

**INTERIM REPORT OF THE DEPARTMENT OF AGRICULTURE
AND CONSUMER SERVICES, THE DEPARTMENT OF
CONSERVATION AND RECREATION, THE DEPARTMENT
OF FORESTRY, AND THE DEPARTMENT OF TAXATION**

**Relating to the Extent
of Use and Fairness
of the Commonwealth's Various
"Land Use" Tax Programs**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



HOUSE DOCUMENT NO. 7

**COMMONWEALTH OF VIRGINIA
RICHMOND
1994**



Clinton V. Turner
Commissioner

Donald G. Blankenship
Deputy Commissioner

804/786-3501
FAX 804/371-2945

COMMONWEALTH of VIRGINIA

Department of Agriculture and Consumer Services

PO Box 1163, Richmond, Virginia 23209

Divisions

Administration
Animal Health
Consumer Affairs
Dairy & Foods
Marketing
Product & Industry Regulation

November 4, 1993

MEMORANDUM

TO: The Honorable L. Douglas Wilder, Governor of Virginia
Members of the General Assembly of Virginia

House Joint Resolution 669, agreed to by the General Assembly in 1993, requests the Department of Agriculture and Consumer Services to study, cooperatively with the Departments of Conservation and Recreation, Forestry and Taxation:

"the extent of use and fairness of the several "land use" tax incentive programs currently existing in Virginia"

I have the honor of submitting the enclosed report, which represents the interim report, requested by the joint resolution. The joint resolution calls for a final report to be completed no later than November 1, 1994.

On behalf of the staff of the Department of Agriculture and Consumer Services, I wish to express our appreciation for the cooperation and assistance provided by the Department of Conservation and Recreation, the Department of Forestry, and the Department of Taxation.

Respectfully submitted,

Clinton V. Turner
Commissioner

Enclosure

Preface

The study group preparing this interim report consisted of Herb Hill, Director of the Office of Policy, Planning, and Agricultural Development, of the Department of Agriculture and Consumer Services; Leon E. App, Executive Assistant, of the Department of Conservation and Recreation; James D. Starr, Chief, Forest Management, of the Department of Forestry; and Thomas E. Morelli, Property Appraisal and Classification Supervisor, of the Department of Taxation.

Table of Contents

	Page
Executive Summary.	1
Chapter 1--Introductory Chapter	2
Chapter 2--The Constitutional Background	3
Chapter 3--The Statutes	5
Chapter 4--Regulations	13
Chapter 5--The Agencies.	18
Chapter 6--Land-use Tax Programs Stakeholders Survey . . .	23
Chapter 7--Recommendations for Additional Research	37
Endnotes	38
Appendixes	43

Executive Summary

House Joint Resolution Number 669, adopted by the Legislature in 1993, calls upon the Department of Agriculture and Consumer Services, the Department of Conservation and Recreation, the Department of Forestry, and the Department of Taxation:

"to study cooperatively the extent of use and fairness of the several "land use" tax incentive programs. . .in Virginia and recommend any needed improvements and ways for localities to promote the availability of the programs to qualified landowners."

The present document constitutes an interim report, required by the resolution. The interim report characterizes the constitutional background of the land-use-assessment tax incentive programs in Virginia, as well as the statutes and regulations that govern those programs. The report also contains: (i) a description of the role played by each of the agencies named in the resolution; (ii) the results of surveys of stakeholders in the use-assessment programs; and (iii) recommendations relating to the nature of, as well as the estimated costs of research and preparing, the final report, due November 1, 1994.

Recommendation: House Joint Resolution No. 669 stipulated that the requested study should be accomplished at no net cost to the Commonwealth. It is the recommendation of the study group that the Commonwealth contract with an independent organization to conduct Phase II of the study. This action is recommended so as to:

1. Provide for statistically valid data collection and analysis;
2. Ensure the objectivity of the study;
3. Maximize public participation in the study; and
4. Provide the required technical expertise necessary to assure the level of analysis that this important issue deserves.

The study group estimates that the cost of contracting with an independent organization would be as much as \$125,000. In order for the assigned agencies to complete the study fully, it is recommended that the 1994 General Assembly provide the necessary funding.

Chapter 1.--Introductory Chapter

At its 1993 session, the General Assembly of Virginia approved House Joint Resolution No. 669. That resolution directs the Department of Agriculture and Consumer Services, assisted by the Department of Conservation and Recreation, the Department of Forestry, and the Department of Taxation:

"to study cooperatively the extent of use and fairness of the several "land use" tax incentive programs currently existing in Virginia and recommend any needed improvements and ways for localities to promote the availability of the programs to qualified landowners."

The resolution, which calls for a final report no later than November 1, 1994, also calls for an interim report to be completed no later than November 1, 1993. The present document is the interim report.

This interim report describes the framework for the programs for land-use assessment in Virginia, which includes the Constitution of Virginia, several enactments of Virginia's General Assembly, and regulations required by the General Assembly for the implementation of those programs. In Virginia, 65 counties and 20 cities, a total of 85 localities (out of 135 localities), have adopted an ordinance for the special assessment of agriculture, horticulture, forest, and open-spaces classes of land. In addition, there are 235 reported districts that have been created under the Agricultural and Forestal Districts Act (that act is discussed below), and 41 reported districts--all in Fairfax County--that have been created under the Local Agricultural and Forestal Districts Act (that act is also discussed below).

The final report will be based in part on what is set forth in this interim report.

Chapter 2--The Constitutional Background

The authorization for a program to assess land in Virginia on the basis of its value for agricultural, horticultural, forestal, or open-space uses, when put to such uses, can be found in The Constitution of Virginia: Report of the Commission on Constitutional Revision.¹ Under the heading of "taxation and finance" the members of the commission, which included Albertis S. Harrison, Jr., Colgate W. Darden, Jr., Davis Y. Paschall, and Lewis F. Powell, Jr., proposed:

". . . that the General Assembly be permitted to allow the assessment of agricultural, horticultural, forest, and open space lands on the basis of use, rather than fair market value, with the object of preserving such lands in urbanizing areas where otherwise rising taxes would force their development for other purposes."²

The recommendation of the Commission on Constitutional Revision resulted in language in the Constitution authorizing land-use assessment.

In making its recommendations on the nature of a new constitution for Virginia, the commission had received more than 200 statements and had heard testimony from about 150 people throughout the Commonwealth. A number of those presenting their views to the commission addressed the issue of taxation, as it relates to land-use assessment.³

The historical setting for a proposal to afford certain lands special assessment status was "unlike any such period in the Commonwealth's history." In the forty years preceding, Virginia's population had doubled, with significant effects: eighty-five percent of the population growth between 1950 and 1960 had occurred in six metropolitan areas, where 56 percent of the population now lived. In the preceding 30 years, industrial growth in Virginia had risen 146 percent in non-agricultural employment.⁴

Virginia was not alone in authorizing measures to provide tax deferral⁵ for certain lands, including lands devoted to horticultural, agricultural, forestal, and open-space use; Virginia was amongst a number of states--Maryland being the first--to provide certain use-value taxation. The law enacted by the Virginia General Assembly was patterned after New Jersey's law. "By 1982, 48 states had adopted some form of use-value taxation."⁶

The land-use-assessment program in Virginia rests on authority of the Constitution of Virginia, on enactments of the Legislature; on regulations adopted by the Commissioner of Agriculture and Consumer Services, the State Forester, and the Director of the Department of Conservation and Recreation; and local ordinances that make

provision for land-use assessment. Below is an overview of some of these mandates.

