receipt of notice of the Commission's determination, obtain a review by any court of record having chancery jurisdiction in the county or city where the proposed development or any part thereof is intended to be constructed, located, or undertaken. Within five days after the receipt of notice of appeal, the Commission shall transmit to the appropriate court all of the original papers pertaining to the matter to be reviewed, and the matter shall be thereupon reviewed by the court or judge in vacation as promptly as circumstances will reasonably permit. The court may enter such orders pending the completion of the proceedings as are deemed necessary or proper. The court review shall be upon the record so transmitted, and any additional evidence presented on behalf of the parties thereto, and the court may request and receive such additional evidence as it deems necessary in order to make a proper disposition of the appeal. Upon conclusion of review, the court may affirm, vacate, or modify the final determination of the Commission. Any party to the proceeding may appeal from the decision of the court to the Virginia Supreme Court, in the same manner as appeals are taken as provided by law.

CHAPTER 19

LAND USE COMMISSION

§10-208. Commission Created; Administration of Funds; Purpose.

There is hereby created in the Department of Conservation, Development and Natural Resources a Land Use Commission, hereinafter referred to as the Commission. The Commission shall be the sole agency responsible for the administration of any funds made available to it. The purpose of the Commission shall be to administer a program for the designation, preservation and protection of critical environmental areas in the State for the benefit of the public.

§10-209. Members of Commission; Appointment; Terms; Vacancies.

The Commission shall be composed of nine members as follows: A member of the Virginia Senate appointed by the Senate Rule Committee for a term of four years and a member of the Virginia House of Delegates appointed by the Speaker of the House of Delegates for a term of two years shall serve as ex officio members; seven members shall be appointed by the Governor from the State at large subject to the confirmation of the General Assembly. Initially, the seven members-at-large shall be appointed for the following terms: Two for a term of four years, two for a term of three years, two for a term of two years and one for a term of one year. Thereafter, successors to members-at-large whose term expires shall be appointed for terms of four years. No member-at-large having served two terms shall be eligible for reappointment to the Commission until four years have elapsed. All terms shall begin July one. Appointments to fill vacancies occurring shall be for the unexpired term.

§10-210. Compensation and Expenses of Members.

All members shall be paid the sum of thirty-five dollars per day for each day or portion thereof during which they are engaged in the performance of their duties, and such members shall be entitled to reimbursement for their expenses incurred while engaged in the discharge of their duties.

§10-211. Employees and Agents.

The Commission, in its discretion, may employ and fix the compensation of such consultants, technicians, engineers, accountants, attorneys, and such other employees and agents as may be required to assist it in the exercise and performance of its powers and duties; provided, however, so as to avoid duplication in the hiring of personnel and to make better use of existing expertise in State government, the Commission shall seek staff assistance in the exercise of its powers and duties from other State agencies and departments if it is available, and shall have authority to use funds appropriated for use by the Commission to reimburse such other State agencies and departments for the time and expenses of their employees devoted to assisting the Commission.

§10-212. Powers.

In addition to other powers conferred by this chapter, the Commission shall have the following powers:

(a) To issue stop-orders or development permits for development within critical environmental areas as set forth in §10-195 and to hear appeals from development decisions of local land development agencies;

(b) Pursuant to chapter 1.1 (§9-6.1 et seq.) of Title 9 of the Code of Virginia, the Commission may from time to time make

such reasonable rules not inconsistent with this chapter or the general laws of the State as it shall deem necessary to carry out the purposes and provisions of this chapter, and from time to time it may alter, repeal or amend any of such rules;

(c) To elect its chairman and any other officer as the Commission sees fit, and to adopt rules and regulations for its own procedure and government;

(d) To administer all funds available to the Commission for carrying out the purposes of this chapter;

(e) To disburse funds to any department, commission, board, agency, officer or institution of the State, or any political subdivision thereof or any Park Authority for carrying out the purposes of this chapter;

(f) With consent of the Governor, to apply for and receive grants from the government of the United States and any instrumentalities thereof for planning and development of critical environmental areas and to enter into contracts and agreements relative thereto;

(g) To accept gifts, bequests and any other thing to be used for carrying out the purposes of this chapter;

(h) To prepare, maintain and keep up-to-date comprehensive plans for the critical environmental areas of the State;

(i) To acquire, in the name of the Commonwealth, either by gift or purchase, any real property or any interest therein, as the Commission deems necessary for the obtaining, maintenance, improvement, protection and conservation of critical environmental areas, and to transfer such property to other State agencies as provided in §2-4.1 of the Code of Virginia;

(j) To act either independently or jointly with any department, commission, board, agency, officer or institution of the State or any political subdivision thereof or any Park Authority in order to carry out the Commission's powers and duties;

(k) To assist upon request any department, commission, board, agency, officer or institution of the State or any political subdivision thereof or any Park Authority in the planning of critical environmental areas in conformity with their respective authorized powers and duties and to encourage and assist in the coordination of federal, State and local critical environmental areas planning; and

(l) To do all things necessary and proper to perform the duties of the Commission to effectuate the purposes of this chapter.

§10-213. Duties.

The Commission shall have the following duties:

(a) To prepare, maintain and keep up-to-date comprehensive plans for the critical environmental areas of the State;

(b) To coordinate its activities with and represent the interest of departments, commissions, boards, agencies, officers and institutions of the State, or any political subdivision thereof or any Park Authority having interests in the planning,

maintenance, improvement, protection and conservation of critical environmental areas;

(c) To study and appraise on a continuing basis critical environmental areas of the State and to assemble and disseminate information relative to the need to designate, preserve and protect such areas;

(d) Upon the acquisition of any property pursuant to paragraph (i) of §10-202 of this chapter, the Commission shall transfer such property as soon as practicable to the State agency having the power necessary to take such property;

(e) To establish and promote standards for facilities in critical environmental areas;

(f) To report annually to the Governor and the General Assembly on the activities and recommendations of the Commission; and

(g) To do such other things as are necessary and proper to effectuate the purposes of this chapter.

§10-214. Cooperation of Other Departments, Etc.

All departments, commissions, boards, agencies, officers, and institutions of the State, or any political subdivision thereof and Park Authorities shall cooperate with the Commission in the preparation, revision and implementation of critical area plans for the preservation and development of critical environmental areas, and such local and detailed plans as may be adopted pursuant thereto.

§10-215. Rules and Regulations to Have Force and Effect of Law.

Any rule or regulation adopted pursuant to paragraph (a) of § 10-212 of this chapter shall have the force and effect of law, and any person knowingly, intentionally, negligently or continually violating such rule or regulation shall be guilty of a misdemeanor and punished as provided in § 18.1-9 of the Code of Virginia. Following a conviction, every day the violation continues shall be deemed a separate offense.

§10-216. Acquisition of Property; Making Property Available for Agricultural and Timber Uses.

The Commission is hereby expressly authorized to acquire by gift or purchase (1) unrestricted fee simple title to land, or (2) fee simple title to such land subject to reservation of rights to use such land for farming or to reservation of timber rights therein, or (3) easements in gross or such other interests in real estate as are designed to maintain the character of such land as open-space land.

2. If any provision of this Act is held invalid, such invalidity shall not affect any other provision in this Act.

3. Chapter 18 of Title 10 of the Code of Virginia containing sections numbered 10-187 through 10-196 is repealed.

A BILL

To appropriate certain funds to the Land Use Commission for the purpose of administration and the acquisition of land.

Be it enacted by the General Assembly of Virginia:

1. § 1. There is hereby appropriated from the general fund of the State treasury the sum of six hundred thousand dollars to the Land Use Commission for the purpose of performing its duties as provided by law for the biennium 1974-1976.

§ 2. There is hereby appropriated from the general fund of the State treasury the sum of one million dollars to the Land Use Commission to establish a fund for the sole purpose of purchasing fee simple or less than fee simple interest in certain real property within a designated critical environmental area. Any unexpended balance of this appropriation shall be carried forward to succeeding fiscal years for the purpose aforesaid.

APPENDIX 3

A BILL

To amend the Code of Virginia by adding in Chapter 11 of Title 15.1 an article numbered 7.1 containing sections numbered 15.1-485.1 through 15.1-485.25, relating to promulgation of a Minimum Subdivision and Site Plan Review Ordinance, provisions to be included in such Ordinance by all counties and municipalities or substantial equivalent, failure to so adopt, recordation of plats and plans; and to repeal Article 7 of Chapter 11 of Title 15.1 containing sections numbered 15.1-465 through 15.1-485, relating to provisions of subdivision ordinance, application, preparation, adoption, recordation, administration and enforcement of such an ordinance, requirement for and recordation and vacation of plat.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia be amended by adding in Chapter 11 of Title 15.1 an article numbered 7.1 containing sections numbered 15.1-485.1 through 15.1-485.25 as follows:

[Those portions of the following draft legislation next to which a vertical line is found in the margin or which are underlined are new provisions added by this legislation.]

Article 7.1

SUBDIVISION AND SITE PLAN REVIEW ACT

§ 15.1-485.1. Findings; Purpose.

(a) The General Assembly finds that where enabling statutes previously enacted to encourage local governments to improve public health, safety, convenience and welfare and to plan for the orderly and comprehensive development of areas under the authority of local governments have been utilized by local governments, the effect of these local plans and regulations has for the most part been beneficial to the wise use of the land of the Commonwealth, and has helped encourage residential, commercial, industrial and other development consistent with standards designed to protect the overall short range and long range public interest but Statewide uniformity is lacking.

(b) It is the policy of the Commonwealth that the public interest, convenience, health, safety and welfare in the orderly subdivision and development of land be encouraged and assured by providing for the establishment of standards and guidelines to be applicable to the subdivision and development of land by all units of local government in the Commonwealth.

§ 15.1-485.2. Promulgation of Minimum Subdivision and Site Plan Review Ordinance.

(a) On or before July one, nineteen hundred seventy-four, the Secretary of Commerce and Resources shall prepare and make public a proposed minimum subdivision and site plan review ordinance containing the provisions required by § 15.1-485.4 and such other provisions found necessary by the Secretary to carry out the purpose of this Article. The Division of State Planning and Community Affairs shall make such expertise, personnel, records, information and any other of its resources as may be necessary or useful in the preparation of such minimum ordinance available to the Secretary. At least thirty days prior to making a proposed minimum ordinance public, the Secretary shall submit a copy of the

minimum ordinance proposed to be made public to the Division of State Planning and Community Affairs for review and comment and any comments or suggestions by the Division to the Secretary prior to publication shall be taken into consideration by the Secretary in approving a proposed minimum ordinance for publication. The Secretary, in preparing a minimum ordinance, shall also consult with the Department of Highways, Soil and Water Conservation Commission, State Water Control Board [Board of Water Resources], Department of Health and such other State agencies and departments which have responsibilities affecting development of land.