The Constitution

The Constitution states, in part:

§2. Assessments.--All assessments of real estate and tangible personal property shall be at their fair market value, to be ascertained as prescribed by law. The General Assembly may define and classify real estate devoted to agricultural, horticultural, forest, or open space uses, and may by general law authorize any county, city, town, or regional government to allow deferral of, or relief from, portions of taxes otherwise payable on such real estate if it were not so classified, provided the General Assembly shall first determine that classification of such real estate for such purpose is in the public interest for the preservation or conservation of real estate for such uses. In the event the General Assembly defines and classifies real estate for such purposes, it shall prescribe the limits, conditions, and extent of such deferral or relief. No such deferral or relief shall be granted within the territorial limits of any county, city, town, or regional government except by ordinance adopted by the governing body thereof. . . .⁷

Chapter 3--The Statutes

Policy Considerations of the Statutes

Several laws have been enacted that relate to land-use assessment. These include a provision contained in the title of the Code relating to taxation that makes provision for land-use assessment.⁸ Others include the Agricultural and Forestal Districts Act,⁹ the Local Agricultural and Forestal Districts Act,¹⁰ and the Virginia Conservation Easement Act.¹¹

Some of these laws contain policy declarations, important statements for any study of land-use assessment. Taken together, they provide insights into the bases for Virginia's land-use-assessment program. It is "vital to the public interest" to preserve real estate devoted to agricultural, horticultural, forest, and open-space uses, particularly when those lands are "within reach of concentrations of population."¹² The conservation of the lands that are the subject of this study is important because of the food, as well as other agricultural and forestal products, they provide.¹³ There are important environmental and aesthetic benefits associated with these lands as well, including prevention of erosion,¹⁴ protection of water and watersheds,¹⁵ protection of air quality,¹⁶ protection of wildlife habitat,¹⁷ aesthetic considerations,¹⁸ and accommodation of an expanding population.¹⁹ In instances in which farming and forestry districts are established under the Agricultural and Forest Districts Act:

"It shall be the policy of all agencies of the Commonwealth to encourage the maintenance of farming and forestry. . .and [subject to certain qualifications] all administrative regulations and procedures of such agencies shall be modified to this end. . . ." ²⁰

The establishment of special tax-assessment status is important for "a balanced economy",²¹ for assuring that such lands are "a viable segment" of the economy,²² and for ameliorating the "pressures which force the conversion of such real estate to more intensive uses. . . ." ²³

Easements

The restriction of real property rights through the gift of a perpetual easement has been recognized as a conservation tool for many years by the Commonwealth of Virginia and the federal government. On the part of the easement donor, there may be several forms of tax incentives available:

- Reduction in federal income tax
- Reduction in Virginia income tax
- Reduction in estate tax

- Reduction in ad valorem real estate taxes
- Qualification for land-use assessment under the open-space option

The open-space planning and development timing capability available to the locality, at local option, through the land-use assessment program is stated clearly in relation to the open-space option, which requires that properties must be shown to be consistent with the local land-use plan. Consistency with the land-use plan, which must be developed and officially adopted by the locality under ordinance in compliance with Article 4 of Chapter 11, Title 15.1 of the Code is repeated in the Open-Space Standards, the Virginia Conservation Easement Act (at §10.1-1010(E) of the Code), the Virginia Open-Space Land Act (at §10.1-1701 of the Code), and for all state agencies seeking to acquire real estate (at §15.1-428.1 of the Code).

The availability of the various easement programs and the tax implications associated with each form a very important and very complicated set of tax incentives which are tied to the land-use-assessment program in many ways.

Specific Provisions of the Statutes

Tax Law (§§58.1-3229 et seq. of the Code)

Under the provisions of Title 58.1 (Taxation) of the Code of Virginia relating to use-value assessment (Article 4 of Ch. 32, hereinafter referred to as "the tax law"), a county, city, or town which has adopted a land-use plan may adopt an ordinance that provides for use-value assessment.²⁴ "Real estate devoted to agricultural use," "real estate devoted to horticultural use," "real estate devoted to forest use," and "real estate devoted to open-space use" (all defined terms under the law)²⁵ would then be qualified for such special assessment. Land used in agricultural and forestal production in an agricultural district, a forestal district, or an agricultural and forestal district is eligible for use-value assessment and taxation, even if there is no local land-use plan or local ordinance under the tax law.²⁶

The tax law requires that, before affording use-value assessment, the local assessing officer determine that the land under consideration meets the definition of "real estate devoted to agricultural use," "real estate devoted to horticultural use," "real estate devoted to forest use," or "real estate devoted to open-space use," and the standards adopted relating thereto, and that the land consist of a minimum of five acres, if used for agricultural or horticultural purposes; a minimum of 20 acres if for forest use; and a minimum of five acres for open-space use; unless the local governing body selects a higher minimum acreage

or selects a two-acre minimum for properties adjacent to a scenic river, a scenic highway, a Virginia byway, or public property in the Virginia Outdoors Plan. In the case of open space, the property must be consistent with the local land-use plan, and meet one of three qualifiers for time commitment. The property must be in (i) an agricultural, forestal, or agricultural and forestal district; 2) a perpetual easement held by a public body; or (iii) subject to a written commitment entered into by the landowner and the local governing body for not less than four nor more than ten years, subject to standards established by the Director of the Department of Conservation and Recreation.²⁷

In valuing the real estate, the assessor is required to "consider. . .the recommendations of value of such real estate as made by the State Land Evaluation Advisory Council [hereinafter "SLEAC"]".²⁸ The SLEAC, created by the tax law, is required to:

"determine and publish a range of suggested values for each of the several soil conservation service land capability classifications for agricultural, horticultural, forest and open space uses in the various areas of the Commonwealth. . ."²⁹

The SLEAC is composed of the Tax Commissioner, the Dean of the College of Agriculture of Virginia Polytechnic Institute and State University, the State Forester, the Commissioner of Agriculture and Consumer Services, and the Director of the Department of Conservation and Recreation.³⁰

The tax law obliges the Director of the Department of Conservation and Recreation, the State Forester, and the Commissioner of Agriculture and Consumer Services each to provide a statement of standards to be applied to determine whether land qualifies for use-value assessment.³¹ A party aggrieved by the decision of any of these officials in interpreting their respective standards may appeal (or the refusal of any of these officials to render an opinion concerning their standards may be appealed) to the circuit court.³²

The tax law contains a number of other provisions, including, most notably, provisions dealing with: (i) making application for use-value assessment³³; (ii) failure to report changes in land use and misstatements in the application for use-value assessment³⁴; (iii) eminent domain³⁵; and (iv) so-called "roll-back taxes," that is, additional taxes that accrue when land no longer qualifies for use-value assessment.³⁶

The tax law requires that land book records are to be maintained to show both the use value and the fair market value of real estate in agricultural, horticultural, forest, and open-space use.³⁷

Agricultural and Forestal Districts Act (§§15.1-1506 et seq. of the Code)

The Agricultural and Forestal Districts Act makes provision for the creation of districts comprised of a core consisting of no less than two hundred acres.³⁸ This law spells out the procedure for the creation of districts and the withdrawal of land from districts.³⁹ For the purposes of this law, a district is defined as an "agricultural, forestal, or agricultural and forestal district."⁴⁰ Land lying within a district that is used in agricultural or forestal production "shall automatically qualify for an agricultural or forestal use-value assessment on such land" under the tax law "if the requirements for such assessment contained therein are satisfied."⁴¹ The local governing body has the authority to enact ordinances to effectuate the Agricultural and Forestal Districts Act.⁴²

Local Agricultural and Forestal Districts Act (§§15.1-1513.1 et seq. of the Code)

The Local Agricultural and Forestal Districts Act makes provision for the creation of an "agricultural, forestal, or an agricultural and forestal district of local significance." Such a district must consist of a minimum of twenty-five acres.⁴³ "Agriculturally and forestally significant land" means:

". . . land that has historically produced agricultural and forestal products, or land that an advisory committee [a defined term] considers good agricultural and forestal land based upon factors such as soil quality, topography, climate, markets, farm improvements, agricultural and forestry economics and technology, and other relevant factors."⁴⁴

The local governing body has the authority to create such districts by adopting an ordinance according to the terms of this law.⁴⁵ However, "local governing body" is defined in such a way as to limit the application of this law. "Local governing body," for the purposes of this law, means:

". . . the governing body of any county having the urban county executive form of government, any adjacent county having the county executive form of government and counties with a population of no less than 63,400 and no more than 73,900 and no less than 85,000 and no more than 90,000."⁴⁶

The ordinance adopted by the local governing body must contain a provision that declares that land used in agricultural and forestal production within the district automatically qualifies for agricultural or forestal value assessment under §58.1-3229 of the Code (a provision of the tax law).⁴⁷

The Local Agricultural and Forestal Districts Act also contains provision for the discontinuance of association in a district of local significance and for the withdrawal of land from a district.⁴⁸

Virginia Open-Space Land Act (§§10.1-1700 et seq. of the Code)

Easements held by public bodies are authorized through the Virginia Open-Space Land Act. §10.1-1700 of the Code defines "public body" as meaning "any state agency having authority to acquire land for a public use, or any county or municipality, any park authority, public recreational facilities authority or the Virginia Recreational Facilities Authority." Thus all the natural-resource-oriented state agencies, plus local governments and other named entities may utilize the Virginia Open-Space Land Act.

The Virginia Open-Space Land Act authorizes public bodies to:

- * Acquire land for open space purposes through:
 - (i) Unrestricted fee simple title to tracts;
 - (ii) 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
 - (iii) Easements in gross or such other interests in real estate of not less than five years' duration as are designated to maintain the character of such land as open-space land. Any interest may also be perpetual.
- * Make open space real property acquired available for agricultural and timbering uses, wherever practicable in the judgment of the public body.
- * Designate any real property in which the public bodies have an interest to be retained and used for the preservation and provision of open space land.
- * Require the use of open-space land to conform to the official comprehensive plan for the locality.
- * Divert or convert the acquired open-space lands. However, no open space land shall be converted or diverted unless the action is found to be: (i) essential to orderly development and growth, and (ii) in accord with the official comprehensive plan for the locality. Other real property of equal fair market value and equivalent usefulness and location for permanent open-space land shall be substituted within one year for real property converted or diverted, unless the public body determines that such open-space land or its equivalent is no longer needed. The public body shall assure

that property substituted will be subject to the provisions of the Act.

The Act also prohibits the use of eminent domain for acquiring land for open space; however, it does not limit powers of eminent domain previously possessed by a public body.

All perpetual easements taken by the public bodies qualify the land for the open-space option of the tax law under the requirements of §58.1-3233.3(ii) as being:

". . .(ii) subject to a recorded perpetual easement that is held by a public body, and promotes the open-space use classification, as defined in §58.1-3230. . ."

The assessment of real property where a public body holds a less than fee simple right, such as a perpetual easement, and the exemption from taxation of that portion of the real property interest held by a public body are both stated in §58.1-3205:

"Where an interest in real property less than the fee is held a public body for the purposes of the Open-Space Land Act (§10.1-1700 et seq.) or chapters 22 and 24 of Title 10.1, assessments for local taxation on the property shall reflect any change in the market value of the property which may result from the interest held by the public body. The value of the interest held by the public body shall be exempt from property taxation to the same extent as other property owned by the public body."

Virginia Conservation Easement Act (§§10.1-1011 et seq. of the Code)

Chapter 390 of the 1993 Virginia Acts¹ of Assembly amended the Virginia Conservation Act at §10.1-1011 of the Code to read:

§10.1-1011. Taxation.--Where the easement by its terms is perpetual, neither the interest of the holder of a conservation easement nor a third-party right of enforcement of such an easement shall be subject to state or local taxation nor shall the owner of the fee be taxed for the interest of the holder of the easement. Land which is (i) subject to a perpetual conservation easement held pursuant to this chapter or the Open Space Land Act (§10.1-1700 et seq.), (ii) devoted to open-space use as defined in §58.1-3230, and (iii) in any county, city or town which has provided for land use assessment and taxation of any class of land within its jurisdiction pursuant to §58.1-3231 or §58.1-3232, shall be assessed and taxed at the use value for open space, if the land otherwise qualifies for such assessment at the time the easement is dedicated. If an easement is in existence at the time the locality enacts land use assessment, the easement

shall qualify for such assessment. Once the land with the easement qualifies for land use assessment, it shall continue to qualify so long as the locality has land use assessment."

While Chapter 390 amended the Virginia Conservation Easement Act, the amended language also references the Virginia Open-Space Land Act and the tax law.

Chapter 390 is the first instance in which the privately-held conservation easements taken under the Virginia Conservation Easement Act may qualify for the taxation rates established for the open-space option of the tax law. The basic purpose of the change was to recognize the long-range commitment of landowners granting extensive and restrictive rights to their land in the form of a perpetual easement to be held for the public good. A locality offering any of the land-use-assessment options is to offer the open-space option to landowners who have granted such easements.

State-Agency-Specific Easement Authority Statutes

The agency-specific public-easement program is available to various state agencies and entities through their specific organic or enabling legislation, as specified below.

-The Department of Conservation and Recreation (§§10.1-201, 10.1-203, 10.1-204, 10.1-208, 10.1-210, 10.1-213, 10.1-216, 10.1-401, and 10.1-405 of the Code)

-Local Soil and Water Conservation Districts (§10.1-543 of the Code)

-Virginia State Park Foundation (§10.1-219 of the Code)

-Virginia Conservation and Recreation Foundation (§10.1-1021 of the Code)

-Virginia Outdoors Foundation (§10.1-1801 of the Code)

-Department of Historic Resources (§10.1-2202 of the Code)

-Board of Historic Resources (§10.1-2204 of the Code)

-Virginia Historic Preservation Foundation (§10.1-2402 of the Code)

While other state agencies, such as the Department of Forestry, Department of Game and Inland Fisheries, and the Virginia Marine Resources Commission have authority to acquire real property, none has specific authority to accept easements for conservation and open-space purposes. However, the Department of Forestry may be

able to acquire a conservation easement under the Virginia Open-Space Land Act.