(b) At the time a proposed minimum subdivision and site plan review ordinance is made public by the Secretary, a copy of such proposed minimum ordinance shall be sent to the governing body of each county and municipality in the State. The Secretary or an officer designated by the Secretary shall hold at least ten public hearings on the proposed minimum ordinance not less than thirty days after it is made public at various places within the State as shall be deemed advisable by the Secretary to enable local governing bodies and members of the public to present evidence, testimony, comments and suggestions with respect to the proposed minimum ordinance. The Secretary shall provide such notice of public hearings as shall be reasonably anticipated to provide general public awareness of such hearings not more than thirty days prior to any such hearing. Such notice shall include notice of the time, place and purpose of each such hearing by publication in a newspaper of general circulation within the area where the hearing is to be conducted at least once a week for four consecutive weeks prior to each hearing. The Secretary shall consider any evidence, testimony, comments or suggestions with respect to the proposed minimum ordinance presented at such public hearings, or submitted to the Secretary in writing by any person other than at such public hearings, in approving a final minimum subdivision and site plan review ordinance. All evidence, testimony, comments or suggestions submitted to the Secretary at such public hearings, or in writing other than at such public hearings, shall be and shall remain public records until such time as the final subdivision and site plan review ordinance is promulgated by the Secretary and the time for filing appeals to appropriate courts from such promulgation has expired to be made available for inspection by the public during normal business hours of the Department of Conservation, Development and Natural Resources.

(c) On or before January one, nineteen hundred and seventy-five, the Secretary shall promulgate and make public a final minimum subdivision and site plan review ordinance after consideration of the evidence, testimony, comments and suggestions submitted with respect to the proposed minimum ordinance and after further consultation and coordination with the Division of State Planning and Community Affairs and such other State departments, agencies and commissions which have any interest in public and private development of land.

(d) The Secretary shall, from time to time, review and make additions to or modifications of the minimum ordinance as may be deemed necessary or advisable to account for changes in population and economic trends, availability of land and natural resources, new techniques of development and control of development and such other matters affecting the public interest, convenience, welfare, health and safety. No such additions or modifications shall become part of the minimum ordinance until they have been made public for at least ninety days and a public hearing or hearings shall have been held not less than thirty days after the proposed additions or modifications have been made public. The Secretary shall consult with the Division of State Planning and Community Affairs

and such other State departments, agencies and commissions as shall have any interest in the proposed additions or modifications.

§15.1-485.3. Definitions.

As used in this Article:

(1) "Subdivision" means the division of a parcel of land into three or more lots or parcels of less than five acres each for the purpose of transfer of ownership or building development, or, if a new street is involved in such division, any division of a parcel of land. The term includes resubdivision and, when appropriate to the context, shall relate to the process of subdividing or to the land subdivided.

(2) "Development" means a tract of land developed as a unit under single ownership or unified control which is either to be used for any commercial or industrial purpose, is to include two or more principal buildings or uses other than agricultural buildings or uses, or is to contain three or more residential dwelling units. The term "development" shall not be construed to include any property which will be principally devoted to agricultural production.

(3) (A) "Plat of Subdivision" or "Plat" means the proposal for a subdivision

(B) "Site Plan" or "Plan" means the proposal for a development other than a subdivision

including all covenants, grants of easements and other conditions relating to use, location and bulk of buildings, density of development, common open space, public facilities and such other information as required by the subdivision and site plan review ordinance to which the proposed subdivision or development other than a subdivision is subject.

(4) "Secretary" means the Secretary of Commerce and resources.

§15.1-485.4. Provisions of Subdivision and Site Plan Review

(a) The minimum subdivision and site plan review ordinance promulgated by the Secretary pursuant to §15.1-485.2 or any equivalent subdivision and site plan review ordinance adopted by a county or municipality pursuant to §15.1-485.8 shall include, among other things, reasonable regulations and requirements with respect to the following:

(1) Standards for the design and layout of subdivisions and developments including, but not limited to, consideration of such matters as:

(A) Acreage, characteristics and configuration of areas to be developed including, but not limited to, such things as:
(i) relationship of the development to flood plains, acquifer-recharge areas, streams, lakes and other natural features; and

(ii) geological characteristics of the area significantly affecting or affected by land use;

(B) Location within the subdivision or development and in relation to surrounding property of buildings or lots planned to contain proposed dwelling units;

(C) Size and location of proposed non-residential structures;

(D) Total number and location within the subdivision or development of proposed off-street parking spaces, excluding those associated with single family residential units;

(E) Type, size, character and location within the subdivision or development of roads and streets; drainage facilities; water, storm and sanitary sewer, electric, gas, telephone and other utility facilities whether publicly or privately owned;

(F) Provisions for the acceptance of dedication for public use of rights of way relating to street, curb, gutter, sidewalk, drainage or sewage systems or other improvement, financed or to be financed in whole or in part by private funds. Such dedication shall be accepted only if the owner or developer:

1. certifies to the governing body of the county or municipality that the construction costs have been paid to the person constructing such facilities, or

2. furnishes to the governing body of the county or municipality a certified check in the amount of the estimated costs of construction or a bond, with surety satisfactory to the governing body, in an amount sufficient for and conditioned upon the construction of such facilities, or a contract for the construction of such facilities and the contractor's bond, with like surety, in like amount and so conditioned;

(G) Provisions for size, scale and other plat details; and provisions for monuments of specific types to be installed establishing street or property lines; and

(H) A requirement that unless a subdivision plat or site plan be filed for recordation within a reasonable time after final approval thereof such approval shall be withdrawn and the subdivision plat or site plan marked void and returned to the approving official.

(2) Procedures for:

(A) enforcement and administration of the subdivision and site plan review ordinance;

(B) review and approval of subdivision plats; and

(C) review and approval of site plans other than subdivision plats

(b) The procedures set forth in a subdivision and site plan review ordinance pursuant to subparagraph (a) (2) of this Section shall require the review and approval of subdivision plats and site plans as follows:

(1) Erosion and sediment control plans relating to a proposed subdivision or development shall be prepared and approved pursuant to the Erosion and Sediment Control Law (Article 6.1 of Title 21 of this Code, including §21-89.1 et seq.)

(2) Provisions in a subdivision plat or site plan with respect

to the location of structures in relation to roads and highways, access from the proposed development to roads and highways, the location and adequacy of roads and streets within the proposed development and requirements of service roads, shall be reviewed and approved by the Department of Highways or the local district of such Department having responsibility for the area in which the proposed development would be located, subject to such conditions deemed necessary and advisable by such authority, which may include conditions requiring dedication of part of the site for road or highway purposes. The Department of Highways, or the local district thereof, shall have authority to limit the number of and condition the points of access to State roads and highways from any development requiring a permit under the subdivision and site plan review ordinance, but may not prohibit access rights to a public highway from any property along such a public highway.

(3) Provisions for sewage disposal and treatment and solid waste disposal shall be reviewed and approved by the State Department of Health or the local Board of Health established under such Department pursuant to existing state laws and regulations regarding the treatment and disposal of solid wastes and sewage.

§15.1-485.5. Application of Municipal Subdivision and Site Plan Review Regulations Beyond Corporate Limits of Municipality.

The subdivision and site plan review regulations adopted by a municipality shall apply within its corporate limits and may apply beyond, except as to counties with a population in excess of six hundred per square mile, if the ordinance so provides, within the distance therefrom set out below:

a. Within a distance of five miles from the corporate limits of cities having a population of one hundred thousand or more;

b. Within a distance of three miles from the corporate limits of cities having a population of less than one hundred thousand; and

c. Within a distance of two miles from the corporate limits of incorporated towns.

Where the corporate limits of two municipalities are closer together than the sum of the distance from their respective corporate limits as above set forth, the dividing line of jurisdiction shall be halfway between the limits of the overlapping boundaries.

The foregoing distances may be modified by mutual agreement between the governing bodies concerned, depending upon their respective areas of interest, provided such modified limits bear a reasonable relationship to natural geographic considerations or to the comprehensive plans for the area. Any such modification shall be set forth in the respective subdivision and site plan review ordinances, by map or description or both.

No such regulations shall be finally adopted by any such municipality until the governing body of the county in which such area is located shall have been duly notified in writing by the governing body of the municipality or its designated agent of such proposed regulations, and requested to review and approve or disapprove the same; and if such county fails to notify the governing body of such municipality of its

disapproval of such plan within forty-five days after the giving of such notice, such plan shall be considered approved. Provided, however, that in any county which has a duly appointed planning commission, the governing body or the council shall send a copy of such proposed regulations or amendments thereof to such commission which shall review and recommend approval or disapproval of the same. The county commission shall not take any such action until notice has been given and a hearing held as prescribed by §15.1-431. Such hearing shall be held by the county commission within sixty days after the giving of notice by the municipality or its agent. Such commission shall forthwith after such hearing make its recommendations to the governing body of the county which shall within thirty days after such hearing notify the municipality of its approval or disapproval of such regulations and no regulations effective beyond the corporate limits shall be finally adopted by the municipality until notification by the governing body of the county, except that if the county fails to notify the governing body of the municipality of its disapproval of such regulations within ninety days after copy of the regulations or amendments thereof are received by the county commission, the regulations shall be deemed to have been approved.

§15.1-485.6. Application of County Subdivision and Site Plan Review Regulations in Areas Subject to Municipal Jurisdiction.

The subdivision and site plan review regulations adopted by a county shall apply in all the unincorporated territory of the county; provided, that no such regulations to be effective in the area of a county subject to municipal jurisdiction shall be finally adopted by such county until the governing body of the municipality shall have been notified in writing of such proposed regulations, and requested to review and approve or disapprove the same, and if such municipality fails to notify the governing body of such county of its disapproval of such regulations within forty-five days after the giving of such notice, the same shall be considered approved; and provided further, that if the municipality has a duly appointed planning commission, the governing body of the county or its agent shall give such notice to such commission as is required to be given county planning commissions by the preceding section (§15.1-485.4) and the provisions of that section shall apply, mutatis mutandis, to the actions of such commission and the governing bodies of the county and municipality, respectively.

§15.1-485.7. Disagreement Between County and Municipality as to Regulations.

In either event when a disagreement arises between the county and municipality as to what regulations should be adopted for the area and such difference cannot be amicably settled, then after ten days' prior written notice by either to the other, either or both parties may petition the circuit court of the county wherein the area or a major part thereof lies to decide what regulations are to be adopted. The court shall hear the matter and enter an appropriate order.