All perpetual easements taken by the above-listed agencies with specific easement authority qualify the land for the open-space option of the tax law (pursuant to §58.1-3233.3(ii) of the Code) as being:

". . .(ii) subject to a recorded perpetual easement that is held by a public body, and promotes the open-space use classification, as defined in §58.1-3230. . ."

Chapter 4--Regulations

There are several regulations governing land-use assessment in Virginia. They are the statements of standards adopted by the Commissioner of Agriculture and Consumer Services, the State Forester, and the Director of the Department of Conservation and Recreation specified by §58.1-3230 of the Code. A synopsis of the content of each of these regulations appears below:

Commissioner of Agriculture and Consumer Services (Agriculture and Horticulture)

Under authority contained in the tax law, the Commissioner of Agriculture and Consumer Services has adopted Standards for Classification of Real Estate as Devoted to Agricultural Use and Horticultural Use under the Virginia Land Use Assessment Law (VR115-01-02) (hereinafter "Agricultural Standards"). The commissioner adopted the present Agricultural Standards on August 8, 1988.

The Agricultural Standards are broken into several sections.

Section 1 contains the requirement, subject to exceptions contained in the section, that land entitled to agricultural or horticultural use assessment must have a history of five consecutive years of previous use for:

"the production for sale of plants or animals, or to the production for sale of plant or animal products useful to man, or devoted to another qualifying use. . ."

This section also requires that the land be currently used for such purpose.

Section 2 requires that the applicant for use assessment certify that the "real estate is being used in a planned program of soil management and soil conservation practices" to reduce erosion, maintain soil nutrients, and control the growth of brush and certain other plants. The applicant must also certify that:

"the real estate is being used in a planned program of management and production of field crops, livestock, livestock products, poultry, poultry products, dairy, dairy products, aquaculture products, and horticultural products for sale."

There are provisions in section 2 as to (i) the minimum yield of the land that must be satisfied in the case of field crops, and (ii) the number of animals, by species, that the land must

support. There are also provisions relating to aquaculture, horticultural production, and timber production.

Section 3 contains the certification procedures. This provision authorizes the commissioner of the revenue or the local assessing officer to require an applicant:

"to certify that the real estate is devoted to the bona fide production for sale of agricultural and horticultural products being used in a planned program of soil management and a planned program of management and production of field crops, livestock, dairy, poultry, aquaculture, horticultural crops, and timber products."

Section 3 identifies certain documents that the commissioner of the revenue or local assessing officer "may find. . .useful in making his determination." Section 3 also provides that:

"In cases of uncertainty on the part of the commissioner of the revenue or the local assessing officer, the law authorizes him to request an opinion from the Commissioner of Agriculture and Consumer Services as to whether a particular property meets the criteria for agricultural or horticultural classification."

State Forester (Forests)

Under authority contained in the tax law, the State Forester has adopted Standards for Classification of Real Estate as Devoted to Forest Use under the Virginia Land Use Assessment Law (VR312-01-02) (hereinafter "Forestry Standards"). The State Forester adopted the present Forestry Standards on January 1, 1989.

The Forestry Standards are divided into several sections.

Section 1, Technical standards for classification of real estate devoted to forest use, describes the minimum standards to qualify for forestry use. The area must be at least twenty acres and have a sufficient number of trees per acre. The area can be for growing commercial forest products or, if specific conditions exist, be nonproductive forest land.

Section 2, Conservation of land resources, management and production, and certification, describes the manner in which the land is to be managed. The owner of the land is required to sign a commitment to manage the land to protect forest land and soil and water or to have a plan prepared by a professional forester.

Section 3, Opinions, provides that the State Forester will determine whether a particular property meets the criteria for forest use when requested to do so by a local assessing officer.

Director of the Department of Conservation and Recreation (Open Space)

The Director of the Department of Conservation and Recreation has adopted VR 215-01-01, Standards For The Classification Of Real Estate As Devoted To Open-Space Use Under The Virginia Land Use Assessment Law (hereinafter "Open-Space Standards").

The Open-Space Standards are divided into five sections:

Introduction

§1. General Standards

§2. Specific Standards

§3. Standards for written commitments by landowners to preserve open-space land use

§4. Opinions

Below is a description of each of these sections:

Introduction: The introduction states the authority for the Open-Space Standards which are, in fact, regulations promulgated under the Administrative Process Act and the Department of Conservation and Recreation's Regulatory Public Participation Procedures. The introduction also states the general purposes of the tax law.

§1. General standards: The general standards state that real estate must meet the requirements of the General Standards and the Specific Standards. Further, if the real property qualifies under the Specific standard C. 3, for a written commitment, then the property must also meet §3, standards for written commitments by landowners to preserve open-space land use. The general standards also address:

- A. Consistency with the land use plan
- B. Minimum acreage
- C. Other requirements
- D. Opinions

§2. Specific standards: The specific standards describe "land" as including water, submerged land, wetlands, marshes, and similar properties as well as land. The specific standards address lands devoted to:

- A. Park or recreation use

- B. Conservation of land or other natural resources
- C. Floodways
- D. Historic or Scenic Areas
- E. Assisting in the shaping of the character, direction and timing of community development, or for the public interest

While the general standards require the proposed open-space property to be consistent with the local comprehensive plan, the specific standards repeat two additional requirements or "qualifiers or filters" from the law:

A. Minimum acreage: Under §58.1-3233 of the Code, the statewide minimum acreage for open-space qualification is five acres. However, the locality may raise the minimum acreage to a figure higher than five acres. The locality may also lower the minimum acreage to two acres for real estate adjacent to a scenic river, a scenic highway, a Virginia byway or public property in the Virginia Outdoors Plan or when the locality has a density of population greater than 5,000 per square mile. (See §58.1-3233(2)(iii) of the Code).

The open-space planning by the Department of Conservation and Recreation required by the federal Land And Water Conservation Act to produce the Virginia Outdoors Plan is tied to the local comprehensive plan and the tax law and gives an additional level of land planning and protection capability to the locality.

B. Time commitments and restricted use: Real estate devoted to open-space use must be:

"(i) within an agricultural, a forestal, or an agricultural and forestal district entered into pursuant to Chapter 36 (§15.1-1507 et seq.) of Title 15.1,

(ii) subject to a recorded perpetual easement that is held by a public body, and promotes the open-space use classification, as defined in §58.1-3230, or

(iii) subject to a recorded commitment entered into by the landowner with the local governing body not to change the use to a non-qualifying use for a time period stated in the written commitment of not less than four years nor more than ten years. Such commitment shall be subject to uniform standards prescribed by the Director of the Department of Conservation and Recreation pursuant to the authority set out in §58.1-3240. Such commitment

shall run with the land for the applicable period, and may be terminated in the manner provided in §15.1-1513 for withdrawal of land from an agricultural, a forestal, or an agricultural and forestal district."

§3. Standards for written commitments by landowners to preserve open-space land use. This section specifies that before land can enjoy open-space assessment, the parties (the land owner and the governing body) must:

- A. Specify the locality (county, city or town).
- B. Describe the real estate to which the commitment applies.
- C. Include or exclude (depending on the nature of the land) the terms of paragraphs H. and I. (Paragraph H relates to waterways and wetlands, and paragraph I relates to use of motorized vehicles in sensitive lands. These two paragraphs must be included in agreements for properties which are to be provided or preserved for natural areas left in undeveloped states, including floodways. These paragraphs are unnecessary for agreements for other types of land uses, such as for a park or a farm use.)

The commitment was developed by comparing the existing and generic perpetual easement forms in use by the Virginia Historic Landmarks Board, the Virginia Outdoors Foundation, and the Nature Conservancy at the time when the Open-Space Standards were being drafted. Note was also made of the general conditions of easements developed by the Chesapeake Bay Foundation. Agricultural and forestry practices are allowed and encouraged which do not change the visual or ecological aspects of the property. No separation or split-off of lots, pieces, or parcels of the property is allowed for the duration of the time period selected.

§4. Opinions: A local assessing officer may request an opinion from the Director of the Department of Conservation and Recreation as to whether a particular property meets the criteria for open-space classification. The procedures are spelled out as to the data needed by the director from the assessing officer; the authority of the director to hold a hearing to obtain additional data; the assurance that the director shall issue an opinion as soon as possible after the facts are known; and the ability of the local assessing officer to appeal the director's opinion as provided in §58.1-3240 of the Code.

Chapter 5.--The Agencies

SLEAC

The SLEAC holds two public meetings each year, usually in August and September. At the first meeting, the ranges of suggested use values are introduced and discussed. At the second meeting, the ranges of suggested use values are affirmed by SLEAC and distributed to localities. SLEAC's meetings are open to the public. Private land owners, public-interest groups, and trade associations are among those who have appeared before SLEAC.

At present, the State Tax Commissioner serves as chairman of SLEAC.

SLEAC is appropriated fifty-three thousand dollars each fiscal year through the general-fund budget of the Department of Taxation. Ninety-five percent of SLEAC's budget is spent for computer management services from Virginia Polytechnic Institute and State University for the development of the suggested range of use values for the several land-use classes.⁴⁹

Department of Conservation and Recreation

The tax law contains several provisions that specify the role of the Department of Conservation and Recreation, including:

-§58.1-3230 of the Code, quoted in the endnotes, defines "real estate devoted to open-space use."

-§58.1-3240 of the Code makes the department director responsible for the development, under the Administrative Process Act, of regulatory standards related to the open-space option. The department is responsible for providing the standards, after adoption, to the local assessing officer of each locality adopting a land-use-assessment ordinance.

-§58.1-3233 of the Code, at subdivision 1, states that the local assessing officer may request an opinion from the Director of the Department of Conservation and Recreation, whether a particular property qualifies under the departmental standards for one of the classifications set forth therein.

-§58.1-3239 of the Code specifies that the director of the department is a member of the SLEAC. As a member of the SLEAC, the department's director is responsible for proposing an annual range of open-space values to SLEAC.

With respect to the establishment of ranges of values, such ranges

of values are provided specifically for golf courses and for swim and racket clubs. Other properties with more natural attributes are assessed under ranges of values established for agricultural or forestry properties.

Initially, the ranges of values for golf courses and for swim and racket clubs was developed through a statewide survey reporting the sale of "undeveloped lands" in either agricultural or forest use for the development of golf courses and swim and racket clubs. These sales values were deemed to be the value of raw land that was going to be developed into the golf course or swim and racket club.

Since 1971, the tax law and the Open-Space Standards have addressed land for parks and recreational purposes, conservation of land or other natural resources, floodways, historic or scenic purposes, or lands assisting in shaping the character, direction, and timing of community development. However, specific values for such lands were not addressed until the 1989 tax year--the same year the current Open-Space Standards became effective. With the effect of the 1988 amendments to the law, which re-emphasized the importance of the preservation of these natural lands, it became evident that open-space ranges of values needed to be established.

The best method to relate these open-space lands to the other land-use options of agriculture, horticulture, and forestry was to tie the open-space values for preservation purposes directly to the ranges of values for those productive value options. Lands that do qualify for the open-space option under all the requirements, including the time commitments and conformity with the local comprehensive land-use plan that are in forest or agricultural use are considered to be productive open space and assessed as if the land were actually in land use under those options. Thus the commonly-used practice was formalized of assigning forest land values to open-space lands in forest cover and the agricultural values to open-space lands in agricultural use. The only real differences are that the property is preserved and valued for open space rather than for the commercial production values and a time commitment is present on each property. In fact, the production records on such lands are immaterial to qualification.

Unproductive natural lands which qualify for the open-space option are recommended to be assessed as either non-productive forest land or as marginal agricultural land. Thus for the first time, the more environmentally sensitive lands such as wetlands, hillsides, and mountaintops were given ranges of value as open space.

Department of Agriculture and Consumer Services

The Commissioner of Agriculture and Consumer Services renders opinions, when requested, on whether land qualifies under the Agricultural Standards, for agricultural or horticultural use

assessment.

The Commissioner of Agriculture and Consumer Services is responsible for recommending values to the SLEAC for use-value assessment for land devoted to agricultural and horticultural purposes. The formula used by the SLEAC for such lands is as follows:

$$V = \frac{NIS}{i}$$

where V = estimated agricultural use value per acre
NIS = estimated annual net income stream per acre
i = applicable interest or capitalization rate

Department of Taxation

The Department of Taxation is responsible for providing assistance to localities in the general administration of local property taxation, if requested by the governing body, the commissioner of the revenue, or other local assessment official. The department's responsibility derives from the general powers and duties of the State Tax Commissioner, at §58.1-202(3) of the Code, which states that the Tax Commissioner shall:

"Exercise general supervision over all commissioners of the revenue so far as the duties of such officers pertain to state revenues, and confer with, instruct and advise all such officers in the performance of their duties to the extent stated."

The Tax Commissioner is further required by law, at §58.1-206 of the Code, to provide a continuing education program, which states in part:

"...There shall be established within the Department a program of continuing education for county, city and town officers responsible for the assessment of real estate, and for members and prospective members of boards of assessors and boards of equalization. Such program shall be composed of basic courses embodying the fundamental instruction essential for the equitable assessment of real estate. . . ."

In fulfillment of this requirement, the department conducts property tax seminars each year, and offers instruction concerning general administrative policy and guidelines for counties, cities, and towns to administer taxation programs, including the special land-use-assessment program. The department invites local assessment officials to attend this training.

The department assembles and distributes to localities the Recommended Ranges of Suggested Values approved by the SLEAC. The department reviews and drafts comments on: (i) proposed legislative changes that may impact the local revenue, and (ii) interpretations given the land-use laws that may require an amendment to the local ordinance.

The land-use application form is edited and printed by the department and distributed to localities.

Department of Forestry

The Department of Forestry calculates forestry land use rates as follows:

1. The annual management fee and stumpage prices for pulpwood and sawtimber are projected at 4% inflation, plus an additional 2% real price appreciation is applied to sawtimber prices to reflect historical trends.
2. Future cash flows are discounted back to the present at an 8% rate on an after-tax basis. The assumption is that this discount rate, or cost of capital, is representative of alternative long-term after-tax rates of return from other sources (e. g., after-tax stock earnings rates, or tax-free bonds).