§15.1-485.8. Adoption of Subdivision and Site Plan Review Ordinance by Counties and Municipalities.

(a) On or prior to January one, nineteen hundred seventy-six, all counties and municipalities in the State shall prepare and adopt a subdivision and site plan review ordinance containing the provisions of the minimum ordinance promulgated by the Secretary pursuant to §15.1-485.2 or provisions essentially equivalent thereto. In addition, such other provisions may be adopted as deemed necessary or desirable by the governing body provided such additional provisions are not inconsistent with or render any less effective the provisions equivalent to the model rdinance. In any county or municipality having a local commission, any

proposed subdivision ordinance shall be prepared and recommended by such commission and be transmitted to the governing body. The governing body of any county or municipality may approve and adopt a subdivision ordinance or amendments thereto only after a notice of intention so to do has been published, and a public hearing held, in accordance with §15.1-431.

(b) The subdivision and site plan review ordinance adopted by a county or municipality shall be submitted to the Secretary on or before January one, nineteen hundred and seventy-six for review and approval. No such ordinance shall become effective until it is approved by the Secretary who shall make a specific finding that the proposed ordinance contains provisions substantially equivalent to the model ordinance promulgated by the Secretary pursuant to §15.1-485.2. Within ninety days of receipt of such an ordinance from a county or municipality, the Secretary shall approve or disapprove the proposed ordinance. If the Secretary disapproves the proposed ordinance, the reasons for such disapproval shall be submitted to the county or municipality together with such suggested provisions and amendments which if incorporated in the proposed ordinance will enable the Secretary to approve the ordinance. No ordinance may be disapproved because it contains any provisions in addition to those required by the model ordinance unless any such additional provisions are inconsistent with or would reduce the effectiveness of the model ordinance provisions or the equivalent provisions. A county or municipality shall have sixty days from the receipt of notice from the Secretary of the disapproval of a proposed ordinance to adopt the provisions or amendments suggested by the Secretary or equivalent provisions or amendments.

(c) If a county or municipality fails to submit a subdivision and site plan review ordinance to the Secretary on or before January one, nineteen hundred and seventy-six, or has submitted a proposed ordinance which has been disapproved by the Secretary and has failed to adopt the suggested or equivalent provisions and amendments within the time limits set forth in subsection (b) of this section, the Secretary may promulgate the model ordinance with such additional provisions deemed necessary or advisable in light of the circumstances existing in the particular county or municipality as the subdivision and site plan review ordinance to control development subject to the ordinance in such county or municipality.

(d) At any time after the Secretary promulgates a subdivision and site plan review ordinance for any county or municipality pursuant to subsection (c) of this section, the county or municipality may adopt and submit to the Secretary for approval a proposed ordinance which shall supersede the ordinance promulgated by the Secretary when it is approved by the Secretary. The Secretary shall approve or disapprove any such proposed ordinance within ninety days of receipt of such ordinance. If the ordinance is disapproved by the Secretary, the reasons for such disapproval shall be submitted to the county or municipality together with such provisions and amendments which if incorporated in the proposed ordinance will enable the Secretary to approve the ordinance.

(e) For purposes of the following sections of this Article, in the event the Secretary promulgates a subdivision and site plan review ordinance to be made effective in a county or municipality because of the failure of such county or municipality to adopt an adequate ordinance, the functions of administering and enforcing such ordinance shall be undertaken by the Secretary acting in place of the local governing body or planning commission.

(f) Until such time as a county or municipality adopts a subdivision and site plan review ordinance which is approved by the Secretary

pursuant to subsection (b) of this section or the Secretary promulgates an ordinance to be applicable in such county or municipality pursuant to subsection (c) of this section, any subdivision or site plan review ordinance adopted by any county or municipality in accordance with the provisions of any statute in effect prior to June 1, 1974 shall remain in effect notwithstanding that such statute may have been, or is subsequently, repealed.

§15.1-485.9. Filing and Recording of Ordinance and Amendments Thereto.

When a subdivision and site plan review ordinance has been adopted, or amended, a certified copy of the ordinance and any and all amendments thereto shall be filed in the office of the engineer or other official of the municipality or county, designated in such ordinance, and in the clerk's office of the court or courts in which deeds are admitted to record of each county or municipality in which such ordinance is applicable.

§15.1-485.10. Preparation and Adoption of Amendments to Ordinance.

In any county or municipality having a local commission, such commission on its own initiative may or at the request of the governing body of the county or municipality shall prepare and recommend amendments to the subdivision *and* site plan review ordinance. The procedure for such amendment shall be the same as for the preparation and recommendation and approval and adoption of the original ordinance pursuant to § 15.1-485.8, including the approval of such amendments with respect to consistency with the minimum standards prescribed in § 15.1-485.4 by the Secretary; provided that no such amendment shall be adopted by the governing body of a county or municipality having a local commission without a reference of the proposed amendment to the commission for recommendation, nor until sixty days after such reference, if no recommendation is made by the commission.

§15.1-485.11. Statutory Provisions Effective After Ordinance Adopted.

After the adoption of a subdivision and site plan *review* ordinance in accordance with this chapter, the following provisions shall be effective in the territory to which such ordinance applies:

a. No person shall:

(1) subdivide land without making and recording a plat of such subdivision and without fully complying with the provisions of this article and of such ordinance or

(2) undertake development of land subject to this article other than a subdivision without making and recording a site plan of such development and without fully complying with the provisions of this article and of such ordinance.

b. No such plat of any subdivision or site plan shall be recorded unless and until it shall have been submitted to and approved by the local commission or by the governing body or its duly authorized agent, of the county or municipality wherein the land to be subdivided or developed is located; or by the commissions, governing bodies or agents, as the case may be, of each county or municipality having a subdivision and site plan review ordinance, in which any part of the land lies.

c. No person shall sell or transfer any such land by reference to or exhibition of or by other use of a plat of a subdivision or a site plan, before such plat or plan has been duly recorded as provided herein, unless such subdivision or development was lawfully

created prior to the adoption of a subdivision and site plan review ordinance applicable thereto, provided, that nothing herein contained shall be construed as preventing the recordation of the instrument by which such land is transferred or the passage of title as between the parties to the instrument.

d. Any person violating the foregoing provisions of this section shall be subject to a fine of not more than one hundred dollars for each lot or parcel of land so subdivided or transferred or sold; and the description of such lot or parcel by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring shall not exempt the transaction from such penalties or from the remedies herein provided.

e. No clerk of any court shall file or record a plat of a subdivision or site plan required by this article to be recorded until such plat has been approved as required herein; and the penalties provided by §17-59 shall apply to any failure to comply with the provisions of this subsection.

§15.1-485.12. Administration and Enforcement of Regulations.

The administration and enforcement of subdivision and site plan review regulations insofar as they pertain to public improvements as authorized in §15.1-485.4 shall be vested in the governing body of the political subdivision in which the improvements are or are to be located.

Except as provided above, the governing body which adopts subdivision and site plan review regulations as authorized in this article shall be responsible for administering and enforcing the provisions of such subdivision and site plan review regulations, through its planning commission or otherwise.

§15.1-485.13. Plat of Proposed Subdivision or Site Plan to be Submitted for Approval.

Whenever the owner or proprietor of any tract of land located within any territory to which a subdivision and site plan review ordinance applies desires to subdivide or develop the same, he shall submit a plan of the proposed subdivision or a site plan of the proposed development if not a subdivision to the local commission of the county or municipality, or an agent designated by the governing body thereof for such purpose. When the land involved lies wholly or partly within an area subject to the joint control of more than one political subdivision, the plat or plan shall be submitted to the local commission or other designated agent of the political subdivision in which the tract of land is located.

If a local commission or other agent fails to approve or disapprove the proposed plat or plan within sixty days after it has been officially submitted for approval, the developer, after ten days' written notice to the commission, or agent, may petition the circuit or corporation court of the county or municipality in which the land involved, or the major part thereof, is located, to decide whether the plat or plan should or should not be approved. The court shall hear the matter and make and enter such order with respect thereto as it deems proper.

If a local commission or other agent disapproves a plat or plan and the developer contends that such disapproval was not properly based on the ordinance applicable thereto, or was arbitrary or capricious, he may appeal to the circuit or corporation court having jurisdiction of such land and the court shall hear and determine the case as soon as may be.

Nothing in this article shall be deemed to prohibit the local governing body from providing in its ordinance for the submission of preliminary subdivision plats or site plans for tentative approval under such rules of preparation and procedure as may be set forth in said ordinance.

§15.1-485.14. Requisites of Plat or Plan.

Every subdivision plat and site plan which is intended for recording shall be prepared by a certified professional engineer or land surveyor, who shall endorse upon each plat or plan a certificate signed by him setting forth the source of title of the owner of the land to be subdivided or developed and the place of record of the last instrument in the chain of title; when the plat or plan is of land acquired from more than one source of title, the outlines of the several tracts shall be indicated upon such plat or plan. Provided, however, that nothing herein shall be deemed to prohibit the preparation of preliminary studies, plans, plats of a proposed subdivision or site plans by the owner of the land, city planners, land planners, architects, landscape architects, or others having training or experience in subdivision or development planning or design.

§15.1-485.15. Statement of Consent to Subdivision or Development; Execution Acknowledgement and Recordation.

Every such plat or plan or deed of dedication to which the plat or plan is attached, shall contain in addition to the professional engineer's or land surveyor's certificate a statement as follows: The platting, planning or dedication of the following described land (here insert a correct description of the land subdivided) is with the free consent and in accordance with the desire of the undersigned owners, proprietors and trustees, if any. The statement shall be signed by such persons and duly acknowledged before some officer authorized to take acknowledgment of deeds. When thus executed and acknowledged, the plat, or plan subject to the provisions herein, shall be filed and recorded in the office of the clerk of court where deeds are admitted to record for the lands contained in the plat or plan, and indexed in the general index to deeds under the names of the owners or lands signing such statement and under the name of the subdivision or development.

§15.1-485.16. Recordation of Plat or Plan as Transfer of Streets, etc.

The recordation of such plat or plan shall operate to transfer, in fee simple, to the respective counties and municipalities in which the land lies such portion of the premises platted or planned as is on such plat or plan set apart for streets, alleys, or other public use and to transfer to such county or municipality any easement indicated on such plat or plan to create a public right of passage over the same; but nothing contained in this article shall affect any right of a subdivider of land heretofore validly reserved.

§15.1-485.17. Validation of Certain Plats Recorded Before January One, Nineteen Hundred Fifty-Three.