FV STS = Future value of sawtimber stumpage
PV STS = Present value of sawtimber stumpage
FVIF = Future value interest factor
FV PWS = Future value of pulpwood stumpage
PV PWS = Present value of pulpwood stumpage
PVIF = Present value interest factor
FVIFA = Future value interest factor of an annuity
NPV = Net present value
AEV = Annual equivalent value

3. $FV\ STS = PV\ STS (FVIF @ 6\%, \text{ years at rotation}) \times MBF$
 $FV\ PWS = PV\ PWS(FVIF @ 4\%, \text{ years at thinning}) \times \text{cords}$
 $FV\ \text{annual costs} = PV\ \text{annual cost} (FVIFA @ 4\%, \text{ years at rotation})$
4. $NPV = FV\ STS (PVIF @ 8\%, \text{ years at rotation})$
 $+ FV\ PWS (PVIF @ 8\%, \text{ years at thinning})$
 $-FV\ \text{annual costs} (PVIF @ 8\%, \text{ years at rotation})$
 $-Establishment\ costs$
5. $AEV = NPV (FVIFA @ 8\%, \text{ years at rotation})$
6. The last step is determining land use value, calculated as

follows:

$$\frac{\text{AEV}}{\text{Capitalization rate}}$$

This is the same as determining the present value of a perpetuity where the value of the annual payment is divided by the discount rate.

Chapter 6.--Land-use Tax Programs Stakeholders Survey

A stakeholders survey was designed and administered to solicit information from major stakeholder groups regarding issues and concerns relating to the various land-use tax programs within the Commonwealth. The survey was designed in strict adherence to the study requirements identified in House Joint Resolution Number 669. The survey focused on obtaining information concerning the fairness of the incentive programs, possible improvements to the incentive programs, and methods for localities to promote the availability of the programs to qualified landowners. The survey was divided into agricultural and horticultural programs, forestry programs, and open-space programs. In a majority of the cases, respondents were authorized to select more than one option within a single category. Narrative comments were also requested and received, which were catalogued and have been retained as reference materials; they are not, however, part of this document, due to the volume of comments. It is anticipated that this information will be further analyzed and made use of in preparing the final report.

The stakeholder surveys were mailed to a wide array of stakeholder groups, which fall into four major categories. They are agricultural and horticultural interest groups, forestry interest groups, open-space interest groups, and local government interest groups. A compilation of the responses from each of these groups is as follows:

AGRICULTURAL AND HORTICULTURAL INTEREST GROUPS
VIRGINIA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES
LAND USE TAX PROGRAM - STAKEHOLDERS SURVEY
IN RESPONSE TO HJR 669 - PERCENTAGE OF RESPONSES

9/30/93

TOTAL RESPONSES RECEIVED TO DATE - 26

I. Agricultural and Horticultural

1. How would you assess the fairness of this incentive program?
 - 0 - 4% (represents a high degree of unfairness)
 - 1 - 4%
 - 2 - 8%
 - 3 - 19%
 - 4 - 30%
 - 5 - 27% (represents a high degree of fairness)
 - N/A - 8%

2. What improvements would you suggest for this incentive program?
 - 1 - 23% Expand the benefits of the program.
 - 2 - 15% Assess other possible program options.
 - 3 - 58% Determine methods to assure consistency of application at the local level.
 - 4 - 27% Mandate participation by the localities.
 - 5 - 23% Assess appeal processes.
 - 6 - 12% Other _____
 - N/A - 12%

3. What ways would you suggest for localities to promote the availability of the program to qualified landowners?
 - 1 - 31% Establish a single individual as a source of reference.
 - 2 - 46% Develop written materials for distribution to interested parties upon request.
 - 3 - 35% Provide annual written reminders of requirements.
 - 4 - 54% Notify citizens of changes in the program.
 - 5 - 27% Provide program information to all new residents.
 - 6 - 12% Other _____
 - N/A - 15%

II. Forestry

1. How would you assess the fairness of this incentive program?
 - 0 - 4% (represents a high degree of unfairness)
 - 1 - 4%
 - 2 - 4%
 - 3 - 23%
 - 4 - 19%
 - 5 - 19% (represents a high degree of fairness)
 - N/A - 27%

2. What improvements would you suggest for this incentive program?
 - 1 - 23% Expand the benefits of the program.
 - 2 - 15% Assess other possible program options.
 - 3 - 54% Determine methods to assure consistency of application at the local level.
 - 4 - 19% Mandate participation by the localities.
 - 5 - 19% Assess appeal processes.
 - 6 - 8% Other _____

N/A - 23%

3. What ways would you suggest for localities to promote the availability of the program to qualified landowners?

- 1 - 27% Establish a single individual as a source of reference.
 - 2 - 46% Develop written materials for distribution to interested parties upon request.
 - 3 - 38% Provide annual written reminders of requirements.
 - 4 - 50% Notify citizens of changes in the program.
 - 5 - 27% Provide program information to all new residents.
 - 6 - 4% Other _____
- N/A - 27%

III. Open Space

1. How would you rate the fairness of this incentive program? (Check one.)

- 0 - 4% (represents a high degree of unfairness)
 - 1 - 4%
 - 2 - 4%
 - 3 - 35%
 - 4 - 19%
 - 5 - 8% (represents a high degree of fairness)
- N/A - 27%

2. What improvements would you suggest for this incentive program? (Check the appropriate categories.)

- 1 - 23% Expand the benefits of the program.
 - 2 - 23% Assess other possible program options.
 - 3 - 50% Determine methods to assure consistency of application at the local level.
 - 4 - 15% Mandate participation by the localities.
 - 5 - 15% Assess appeal processes.
 - 6 - 8% Other _____
- N/A - 27%

3. What ways would you suggest for localities to promote the availability of the program to qualified landowners? (Check the appropriate categories.)

- 1 - 31% Establish a single individual as a source of reference.
 - 2 - 42% Develop written materials for distribution to interested parties upon request.
 - 3 - 27% Provide annual written reminders of requirements.
 - 4 - 50% Notify citizens of changes in the program.
 - 5 - 31% Provide program information to all new residents.
 - 6 - 12% Other _____
- N/A - 31%

FORESTRY INTEREST GROUPS
VIRGINIA DEPARTMENT OF FORESTRY
LAND USE TAX PROGRAM - STAKEHOLDERS SURVEY
IN RESPONSE TO IJR 669 - PERCENTAGE OF RESPONSES

9/30/93

TOTAL RESPONSES RECEIVED TO DATE - 33

I. Agricultural and Horticultural

1. How would you assess the fairness of this incentive program?
 - 0 - 0% (represents a high degree of unfairness)
 - 1 - 0%
 - 2 - 3%
 - 3 - 15%
 - 4 - 18%
 - 5 - 36% (represents a high degree of fairness)
 - N/A - 27%

2. What improvements would you suggest for this incentive program?
 - 1 - 21% Expand the benefits of the program.
 - 2 - 12% Assess other possible program options.
 - 3 - 36% Determine methods to assure consistency of application at the local level.
 - 4 - 42% Mandate participation by the localities.
 - 5 - 9% Assess appeal processes.
 - 6 - 0% Other _____
 - N/A - 27%