Any subdivision plat recorded prior to January one, nineteen hundred fifty-three, if otherwise valid, is hereby validated and declared effective even though the technical requirements for recordation existing at the time such plat was recorded were not complied with.

§15.1-485.18. Municipality or County Not Obligated to Pay for Grading, Paving, etc.

Nothing herein shall be construed as creating an obligation upon any municipality or county to pay for grading or paving, or for sidewalks, sewers, curb and gutter improvements or construction.

§15.1-485.19. Plans and Specifications for Utility Fixtures and Systems to be Submitted for Approval.

If the owners of any such subdivision or development desire to construct in, on or under any streets or alleys located in such subdivision or development any gas, water, sewer or electric light or power works, pipes, wires, fixtures or systems, they shall present plans or specifications therefor to the governing body of the county or municipality in which the subdivision or development is located or its authorized agent, for approval. If the subdivision or development is located beyond the corporate limits of a municipality but within the limits set forth in § 15.1-485.5 such plans and specifications shall be presented for approval to the governing body of such municipality, or its authorized agent, if the county has not adopted a subdivision and site plan review ordinance. The governing body, or agent, shall have thirty days in which to approve or disapprove the same. In event of the failure of any governing body, or its agent, to act within such period, such plans and specifications may be submitted, after ten days' notice to the county or municipality, to the judge of the circuit or corporation court having jurisdiction within such county or city for his approval or disapproval, and his approval thereof shall, for all purposes of this article be treated and considered as the approval of the municipality or county or its authorized agent.

§15.1-485.20. Vacation of Plat or Plan Before Development or Sale of Lot Therein.

Any such plat or plan recorded, or part thereof, may be vacated with the consent of the governing body or its authorized agent, of the county or municipality where the land lies, by the owners, proprietors and trustees, if any, who signed the statement required by §15.1-485.15 at any time before development or sale of any lot in the subdivision, by a written instrument, declaring the same to be vacated, duly executed, acknowledged or proved and recorded in the same clerk's office wherein the plat or plan to be vacated is recorded and the execution and recordation of such writing shall operate to destroy the force and effect of the recording of the plat or plan so vacated and to divest all public rights in, and to reinvest such owners, proprietors and trustees, if any, with the title to the streets, alleys, easements for public passage and other public areas laid out or described in such plat or plan.

§15.1-485.21. Vacation of Subdivision Plat or Site Plan After Sale of Part of Development.

In cases where any subdivision lot or any portion of a development has been sold, the plat, plan or part thereof may be vacated according to either of the following methods:

a. By instrument in writing agreeing to said vacation signed by all the owners of subdivision lots or of the development shown on said plat or plan and also signed on behalf of the governing body of the county or municipality in which the land shown on the plat, plan or part thereof to be vacated lies for the purpose of showing the approval of such vacation by the governing body. The word "owners" shall not include lien creditors except those whose debts are secured by a recorded deed of trust or mortgage and shall not include any consort of an owner. The instrument of vacation shall be acknowledged in the manner of a deed and filed for record in the clerk's office of any court in which said plat or plan is recorded.

b. By ordinance of the governing body of the county or municipality in which the land shown on the plat, plan or part thereof to be vacated lies on motion of one of its members or on application of

any interested person. Such ordinance shall not be adopted until after notice has been given as required by §15.1-431. Said notice shall clearly describe the plat, plan or portion thereof to be vacated and state the time and place of the meeting of the governing body at which the adoption of the ordinance will be voted upon. Any person may appear at said meeting for the purpose of objecting to the adoption of the ordinance. An appeal from the adoption of the ordinance may be filed within thirty days with the circuit or corporation court having jurisdiction of the land shown on the plat, plan or part thereof to be vacated. Upon such appeal the court may nullify the ordinance if it finds that the owner of any lot shown on the plat or of any portion of the development shown on the plan will be irreparably damaged. If no appeal from the adoption of the ordinance is filed within the time above provided or if the ordinance is upheld on appeal, a certified copy of the ordinance of vacation may be recorded in the clerk's office of any court in which the plat or plan is recorded.

§15.1-485.22. Fee for Processing Application Under §15.1-485.21.

The governing body of any city may prescribe and charge a reasonable fee not exceeding fifty dollars for processing an application pursuant to §15.1-485.21 for the vacating of any plat or plan.

§15.1-485.23. Effect of Vacation Under § 15.1-485.21.

The recordation of the instrument as provided under paragraph (a) of §15.1-485.21 or of the ordinance as provided under paragraph (b) of §15.1-485.21 shall operate to destroy the force and effect of the recording of the plat, plan or part thereof so vacated, and to vest fee simple title to the center line of any streets, alleys, or easements for public passage so vacated in the owners of abutting lots free and clear of any rights of the public or other owners of lots shown on the plat or plan, but subject to the rights of the owners of any public utility installations which have been previously erected therein. If any such street, alley or easement for public passage is located on the periphery of the plat or plan such title for the entire width thereof shall vest in such abutting lot owners. The fee simple title to any portion of the plat or plan so vacated as was set apart for other public use shall be revested in the owners proprietors and trustees, if any, who signed the statement required by §15.1-485.15 free and clear of any rights of public use in the same.

§15.1-485.24. Vacation of Subdivision Plats Recorded Before Effective Date of Chapter.

Notwithstanding the provisions of this article, any streets, alleys, easements or public places shown on plats of subdivisions recorded in accordance with the provisions of any statute in effect prior to June twenty-ninth, nineteen hundred and sixty-two, may be vacated according to the provisions of any statute in existence on or before June twenty-ninth, nineteen hundred and sixty-two, notwithstanding that such statute may have been, or is subsequently, repealed.

§15.1-485.25. Duty of Clerk When Plat or Plan Vacated.

The clerk in whose office any plat or plan so vacated has been recorded shall write in plain legible letters across such plat or plan, or the part thereof so vacated, the word "vacated" and also make a reference on the same to the volume and page in which the instrument of vacation is recorded.

APPENDIX 4

A BILL

To amend the Code of Virginia by adding in Article 7 of Chapter 11 of Title 15.1 a section numbered 15.1-485.1, relating to building permit fees for capital facilities.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia be amended by adding in Article 7 of Chapter 11 of Title 15.1 a section numbered 15.1-485.1 as follows:

§15.1-485.1. Permit Fees.

(a) For those portions of a county or municipality for which a Comprehensive Plan pursuant to §15.1-466, a Capital Outlay Program pursuant to §15.1-464, and a subdivision and site plan review ordinance pursuant to this Article, have been appropriately adopted and published, the local governing body may, as a condition of the issuance of a building permit, approval of a final plat of subdivision or site plan under this Article, require a developer or builder to pay a fee to recover the cost of park and recreational facilities, school sites, sewerage and drainage facilities and other capital improvements which may be required to serve the immediate and future needs of the development or building and the anticipated residents or users thereof, provided, that:

(1) An ordinance has been in effect for a period of thirty days prior to the filing of an application for development permit which includes definite standards for determining the amount of any fee to be paid. These standards shall be based upon appropriate and relevant studies and surveys conducted by the county or municipality of the nature and type approved by the Secretary to determine the need, if any, for park, recreational, school, sewerage, drainage and other capital facilities generated by existing development or building within the county or municipality.

(2) The fees are to be used only for the purpose of providing park, recreational, school, sewerage, drainage or other capital facilities to serve the development or building and shall be used for such purpose within five years from the date of approval of the development or building or shall be returned to the developer or builder.

(3) The park, recreation, school, sewerage, drainage and other capital facilities shall be in accordance with a Comprehensive plan pursuant to § 15.1-446 and Capital Outlay Program pursuant to § 15.1-464 adopted by such county or municipality.

(4) The amount of fees to be paid shall bear a reasonable relationship to the use of the park, recreation, school, sewerage, drainage and other capital facilities by or for the benefit of future residents or users of the development or building but in no case shall such amount of land exceed two per cent (2%) of the gross market value of the land after completion of construction.

(b) In lieu of the cash payment of fees as provided in subsection (a) of this Section, upon mutual agreement between a county or municipality and a developer or builder, payment of such fees may be satisfied by the dedication of land by the developer or builder having an estimated gross market value after completion of construction not exceeding the amount of fees which could be assessed pursuant to subsection (a) of this Section or by the construction, maintenance and protection of privately-owned

capital facilities consistent with a Comprehensive Plan pursuant to § 15.1-446 and a Capital Outlay Program pursuant to § 15.1-464 by the developer or builder subject to such conditions and restrictions approved by the county or municipality.

MEMORANDUM

TO: Members of the VALC Land Use Policy Study Committee

FROM: John T. Hazel, Jr.

Re: Dissent from Committee Position re Amendment 15.1-485.1 authorizing dedication of land or cash contribution as a condition to approval of a subdivision plat.

The proposal endorsed by the Committee majority in simple terms provides that a municipality may require a cash payment or dedication of land in lieu of a cash payment to provide for various facilities not generally considered direct costs or on-site requirements as a prerequisite to subdivision approval. As a practical fact, the principal facility to which the cash contribution or land dedication would apply is schools. A lesser assortment of other facilities are alleged to be benefitted, i.e., parks, fire stations, governmental centers, etc. The undersigned dissents from the Committee position on the following grounds:

1. The Constitution of Virginia and the general policies of both State and Federal government throughout the history of the Commonwealth have been to encourage and enhance free public education. Article 8, Section 1 of the Constitution of Virginia provides, in part:

> "The General Assembly shall provide for a system of free public elementary and secondary education for all children of school age throughout the Commonwealth."

The effect of the "cash contribution" recommended by the Committee is simple, obvious and direct, i.e., the purchaser of a new house will be required to pay, through the guise of a contribution at the time of subdivision, a fee to the municipality for the capital construction cost of schools. This is in direct conflict with the Constitution of Virginia as well as the history of free public education.

2. The increase in housing costs in recent years has been astonishing. Indeed, in many sections of the country and the Commonwealth, housing shortages are approaching the crisis stage with resultant demands for government involvement. As a matter of public policy, it would appear inappropriate and unwise to inflict upon the new home purchaser an additional cost for public improvements heretofore considered among the basic obligations of government.

3. The requirement that a new home purchaser pay an added cost to the municipality for schools, offsite parks, government offices and related matters generally referred to as "capital improvements," is a particularly insidious form of discrimination in favor of existing residents and against the new home seeker, whether it be the young people of the community or those who desire to enter the community.

4. Insufficient facts are before the Committee upon which to base such a far-reaching recommendation. The principal justification offered by proponents of cash contributions and/or mandatory dedication is the need for a political palliative to offer the several local jurisdictions in the State which have attempted to restrict growth and/or avoid the use of available procedures for financing of capital improvements. A basic reason for government is suggested to be the opportunity available, in common with other citizens of a community, for the financing of capital improvements generally regarded as off-site. It should be noted that without the suggested amendment, procedures are already available for on-site costs such as utility lines, streets, storm drainage, etc., and zoning procedures are available which provide for dedication of park land directly available to the subdivision involved.

5. Some segments of the development industry may well support cash contribution and mandatory dedication as an escape from the tactics of some local governments in extracting land and capital contributions as a condition to zoning and/or as a method to assure the success of a zoning case. Obviously, the additional cost of such a cash contribution is passed directly to the home-owner and the developer is, in fact, "buying" a rezoning or subdivision. The superficial appeal of the proposed device to the development industry and to some local governments should not be confused with a solution to the basic problems of provision for government obligations.

6. Evidence before the Committee and the suggested legislation fail to define many details of the proposed cash contribution formula. While some effort is made to require platitudes regarding public facilities be reduced to practical facility programs, and actually funded construction, there is little evidence the contribution gained through the proposed method would be sufficient to materially relieve governmental cost, and there is no conclusive evidence that residential growth, in fact, creates an adverse financial picture for the particular community. Various parties involved in land use considerations allege with great repetition and at times shrill voice that "residential growth doesn't pay its way." Stated another way, this means people don't pay their way. Certainly such a premise is not a valid assumption for a progressive government policy considering the full gamut of human rights, needs, and government obligations.

ROSSER H. PAYNE, JR., A.I.P.

AND ASSOCIATES

CONSULTANTS — URBAN PLANNING — MANAGEMENT

TELEPHONE
(703) 347-3600

October 15, 1973

Courtney R. Frazier, Esquire
Staff Attorney
Division of Legislative Services
Virginia State Capitol
P.O. Box 3-AG
Richmond, Virginia 23208

Re: Land Use Policies Study Committee Report - Section on Mandatory Dedication, pp. 53-58.

Dear Courtney:

I want to make my opinion very clear on the matter referenced above. I believe the Committee has stated fairly its reservations about such required dedications, and I know we're all concerned about it.

From my point of view, I do not object to the required basic dedication of land and some capital improvements which inure to the specific land to be developed. Such would include, streets, walks, parking, local recreation sites, school sites, library and fire or police station sites, water and sewer sites, lines or structures. I draw the line at obtaining "front end" money to finance jurisdictional capital improvements for buildings, which are required by constitutional or statutory dictum to be provided by the local jurisdiction for the benefit of the total publics involved. In nearly all cases, these facilities comprise buildings which serve the entire public and not simply the development of the individual or group providing the "front end" money.

If some future formula could be devised, where cost reimbursement for "front end" money loaned by the builder or owner to the jurisdiction for public buildings could be guaranteed, possibly success could be achieved, and I would not object. I am sure that any monies extracted thereunder, must bear a direct relationship to units served, the servicable life of both private and public structures involved, and the cash revenue and expenditures involved on a per unit/per capita basis.

There is no question that government exists to provide services, and therefore our committee report does correctly set forth restrictive standards for the use of such a technique by local government, but the methodology needs much more attention. The current attempts by some jurisdictions to extract such funds prior to or during zoning actions is neither practical, manageable, or legal, in my opinion, in view of the total lack of plans, criteria, standards or enabling legislation for such activities.

I am pleased to be one of the signers of the report, because we have embarked on a worthwhile study, not yet complete. It is necessary however, for me to request that the critical point I raise here, be acknowledged as a major item of interest. Perhaps this letter could be appended to the report, or could follow any dissents which are filed.

Thank you for your consideration.

Sincerely,

Rosser H. Payne, Jr., A.I.P.

RHPjr:w

cc: The Honorable D. French Slaughter, Jr., Chairman

APPENDIX 5

Draft of Amendments to Erosion and Sediment Control Law

A copy of the Erosion and Sediment Control Law has been reproduced from the Virginia Code and appropriate insertions and deletions have been made (the insertions having been typed on the reproduced copy) to assure that the Law covers any development requiring a permit under the Subdivision and Site Control Act (see §21-89.3(a)(vi)) and covers slope (see §21-89.4(b)(1)) and flood plain development (remainder of amendments and deletions).

APPENDIX 5

A BILL

To amend and reenact §§ 21-89.2, 21-89.3, 21-89.4, 21-89.5, 21-89.6, 21-89.8, 21-89.9, 21-89.12 and 21-89.13 of the Code of Virginia, relating to findings and definitions under the Erosion and Sediment Control Law, State and local erosion and sediment control programs, regulated land-disturbing activities; monitoring, inspection and reports; authorization for standards; and no limitations on authority of certain State agencies.

Be it enacted by the General Assembly of Virginia:

1. That §§ 21-89.2, 21-89.3, 21-89.4, 21-89.5, 21-89.6, 21-89.8, 21-89.9, 21-89.12 and 21-89.13 of the Code of Virginia be amended and reenacted as follows:

§ **21-89.2. Findings of General Assembly.** — The General Assembly has determined that the lands and waters comprising the watersheds of the State are great natural resources; that as a result of erosion of lands and sediment deposition in waters within the watersheds of the State, said waters are being polluted and despoiled to such a degree that fish, aquatic life, recreation and other uses of lands and waters are being adversely affected; that the rapid shift in land use from agricultural to nonagricultural uses has accelerated the processes of soil erosion and sedimentation: *that recurrent flooding of portions of the State's land resources causes loss of life, damage to property, disruption of commerce and governmental services, and unsanitary conditions, all of which are detrimental to the health, safety, welfare, and property of the occupants of flooded lands and the people of this State, and the public interest necessitates management of floodprone lands and waters in a manner consistent with sound land and water use management practices which will prevent and alleviate flooding threats to life and health, and reduce private and public economic losses,* and further, it is necessary to establish and implement, through the Virginia Soil and Water Conservation Commission, hereinafter referred to as the "Commission," and the soil and water conservation districts, hereinafter referred to as "districts," in cooperation with counties, cities, towns, other subdivisions of this State, and other public and private entities, a statewide coordinated erosion, ~~and~~ sediment *and flood plain* control program to conserve and to protect the land, water, air and other natural resources of the Commonwealth.

§ **21-89.3. Definitions.** — As used in this article, unless the context clearly indicates otherwise:

(a) *"Land disturbing activity"* shall mean any land change which may result in soil erosion from water or wind and the movement of sediments into State waters or onto lands in the State, including, but not limited to, clearing, grading, excavating, transporting and filling of land, other than federal lands, *construction, installation or alteration of any structure or artificial obstruction in or on any flood plain,* except that the term shall not include: (i) such minor land-disturbing activities as home gardens and individual home landscaping, repairs and maintenance work; (ii) individual service connections and construction or installation of public utility lines; (iii) septic tank lines or drainage fields unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system; (iv) surface or deep mining, neither shall it include tilling, planting, or harvesting of agricultural, horticultural, or forest crops; (v) construction, repair or rebuilding of the tracks, right-of-way, bridges, communication facilities and other related structures and facilities of a railroad company; (vi) preparation for single-family residences separately built, unless in conjunction with ~~multiple construction in subdivision development, or individual noncommercial tracts of land of less than fifteen thousand square feet~~. *a subdivi-*

sion or development requiring approval of a plat of subdivision or site plan pursuant to the Subdivision and Site Plan Review Act (Article 7 of Chapter 11, Title 15.1, Code of Virginia).

(b) *"Person"* shall mean any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town, or other political subdivision of this State, any interstate body, or any other legal entity.

(c) *"Town"* shall mean an incorporated town.

(d) *"Conservation standards"* or *"standards"* shall mean standards adopted by the Commission or the districts, counties, cities and towns pursuant to §§ 21-89.4 and 21-89.5, respectively, of this article.

(e) *"Specifications"* shall mean the written procedures, requirements or plans to control erosion ~~and~~, sedimentation *and flood plain development* as officially adopted by the governing board or commission of a State agency or institution or by an agency's administrative head if there is no board or commission.

(f) *"Conservation plan," "erosion and sediment control plan,"* or *"plan,"* shall mean a document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory and management information with needed interpretations, and a record of decisions contributing to conservation treatment. The plan shall contain all major conservation decisions to assure that the entire unit or units of land will be so treated to achieve the conservation objectives. *With respect to any area located in a flood plain, the plan shall contain provisions with respect to control of land-disturbing activities in or on the flood plains.*

(g) "State erosion and sediment control program" or "State program" shall mean the program adopted by the Commission consisting of conservation standards, guidelines and criteria to minimize erosion ~~and~~, sedimentation *and flood hazards.*

(h) "Local erosion and sediment control program" or "local control program" shall mean an outline or explanation of the various elements or methods employed by a district, county, city, or town to regulate land-disturbing activities and thereby minimize erosion, ~~and~~ sedimentation *and flood hazards* in compliance with the State program and may include such items as a local ordinance, policies and guidelines, technical materials, inspection, enforcement and evaluation.

(i) *"Plan approving authority"* shall mean the district or a county, city, or town, or a department of a county, city, or town, responsible for determining the adequacy of a conservation plan submitted for land-disturbing activities on a unit or units of lands and shall approve such plan if the plan is determined to be adequate.

(j) "Flood plain" means the relatively flat area adjoining the channel of a natural stream subject to or likely to be subject to periodic flooding the boundaries of which shall be determined by the Commission after consultation with the Board of Water Resources.

§ 21-89.4. State erosion and sediment control program. — (a) The Commission shall establish minimum standards, guidelines and criteria for the effective control of soil erosion, sediment deposition, ~~and~~ nonagricultural runoff *and flood plain development* which must be met in any control program. To assist in the development of the program, the Commission shall seek

the advice of the State Water Control Board (the opinion of the State Water Control Board shall be advisory only) and may seek the advice of other appropriate State and federal agencies and shall name an advisory board of not less than seven nor more than eleven members which shall include but not be limited to representatives of such interests as residential development and construction, nonresidential construction, and agriculture. At least two members of the advisory board shall be from the public at large having no direct pecuniary interest, and at least two members shall be from local governments.