3. What ways would you suggest for localities to promote the availability of the program to qualified landowners?
 - 1 - 21% Establish a single individual as a source of reference.
 - 2 - 58% Develop written materials for distribution to interested parties upon request.
 - 3 - 18% Provide annual written reminders of requirements.
 - 4 - 30% Notify citizens of changes in the program.
 - 5 - 39% Provide program information to all new residents.
 - 6 - 3% Other _____
 - N/A - 30%

II. Forestry

1. How would you assess the fairness of this incentive program?
 - 0 - 3% (represents a high degree of unfairness)
 - 1 - 0%
 - 2 - 3%
 - 3 - 18%
 - 4 - 15%
 - 5 - 55% (represents a high degree of fairness)
 - N/A - 6%

2. What improvements would you suggest for this incentive program?
 - 1 - 24% Expand the benefits of the program.
 - 2 - 24% Assess other possible program options.
 - 3 - 64% Determine methods to assure consistency of application at the local level.
 - 4 - 55% Mandate participation by the localities.
 - 5 - 15% Assess appeal processes.
 - 6 - 6% Other _____
 - N/A - 6%

3. What ways would you suggest for localities to promote the availability of the program to qualified landowners?

- 1 - 36% Establish a single individual as a source of reference.
- 2 - 76% Develop written materials for distribution to interested parties upon request.
- 3 - 36% Provide annual written reminders of requirements.
- 4 - 52% Notify citizens of changes in the program.
- 5 - 39% Provide program information to all new residents.
- 6 - 6% Other _____
- N/A - 9%

III. Open Space

1. How would you rate the fairness of this incentive program? (Check one.)

- 0 - 3% (represents a high degree of unfairness)
- 1 - 0%
- 2 - 18%
- 3 - 9%
- 4 - 3%
- 5 - 21% (represents a high degree of fairness)
- N/A - 45%

2. What improvements would you suggest for this incentive program? (Check the appropriate categories.)

- 1 - 15% Expand the benefits of the program.
- 2 - 15% Assess other possible program options.
- 3 - 36% Determine methods to assure consistency of application at the local level.
- 4 - 18% Mandate participation by the localities.
- 5 - 0% Assess appeal processes.
- 6 - 0% Other _____
- N/A - 42%

3. What ways would you suggest for localities to promote the availability of the program to qualified landowners? (Check the appropriate categories.)

- 1 - 18% Establish a single individual as a source of reference.
- 2 - 45% Develop written materials for distribution to interested parties upon request.
- 3 - 9% Provide annual written reminders of requirements.
- 4 - 27% Notify citizens of changes in the program.
- 5 - 30% Provide program information to all new residents.
- 6 - 3% Other _____
- N/A - 42%

OPEN SPACE INTEREST GROUPS

VIRGINIA DEPARTMENT OF CONSERVATION AND RECREATION
LAND USE TAX PROGRAM - STAKEHOLDERS SURVEY
IN RESPONSE TO HJR 669 - PERCENTAGE OF RESPONSES

9/30/93

TOTAL RESPONSES RECEIVED TO DATE - 34

I. Agricultural and Horticultural

1. How would you assess the fairness of this incentive program?
 - 0 - 3% (represents a high degree of unfairness)
 - 1 - 3%
 - 2 - 3%
 - 3 - 24%
 - 4 - 42%
 - 5 - 24% (represents a high degree of fairness)
 - N/A - 3%

2. What improvements would you suggest for this incentive program?
 - 1 - 21% Expand the benefits of the program.
 - 2 - 29% Assess other possible program options.
 - 3 - 56% Determine methods to assure consistency of application at the local level.
 - 4 - 21% Mandate participation by the localities.
 - 5 - 24% Assess appeal processes.
 - 6 - 15% Other _____
 - N/A - 3%

3. What ways would you suggest for localities to promote the availability of the program to qualified landowners?
 - 1 - 24% Establish a single individual as a source of reference.
 - 2 - 56% Develop written materials for distribution to interested parties upon request.
 - 3 - 53% Provide annual written reminders of requirements.
 - 4 - 53% Notify citizens of changes in the program.
 - 5 - 29% Provide program information to all new residents.
 - 6 - 9% Other _____
 - N/A - 6%

II. Forestry

1. How would you assess the fairness of this incentive program?
 - 0 - 0% (represents a high degree of unfairness)
 - 1 - 9%
 - 2 - 6%
 - 3 - 24%
 - 4 - 29%
 - 5 - 21% (represents a high degree of fairness)
 - N/A - 15%

2. What improvements would you suggest for this incentive program?
 - 1 - 15% Expand the benefits of the program.
 - 2 - 21% Assess other possible program options.
 - 3 - 62% Determine methods to assure consistency of application at the local level.
 - 4 - 29% Mandate participation by the localities.
 - 5 - 21% Assess appeal processes.
 - 6 - 9% Other _____
 - N/A - 15%

3. What ways would you suggest for localities to promote the availability of the program to qualified landowners?

1 - 21% Establish a single individual as a source of reference.
2 - 53% Develop written materials for distribution to interested parties upon request.
3 - 53% Provide annual written reminders of requirements.
4 - 41% Notify citizens of changes in the program.
5 - 32% Provide program information to all new residents.
6 - 3% Other _____
N/A - 15%

III. Open Space

1. How would you rate the fairness of this incentive program? (Check one.)

0 - 3% (represents a high degree of unfairness)
1 - 6%
2 - 3%
3 - 29%
4 - 18%
5 - 12% (represents a high degree of fairness)
N/A - 21%

2. What improvements would you suggest for this incentive program? (Check the appropriate categories.)

1 - 24% Expand the benefits of the program.
2 - 29% Assess other possible program options.
3 - 41% Determine methods to assure consistency of application at the local level.
4 - 15% Mandate participation by the localities.
5 - 12% Assess appeal processes.
6 - 3% Other _____
N/A - 26%

3. What ways would you suggest for localities to promote the availability of the program to qualified landowners? (Check the appropriate categories.)