(b) To implement this program, the Commission shall develop and adopt by July one, nineteen hundred seventy-four, guidelines for erosion and sediment control, which guidelines may be revised from time to time as may be necessary. By *July one, nineteen hundred seventy-six, the Commission shall develop and adopt as a part of such guidelines, guidelines for the control of land disturbing activities in flood plains.* In accordance with chapter 1 of Title 9 of this Code, the Commission shall give due notice and conduct public hearings on the proposed guidelines or proposed change in existing guidelines before adopting or revising such guidelines. The guidelines for carrying out the program shall:

(1) Be based upon relevant physical and developmental information concerning the watersheds and drainage basins of the State, including, but not limited to, data relating to land use, soils, hydrology, geology, *slope,* size of land area being disturbed, proximate water bodies and their characteristics, transportation, and public facilities and services;

(2) Include such survey of lands and waters as may be deemed appropriate by the Commission or required by any applicable law to identify areas, including multijurisdictional and watershed areas, with critical erosion, ~~and~~ sediment *and flood plain* problems; ~~and~~

(3) Contain conservation standards for various types of soils and land uses, which standards shall include criteria, techniques, and methods for the control of erosion and sediment resulting from land-disturbing activities; *and*

(4) Establish standards for uses which may be allowed as of right, prohibited, or conditionally allowed in flood hazard areas, and establish standards and criteria for evaluating permits and conditions which may be attached to the issuance of permits.

(c) The program and guidelines shall be made available for public inspection at the office of the Commission.

§ 21-89.5. Local erosion and sediment control programs. — (a) Each district in the Commonwealth, except as provided in subsection (c) of this section, shall within eighteen months after the adoption of the State guidelines, develop and adopt a soil erosion and sediment control program consistent with the State program and guidelines for erosion, ~~and~~ sediment *and flood plain* control. Districts adopting such program and guidelines for erosion and sediment control. Districts adopting such programs shall do so pursuant to the provisions of the General Administration Agencies Act. To assist in developing its program, each district shall name an advisory committee of not less than seven nor more than eleven members which shall include but not be limited to representatives of such interests as residential development and construction, nonresidential construction, and agriculture. At least two members of the advisory board shall be from the public at large having no direct pecuniary interest, and at least two members shall be from local governments. Upon the request of a district the Commission shall assist in the preparation of the district's program. Upon adoption of its program, the district shall submit the program to the Commission for review and approval.

To carry out its program the district shall, within one year after the

program has been approved by the Commission, establish, consistent with the State program and guidelines, conservation standards for various types of soils and land uses, which standards shall include criteria, guidelines, techniques, and methods for the control of *land-disturbing activities in or on flood plains and* erosion and sediment resulting from land-disturbing activities. Such conservation standards may be revised from time to time as may be necessary. Before adopting or revising conservation standards, the district shall, after giving due notice, conduct a public hearing on the proposed conservation standards or proposed changes in existing standards. The program and conservation standards shall be made available for public inspection at the principal office of the district.

(b) In areas where there is no district, a county, city, or town shall develop, adopt and carry out the erosion and sediment control program and exercise the responsibilities of a district with respect thereto, as provided in this article; except that the provisions for an advisory committee shall not be mandatory.

(c) Any county, city, or town that, prior to July one, nineteen hundred seventy-five, has adopted its own erosion and sediment control program which has been approved by the Commission shall be treated under this article as a county, city, or town which lies in an area where there is no district, whether or not such district in fact exists.

Any town, lying within a county which adopts its own erosion and sediment control program, must adopt its own program, or adopt jointly with the county an erosion and sediment control program or authorize the county to adopt the program for the town. If a town lies within the boundaries of more than one county, such town shall be considered for the purposes of this article to be wholly within the county in which the larger portion of the town lies. Any county, city, or town adopting an erosion and sediment control program may designate its department of public works or a similar local government department as the plan-approving authority or may designate the district as the plan-approving authority for all or some of the conservation plans.

(d) If a district, or county, city, or town not in a district, fails to submit a program to the Commission within the period specified herein, the Commission shall, after such hearings or consultations as it deems appropriate with the various local interests involved, develop and adopt an appropriate program to be carried out by such district, county, city, or town. The Commission shall do likewise with respect to any town lying within a county which adopts its own erosion and sediment control program and such town does not provide for land-disturbing activities within the town to be covered by a local control program.

§ **21-89.6. Regulated land-disturbing activities.** — (a) Except as provided in subsections (e) and (f) of this section, no person may engage in any land-disturbing activity after the adoption of the conservation standards by the districts, counties, cities or towns until he has submitted to the district, county, city, or town an erosion and sediment control plan for such land-disturbing activity and such plan has been reviewed and approved by the plan-approving authority. Where land-disturbing activities involve lands under the jurisdiction of more than one local control program an erosion, ~~and~~ sediment *and flood plain control* plan may, at the option of the applicant, be submitted to the Commission for review and approval rather than submission to each jurisdiction concerned.

(b) Upon submission of an erosion and sediment control plan to a plan-approving authority or to the Commission:

(1) The plan-approving authority shall, within forty-five days, approve any such plan if it determines that the plan meets the conservation standards of the local control program and if the person responsible for carrying out the

plan certifies that he will properly perform the erosion and sediment control measures included in the plan and will conform to the provisions of this article;

(2) The Commission shall review plans submitted to it and shall within forty-five days approve any such plan if it determines that the plan is adequate in consideration of the Commission's guidelines and the conservation standards of the local control program or programs involved, and if the person responsible for carrying out the plan certifies that he will properly perform the conservation measures included in the plan and will conform to the provisions of this article.

(c) The plan-approving authority or Commission must act on all plans submitted within forty-five days from receipt thereof by either approving said plan in writing or by disapproving said plan in writing and giving the specific reasons for its disapproval. When a plan submitted for approval under this section is found, upon review by the respective agency, to be inadequate, such agency shall specify such modifications, terms, and conditions as will permit approval of the plan and communicate these requirements to the applicant as herein required. If no action is taken by the plan-approving authority or Commission within the time specified above, the plan shall be deemed approved and the person authorized to proceed with the proposed activity.

(d) An approved plan may be changed by the authority which has approved the plan or by the Commission when it has approved the plan in the following cases:

(1) Where inspection has revealed the inadequacy of the plan to accomplish the erosion, ~~and~~ sediment *and flood plain* control objectives of the plan, and appropriate modifications to correct the deficiencies of the plan are agreed to by the plan-approving authority and the person responsible for carrying out the plan; or

(2) Where the person responsible for carrying out the approved plan finds that because of changed circumstances or for other reasons the approved plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of this article, are agreed to by the plan-approving authority and the person responsible for carrying out the plan.

(e) Any person owning, occupying, or operating private agricultural, horticultural or forest lands shall not be deemed to be in violation of this article for land-disturbing activities resulting from the tilling, planting or harvesting of agricultural, horticultural or forest crops or products, or engineering operations under § 21-2(c) of the Code of Virginia. Such person shall comply with the provisions of this article when grading, excavating or filling.

(f) Any State agency that undertakes a project involving a land-disturbing activity shall file specifications or a conservation plan with the Commission for review and written comments. The Commission shall have sixty days in which to comment and such comment shall be binding on the State agency or the private business hired by the State agency. Individual approval of separate projects is not necessary when approved specifications are followed.

The State agency shall submit changes in the conservation plan or specifications as they occur to the Commission and shall submit specifications and plans at least annually for review.

Further, the State agency responsible for the land-disturbing activity shall ensure compliance with the approved plan or specifications.

(g) For the purposes of subsections (a) and (b) of this section, when land-disturbing activity will be required of a contractor performing construction work pursuant to a construction contract, the preparation, submission and approval of an erosion and sediment control plan shall be the responsibility of the owner.

§ 21-89.8. Monitoring, reports and inspections. — (a) Land-disturbing activities where permit is issued. — With respect to approved plans for erosion, ~~and~~ sediment *and flood plain* control in connection with land-disturbing activities which involve the issuance of a grading, building, or other permit, either the permit-issuing authority or plan-approving authority shall provide for periodic inspections of the land-disturbing activity to ensure compliance with the approved plan, and to determine whether the measures required in the plan are effective in controlling erosion, ~~and~~ sediment *and flood hazards* resulting from the land-disturbing activities. Notice of such right of inspection shall be included in the permit. The owner, occupier or operator shall be given an opportunity to accompany the inspectors. If the permit-issuing authority or plan-approving authority determines that the permittee has failed to comply with the plan, the authority shall immediately serve upon the permittee by registered or certified mail to the address specified by the permittee in his permit application a notice to comply. Where the plan-approving authority serves notice, a copy of each notice shall also be sent to the issuer of the permit. Such notice shall set forth specifically the measures needed to come into compliance with such plan and shall specify the time within which such measures shall be completed. If the permittee fails to comply within the time specified, he may be subject to revocation of the permit; furthermore, he shall be deemed to be in violation of this article and upon conviction shall be subject to the penalties provided by the article.

(b) *Other regulated land-disturbing activities.* — With respect to approved plans for erosion, ~~and~~ sediment *and flood plain* control in connection with all other regulated land-disturbing activities, the plan-approving authority may require of the person responsible for carrying out the plan such monitoring and reports, and may make such on-site inspections after notice to the resident owner, occupier or operator as are deemed necessary to determine whether the soil erosion, ~~and~~ sediment *and flood plain* control measures required by the approved plan are being properly performed, and whether such measures are effective in controlling soil erosion, ~~and~~ sediment *and flood hazards* resulting from the land-disturbing activity. Such resident owner, occupier or operator shall be given an opportunity to accompany the inspectors. If it is determined that there is failure to comply with the approved plan, the plan-approving authority shall serve notice upon the person who is responsible for carrying out the plan at the address specified by him in his certification at the time of obtaining his approved plan. Such notice shall set forth the measures needed for compliance and the time within which such measures shall be completed. Upon failure of such person to comply within the specified period, he will be deemed to be in violation of the article and upon conviction shall be subject to the penalties provided by the article.

(c) *Additional provisions.* — Notwithstanding the above provisions of this section the following may be applied:

(1) Where a county, city, or town adopts the local control program and the permit-issuing authority and the plan-approving authority are not within the same local government department, the county, city, or town may designate one department to inspect, monitor, report and insure compliance. In the event a district has been designated as the plan-approving authority for all or some of the conservation plans, the enforcement of the program shall be with the local government department; however, the district may inspect, monitor and make reports for the local government department.

(2) Where a district adopts the local control program and permit-issuing authorities have been established by a county, city, or town, the district by joint resolution with the applicable county, city, or town may exercise the responsibilities of the permit-issuing authorities with respect to monitoring, reports, inspections and enforcement.

(3) Where a permit-issuing authority has been established, and such

authority is not vested in an employee or officer of local government but is the commissioner of revenue or some other person, the county, city, or town shall exercise the responsibilities of the permit-issuing authority with respect to monitoring, reports, inspections and enforcement unless such responsibilities are transferred as provided for in the above provisions of this section.

§ **21-89.9. Cooperation with federal and State agencies.** — The districts, counties, cities or towns operating their own programs, and the Commission are authorized to cooperate and enter into agreements with any federal or State agency in connection with plans for erosion, ~~and~~ sediment *and flood plain* control with respect to land-disturbing activities.

§ **21-89.12. Authorization for more stringent standards.** — A district, county, city or town is hereby authorized to adopt more stringent soil erosion and siltation *and flood plain hazard control* standards than those necessary to ensure compliance with the State's minimum standards, guidelines and criteria. However, nothing in this section shall be construed to authorize any district, county, city or town to impose any more stringent regulations for plan approval or permit issuance than those specified in §§ 21-89.6 and 21-89.7.

§ **21-89.13. No limitation on authority of Water Control Board or Department of Conservation and Economic Development.** — Nothing contained within the provisions of this article shall limit the powers or duties presently exercised by the State Water Control Board under chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of this Code, or the powers or duties of the Department of Conservation and Economic Development as it relates to strip mine reclamation under chapters 16 (§ 45.1-180 et seq.) and 17 (§ 45.1-198 et seq.) of Title 45.1 of this Code *or the powers and duties of the Marine Resources Commission as it relates to preservation of wetlands pursuant to Chapter 2.1 of Title 62.1 of this Code (§ 62.1-13.1 et seq.).*

APPENDIX 6

APPENDIX 6

A BILL

To amend and reenact §§ 15.1-84 and 58-769.10 of the Code of Virginia, relating respectively to tax receipts and effect of change in land use under the Land Use Valuation Tax.

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.1-84 and 58-769.10 of the Code of Virginia be amended and reenacted as follows:

§ 15.1-84. Receipts to be given by officers. — Every officer shall deliver to each person who pays him, or from whose property he makes taxes, levies, militia fines or officers' fees, a receipt for all that is so paid or made, with a statement showing how much thereof is for taxes, how much for levies, how much for militia fines and how much for officers' fees, and also the bills for such fees. Any officer failing herein shall forfeit to such person four dollars.

A copy of each receipt issued pursuant to this § 15.1-84 with respect to the payment of recordation taxes required by § 58-54 shall be sent to the State Tax Commissioner on or before the tenth day of the month following the month in which each such receipt is issued.

§ 58-769.10. Change in use of real estate assessed under ordinance; roll-back taxes. — When real estate qualifies for assessment and taxation on the basis of use under an ordinance adopted pursuant to this article, and the use by which it qualified changes, to a nonqualifying use, it shall be subject to additional taxes, hereinafter referred to as roll-back taxes, in an amount equal to the amount, if any, by which the taxes paid or payable on the basis of the valuation, assessment and taxation under such ordinance were exceeded by the taxes that would have been paid or payable on the basis of the valuation, assessment or taxation of other real estate in the taxing locality in the year of the change and in each of the five years immediately preceding the year of the change, plus simple interest on such roll-back taxes at the rate of six per centum per annum. If in the tax year in which the change of use occurs, the real estate was not valued, assessed and taxed under such ordinance, the real estate shall be subject to roll-back taxes for such of the five years immediately preceding in which the real estate was valued, assessed and taxed under such ordinance.

In determining roll-back taxes chargeable on real estate which has changed in use, the treasurer shall extend the real estate tax rates for the current and next preceding five years, or such lesser number of years as the property may have been taxed on its use value, upon the difference between the value determined under § 58-769.9 (d) and the use value determined under § 58-769.9 (a) for each such year.

Liability to the roll-back taxes shall attach when a change in use occurs but not when a change in ownership of the title takes place if the new owner continues the real estate in the use for which it is classified under the conditions prescribed in this article and in the ordinance. The owner of any real estate liable for roll-back taxes shall, within sixty days following a change in use, report such change to the treasurer on such forms as may be prescribed and pay to the treasurer the amount of tax assessed pursuant thereto.

Every officer, board or commission of any county, city or town which has adopted an ordinance pursuant to this article which shall (a) issue a receipt pursuant to § 15.1-84 to evidence the payment of any recordation taxes required by § 58-54, (b) issue a permit for the construction, repair or improvement of any building permanently annexed to the freehold pursuant to Chapter 11 of Title 15.1 of this Code (§ 15.1-142 et seq.), (c) approve a plat of subdivision or site plan pursuant to § 15.1-475 or (d) authorize a variance from

or a special exception to the terms of any zoning ordinance pursuant to Article 8 of Chapter 11 of Title 15.1 of this Code (§ 15.1-427 et seq.), shall on or before the tenth day of the next succeeding calendar month file a copy of each such receipt, permit, approval or authorization with the Commissioner of the Revenue.

APPENDIX 7

A BILL

To amend and reenact §§ 10-152 and 10-158 of the Code of Virginia, relating to authority of public bodies to acquire property for use as open space land and acquisition of title to and easements on such property subject to reservations.

Be it enacted by the General Assembly of Virginia:

1. That §§ 10-152 and 10-158 of the Code of Virginia be amended and reenacted as follows:

§10-152. Authority of public bodies to acquire or designate property for use as open-space land. — To carry out the purposes of this chapter, any public body may (a) acquire by purchase, gift, devise, bequest, grant or otherwise title to or any interests or rights *of not less than 30 years duration* in real property that will provide a means for the preservation or provision of ~~permanent~~ open-space land and (b) designate any real property in which it has an interest *of not less than 30 years duration* to be retained and used for the preservation and provision of ~~permanent~~ open-space land. The use of the real property for ~~permanent~~ open-space land shall conform to the official comprehensive plan for the area in which the property is located. No property or interest therein shall be acquired by eminent domain by any public body for the purpose of this chapter, provided, however, this provision shall in no way limit the power of eminent domain as it was possessed by any public body prior to the passage of this chapter.

§10-158. Acquisition of title subject to reservation of farming or timber rights; acquisition of easements, etc.; property to be made available for farming and timber uses. — Any public body is hereby expressly authorized, without limiting the authority of the public body to acquire unrestricted fee simple title to tracts, to acquire, by gift or purchase, (1) fee simple title to such land subject to reservation of rights to use such lands for farming or to reservation of timber rights thereon, or (2) easements in gross or such other interests in real estate *of not less than 30 years duration* as are designed to maintain the character of such land as open-space land. Whenever practicable in the judgment of such public body, real property acquired pursuant to this chapter shall be made available for agricultural and timbering uses which are compatible with the purposes of this chapter.

Recommendations For Further Study

Because of the impossibility of dealing comprehensively with all matters affecting land use policies in Virginia, the Committee is recommending that it be continued in existence for another two years to continue examining various land use problems. Some of the areas needing further study have already been suggested in this Report and include the following:

(1) Further study of the administration of local land development laws (See Part II).

(2) Further study of the necessity for environmental impact statements for all State highway projects (Part IIID).

(3) Establishment of a new study commission to deal with the impact of real estate tax laws on land development and real estate tax assessment practices generally (Part IIIF).

In addition to these items, the Committee also believes a number of other issues are in need of study and a description of some of these issues follows.

A. *Large Scale Development*

The vast majority of decisions affecting land development involve projects which have no major effect on any State or national interest, and in fact, can best be made by local people familiar with local circumstances. However, there are developments the size and magnitude of which are such that their impact extends beyond the boundaries of the local jurisdiction in which the developments are located. For example, the Great America Park proposed by the Marriott Corporation in Prince William County would be a huge amusement park drawing people to it from all over Virginia and surrounding states. Clearly such a development would have substantial impact on many communities in and surrounding Prince William County. Indeed, the Fairfax County Board of Commissioners has indicated its concern that the proposed park would be seriously detrimental to the water supply for Fairfax County. Another recent proposal which will have impact beyond the local jurisdiction is the King's Dominion Park and the associated Lion Country Safari Wild Game Preserve being constructed in Hanover County by Taft Broadcasting Company. Without adequate planning and resources, such developments can impose pressures on local governments far beyond the capacity of such governments to accommodate.

With respect to some types of large-scale development the Committee believes the State must have some active role even if it be limited to establishing minimum development standards or having some review authority over local development decisions. A mechanism must be found for balancing the need for expanded State participation in the development decision-making process against the policy that such participation should be limited to situations where the State has a legitimate direct interest. Also, a method by which that interest is brought to bear in the development decision-making process is needed.

The problem is compounded in Virginia, for in many areas of the State, planning and zoning authorities do not exist, and even in some areas where such authorities have been established, they may be ill-equipped to adequately deal with large scale development. The pressures on local governments to find additional sources of tax revenue can in many instances lead to the location and approval of a development without the time being taken to fully assess the impact of the development on the resources of the local government and on surrounding communities. The local government which permits a large amusement park, airport, industrial park, shopping center or second home residential development without fully analyzing the adequacy of roads, sewage

treatment facilities, schools and other resources of the area may well be subjecting itself and surrounding areas to a type and intensity of development which can have serious adverse effects.

The State of Florida has developed a set of guidelines for what is called "development of regional impact" which were developed pursuant to the Florida Environmental Land and Water Management Act of 1972 taking into account various factors such as the extent to which a development would create or alleviate environmental problems such as noise and air or water pollution; the pedestrian or vehicular traffic and number of persons likely to be present; the size of the site; the likelihood of additional or subsidiary development; and the unique qualities of the particular areas of the state. The Florida guidelines cover, among other things, such types of development as new airports or runways; large sports, entertainment, amusement or recreational facilities; electric generating facilities and transmission lines exceeding a certain size or capacity; hospitals designed to serve citizens of more than a single county; certain industrial parks or industrial plants; various types of mining operations and petroleum storage facilities; and large scale residential development.

The Committee has not had the time or information to define the types of development which require the application of State standards and guidelines to assure that large scale development is undertaken with proper consideration of its broad impact. The Florida "Development of Regional Impact" program is a very useful example of a program which might be the basis for a large scale development control program in Virginia although all of the details may not be applicable to Virginia's situation. The Committee has recommended that it be continued in existence for another two years to deal with a variety of additional land use problems. One of its tasks for the continued study should be to identify types of development the impact of which is of such a magnitude as to transcend local political boundaries, to prepare standards and guidelines to insure that such development is undertaken in a manner consistent with the total public interest and to recommend appropriate legislation to the 1975 and 1976 sessions of the General Assembly. This task will be no simple matter and the Committee would expect to draw heavily on the expertise of various State and local agencies in formulating standards and guidelines.

B. *Evaluation of Water Resources*

The immense growth of population and commercial and industrial development in Virginia has placed substantial pressure not only on land resources of the Commonwealth but also on its water resources. It has been estimated that the larger rivers in the State have more than enough water to meet the water needs of Virginians in the reasonably foreseeable future if that water were appropriately distributed throughout the State. However, water resources are not always distributed to the areas where the population densities are the greatest. Thus, in Northern Virginia, the availability of water resources is a critical matter and some communities have imposed or are considering constraints on development where available water resources do not appear adequate to accommodate all of the proposed development. In the Tidewater areas, the demands being placed on groundwater supplies is opening up the possibility that salt water may back up into fresh water supplies currently depended on to accommodate growth in the area. In other areas of the State, inadequate planning of development and related needs for sewage and waste treatment have seriously affected groundwater supplies.

Pursuant to requirements of the Federal Water Pollution Control Act, some degree of water basin planning is being undertaken by planning district commissions and various local units in Virginia in conjunction with the Division of State Planning and Community Affairs and other appropriate State agencies. However, the problem of conserving and assuring the appropriate distribution of water resources to areas in need of water is a

problem requiring considerable further study. The Committee therefore recommends the creation of a new Committee to look in particular into the problem of protecting and preserving water resources of the Commonwealth, coordinating planning and development of water resources with the planning and development of land use and reviewing and making recommendations as to the law governing the use of and right to water as may be provided by the Constitution, statutes and case law in Virginia.

C. *Urban and Suburban Land Use*

Slowly but surely more and more land is being converted from agricultural, forest or other open-space uses to residential, commercial and industrial development. The so-called "urban sprawl" now extends from New England all the way down the Atlantic Coast into Northern Virginia. The problem is perhaps most acute and visible in the Northern Virginia area, but the Norfolk-Hampton Roads area, the Richmond-Tri-Cities Area and other large metropolitan areas in the State are not immune to the phenomenon of "urban sprawl." Although there now appears to be considerable open-space between Prince William County and Richmond to separate the sprawl of Northern Virginia from the capitol city, the rate of development in this area is such that the gap is rapidly being closed.

The views of the Committee members vary as to the desirability of stopping or slowing growth throughout the State or in certain areas of the State. However, none of the members of this Committee believes that the General Assembly is able to stop growth. Furthermore, despite the expressions of dissatisfaction from all types of public and private officials and interest groups with the way growth is being dealt within metropolitan areas, local governments can do little or no more than the State to *stop* growth. However, the Committee shares the general concern over the rate and nature of the growth that is taking place.

Urban sprawl is a complex problem which involves more than the conversion of farmland and other open space to residential subdivisions, although that problem may be the most obvious one to a casual observer. Rather, the problem of urban sprawl encompasses the question of the density of population in developed areas. If some land in urban areas is not developed to accommodate and attract a high density of population, the pressures to convert more and more open space to low density residential developments will overwhelm local and State governmental efforts to preserve open space. More and more land will be needed for highways, people will drive farther and farther to work, and the quality of our air will degenerate even further.

A number of suggestions have been made to the Committee for dealing with the problem of urban sprawl. One suggestion was to authorize the replacement of the traditional zoning ordinance as the means of regulating land use with a program of regulation based on transferable development rights. Under such a program, a State agency such as the Division of State Planning and Community Affairs would project the development potential for the whole State and study the capacity of various parts of the State to support the necessary development. These projections would be furnished to local governments for their guidance in making decisions with respect to land development. Local governments would award a pro-rata share of the total programmed development for the area within their boundaries to the owner of each acre of land. A person seeking to undertake a development which would require more than his pro-rata share of development rights would be required to purchase development rights from those who are interested in keeping their land in farming or other low density use. This approach assumes there are limits to the total number of people and development which a given area can support, that these limits can be accurately ascertained and that further development can be prevented. Also, this proposal entails drastic changes in

property values without provision for compensation for those persons suffering a loss.

Others have suggested that local development decisions could be greatly improved if the State would develop and adopt minimum standards and guidelines which local planning and zoning authorities would comply with but leaving the general decision-making function to local governments. In some situations, there may be types of development which are of regional or Statewide importance over which State or regional authorities should exercise some degree of control. These might include such things as transportation networks, water supplies and protection of critical environmental areas. However, the primary development decision-making functions would be left with local governments to be carried out in accordance with minimum standards and guidelines promulgated by the State.

Another suggestion is that a system be established whereby a person seeking to undertake development would be granted the right to undertake the development only if it were demonstrated that criteria with respect to the minimization of the impact of the proposed development on the environment would be complied with. This is an approach similar to the National Environmental Policy Act but would be enacted and implemented on the local level with an additional requirement that permits must be obtained before any development could be undertaken. Standards and criteria for minimizing environmental impact could be adopted and made available to developers in planning projects.

Others have suggested that no additional State or local legislative authority is necessary to achieve more desirable development and accommodation of population growth. Rather, what is needed is a more effective and efficient gathering of information. It is argued that if planning officials have better information with respect to a proposed development and the economics of development, with better analysis of land and real estate markets, a sufficient basis would be provided for having planning and development decisions made by the existing governmental agencies under present laws in a more rational manner.

It is safe to say that few of the witnesses before the Committee suggested having the State step in to make all development decisions in urban areas. About the only consensus the Committee has been able to find in all of the testimony presented to it is that present patterns and quality of growth and development in many of the major metropolitan areas in the State leave much to be desired. Little consensus was found with respect to the question of what kind of development would be desired or what would be the most appropriate mechanism for controlling development. However, there was certainly a substantial degree of recognition that the State has a significant interest in the development of major metropolitan areas and should assume some responsibility for assuring that better mechanisms for dealing with land development in those areas are made available.

One of the basic problems in arriving at a system for dealing with development in major metropolitan areas is the multiplicity of local political subdivisions which make up the metropolitan areas, all of which are jealous of the development authority they presently have. Without a substantial degree of coordination of some type between the various political subdivisions making up a metropolitan area, there is no assurance that development decisions of Town A will not have serious adverse impact on neighboring or nearby towns. For example, a decision by the Fairfax County Board of Supervisors to go slow with the issuance of development permits or to impose various conditions making development more expensive can be expected to have the effect of causing developers to skip over Fairfax County and locate projects in Prince William, Fauquier or Loudoun Counties. Similar decisions in these counties

would result in development leaptrogging into the next ring of counties. Thus, some mechanism must be found to provide for some form of coordination of planning and development decisions between the various political subdivisions making up the major metropolitan areas in Virginia. While this is a role which conceivably could be played by planning district commissions, to date PDCs have not assumed this role — and there are many who question the capability of PDCs to handle this role. Furthermore, many of the metropolitan areas in the State are in two or more planning districts and would require further coordination between two or more PDCs in order to deal with overall metropolitan planning.

The Committee believes it has come a long way in understanding some of the problems of land use in urban areas but believes much more work must be done and much more information collected before appropriate recommendations can be made for revision of existing legislation or adoption of new legislation. An overall approach to urban land use problems will need to contend with a wide gamut of issues about which a great deal of study and consultation is going to be required.

One of the primary issues which must be tackled head-on is that of finding a way of achieving the most appropriate concentrations of population in particular parts of an urban area. Good urban planning requires some reasonable degree of open space be preserved and provided for the health and enjoyment of urban residents. However, if some land in an urban area is to be preserved as open space, other land in the urban area must be developed at higher densities to accommodate the population which might otherwise have located in development in the open space. This may mean that land which existing zoning regulations indicate should be developed for single family detached residential units should be zoned and developed for a higher density of population whether in the form of high-rise apartments or some other form of high population density development. Hard decisions will be required in arriving at judgments as to how much and what land should be preserved as open space and what land should be developed in what densities.

The most appropriate program for dealing with problems of land use in Virginia's urban areas is going to run into very serious political, legal and public relations problems. All political subdivisions in urban areas are jealous of their own prerogatives and they are not readily going to surrender the authority they have over development within their boundaries. Yet it is clear if the multiplicity of political subdivisions in urban areas all deal only with their own problems urban sprawl will continue to spread over now rural counties. As local governments reduce permitted densities to solve their own problems they force developers even farther out on the urban fringe. The Committee recognizes that an absence of State action means a continuation, or even an exaggeration, of the present patterns of urban sprawl.

A variety of possible approaches to urban land use problems exists. For example, a new development agency could be established on the State level or for each urban area in which all the local development planning and decision-making functions which are now scattered among various boards and commissions in each political subdivision could be centered. Such an agency could determine how development should best be directed throughout the urban area without regard to artificial political boundaries. Another alternative would be to establish a new agency or designate an existing one to recommend appropriate distributions and densities of population and development in various parts of urban areas while leaving the development decision-making function in the hands of the individual political subdivisions subject to the distribution and density recommendations.

Either of the above alternatives could be very effective in controlling the distribution of the sprawling urban population. Neither alternative would stop or prohibit the outward flow of urban population around the perimeters of

metropolitan areas. However, it must be borne in mind that these alternatives would require the designation of certain areas within counties on the perimeters of large metropolitan areas as high density areas. This would be necessary to accommodate the increase in population in the localities affected. If this were done then large sections of counties on such urban perimeters could be designated as low density areas in which the rural character would be preserved. Besides the legal and planning problems involved this approach means that State or regional agencies would have very broad zoning powers within counties lying in the path of urban sprawl from large metropolitan areas.

These two alternatives are hardly exhaustive of the possibilities and any recommendation to the General Assembly should be made only after adequate consultation with local governments in urban areas which may be affected by any legislation. Any such recommendation must also take adequate account of the legal and constitutional problems inherent in any system of land use regulation. Property rights are a precious thing to all Virginians but it is clear property rights are not absolute. No man can totally ignore the effect on neighboring landowners of a development he undertakes. Nor can government ignore the impact its land planning and development decision-making mechanisms will have on private landowners. The arbitrary designation of one parcel of privately-owned land in an urban area as land to be preserved as open space while permitting adjoining land to be developed for residential or commercial use, raises serious policy issues with which any mechanism for dealing with urban land use problems must deal.

Any program of land development control in urban areas must also be sensitive to the needs and desires of all the residents of the urban area. A land development control mechanism which might be constitutionally permissible and acceptable to state and local governmental agencies concerned will get nowhere fast if it does not provide adequate means for the local citizens to understand what is being done and to participate in the policy and decision-making functions.

In an effort to find a better way of handling land use problems in Virginia's urban areas, the Committee recommends it continue its study of urban land use problems for an additional two years. The Committee further recommends that the legislature appropriate such an amount as will permit the Committee to cover the cost of providing a staff which can spend all of its time assembling data and conferring with citizens on the problems of Virginia's urban areas to provide more complete information on which to base legislative recommendations to the 1975 and 1976 sessions of the General Assembly. Such an appropriation should also be sufficient to cover the cost of the other studies the Committee has suggested be undertaken.