1 - 24% Establish a single individual as a source of reference.
2 - 50% Develop written materials for distribution to interested parties upon request.
3 - 41% Provide annual written reminders of requirements.
4 - 41% Notify citizens of changes in the program.
5 - 29% Provide program information to all new residents.
6 - 0% Other _____
N/A - 26%

LOCAL GOVERNMENT INTEREST GROUPS
VIRGINIA DEPARTMENT OF TAXATION
LAND USE TAX PROGRAM - STAKEHOLDERS SURVEY
IN RESPONSE TO HJR 669 - PERCENTAGE OF RESPONSES

9/30/93

TOTAL RESPONSES RECEIVED TO DATE - 160

I. Agricultural and Horticultural

1. How would you assess the fairness of this incentive program?
 - 0 - 4% (represents a high degree of unfairness)
 - 1 - 3%
 - 2 - 12%
 - 3 - 32%
 - 4 - 54%
 - 5 - 45 (represents a high degree of fairness)
 - N/A - 22%

2. What improvements would you suggest for this incentive program?
 - 1 - 5% Expand the benefits of the program.
 - 2 - 20% Assess other possible program options.
 - 3 - 49% Determine methods to assure consistency of application at the local level.
 - 4 - 4% Mandate participation by the localities.
 - 5 - 3% Assess appeal processes.
 - 6 - 12% Other _____
 - N/A - 26%

3. What ways would you suggest for localities to promote the availability of the program to qualified landowners?
 - 1 - 14% Establish a single individual as a source of reference.
 - 2 - 49% Develop written materials for distribution to interested parties upon request.
 - 3 - 23% Provide annual written reminders of requirements.
 - 4 - 19% Notify citizens of changes in the program.
 - 5 - 8% Provide program information to all new residents.
 - 6 - 8% Other _____
 - N/A - 25%

II. Forestry

1. How would you assess the fairness of this incentive program?
 - 0 - 4% (represents a high degree of unfairness)
 - 1 - 8%
 - 2 - 14%
 - 3 - 21%
 - 4 - 18%
 - 5 - 6% (represents a high degree of fairness)
 - N/A - 29%

2. What improvements would you suggest for this incentive program?
 - 1 - 5% Expand the benefits of the program.
 - 2 - 8% Assess other possible program options.
 - 3 - 39% Determine methods to assure consistency of application at the local level.
 - 4 - 3% Mandate participation by the localities.
 - 5 - 2% Assess appeal processes.
 - 6 - 11% Other _____
 - N/A - 34%

3. What ways would you suggest for localities to promote the availability of the program to qualified landowners?

- 1 - 12% Establish a single individual as a source of reference.
- 2 - 41% Develop written materials for distribution to interested parties upon request.
- 3 - 21% Provide annual written reminders of requirements.
- 4 - 17% Notify citizens of changes in the program.
- 5 - 8% Provide program information to all new residents.
- 6 - 7% Other _____
- N/A - 34%

III. Open Space

1. How would you rate the fairness of this incentive program? (Check one.)

- 0 - 8% (represents a high degree of unfairness)
- 1 - 3%
- 2 - 12%
- 3 - 19%
- 4 - 14%
- 5 - 3% (represents a high degree of fairness)
- N/A - 43%

2. What improvements would you suggest for this incentive program? (Check the appropriate categories.)

- 1 - 6% Expand the benefits of the program.
- 2 - 18% Assess other possible program options.
- 3 - 29% Determine methods to assure consistency of application at the local level.
- 4 - 4% Mandate participation by the localities.
- 5 - 1% Assess appeal processes.
- 6 - 7% Other _____
- N/A - 46%

3. What ways would you suggest for localities to promote the availability of the program to qualified landowners? (Check the appropriate categories.)

- 1 - 9% Establish a single individual as a source of reference.
- 2 - 34% Develop written materials for distribution to interested parties upon request.
- 3 - 13% Provide annual written reminders of requirements.
- 4 - 11% Notify citizens of changes in the program.
- 5 - 7% Provide program information to all new residents.
- 6 - 3% Other _____
- N/A - 50%

KEY - LAND USE TAX PROGRAM - STAKEHOLDERS SURVEY
AGRICULTURAL AND HORTICULTURAL INTEREST GROUPS

VA DEPT OF AGRICULTURE AND CONSUMER SERVICES

AGBD or VDACSBD	-	Virginia Department of Agriculture and Consumer Services Advisory Board
CA	-	Commodity Associations
CB	-	Commodity Boards
CB/AGBD	-	Member of a Commodity Board and VDACS Board
HIA	-	House Agriculture
ML	-	Mailing List (individuals expressing an interest in HJR 669)
SA	-	Senate Agriculture
VAFB	-	Virginia Farm Bureau

KBY - LAND USE TAX PROGRAM - STAKEHOLDERS SURVEY

FORESTRY INTEREST GROUPS

VA DEPT OF FORESTRY

- LMA - Lumber Manufacturers Association
- LLO - Large Landowners
- VFA - Virginia Forestry Association
- BOF - Board of Forestry

KBY - LAND USE TAX PROGRAM - STAKEHOLDERS SURVEY

OPEN SPACE INTEREST GROUPS

VA DEPT OF CONSERVATION AND RECREATION

BCR - Board of Conservation and Recreation Members

VSWCB - VA Soil and Water Conservation Board Members

LSWCD - 45 Local Soil and Water Conservation Districts Chairmen

ST - State Treasurer

VOF - Virginia Outdoors Foundation Members and Executive Director

VCRF - Virginia Conservation and Recreation Foundation Members

SPF - State Parks Foundation Members

DHR - Department of Historic Resources Members

VHPF - VA Historic Preservation Foundation Members

ENV - Piedmont Environmental Council

- Chesapeake Bay Foundation
- The Conservation Fund
- Loudoun Open Space Committee
- Lower James River Association
- VA. Recreation and Park Society
- Conservation Council of Virginia
- Alliance for the Chesapeake Bay
- Virginia Environmental Network
- Virginia Population and Growth Comm. Executive Director
- VA. Chapter Amer. Soc. Land. Arch.

Rationale

BCR represent a wide variety of interests as does the Virginia Population and Growth Commission.

Virginia Soil and Water Conservation Board represents the agricultural interest.

Local Soil and Water Conservation Districts represent the agricultural interest.

The Virginia Outdoors Foundation, Virginia Conservation and Recreation Foundation, Virginia State Parks Foundation, and Board of Historic Resources all represent state entities that can hold property by perpetual easements.

The State Treasurer is a member of several boards/foundations and it was recommended that he receive only one survey form. Therefore, he has been singled out in the list.

Environmental groups represent Open Space interests.

KEY - LAND USE TAX PROGRAM - STAKEHOLDERS SURVEY

LOCAL GOVERNMENT INTEREST GROUPS

VA DEPT OF TAXATION

- 001 - Commissioners of the Revenue
- 002 - County and City Assessors
- 003 - Administrators (County and City)
- 000 - Towns with Town Managers

Chapter 7.--Recommendations for Additional Research

Obtaining the following information would provide further insights into the land-use assessment program in Virginia:

- Number of participants in localities by option
- Role of the localities
- Assessment of uniformity of application
- Analysis of compliance with standards
- Impact of current system
- Assessment of other land-use tax-incentive programs
- Review of other states' experiences
- Recommendations for change, if any

Although the performance of the kind of research necessary to obtain this kind of information is beyond the expertise and resource capabilities of the agencies that have undertaken the present, interim report, there are organizations that are capable of doing this kind of research.

Recommendation: House Joint Resolution No. 669 stipulated that the requested study should be accomplished at no net cost to the Commonwealth. It is the recommendation of the study group that the Commonwealth contract with an independent organization to conduct Phase II of the study. This action is recommended so as to:

1. Provide for statistically valid data collection and analysis;
2. Ensure the objectivity of the study;
3. Maximize public participation in the study; and
4. Provide the required technical expertise necessary to assure the level of analysis that this important issue deserves.

The study group estimates that the cost of contracting with an independent organization would be as much as \$125,000. In order for the assigned agencies to complete the study fully, it is recommended that the 1994 General Assembly provide the necessary funding.

Endnotes

1. The Constitution of Virginia: Report of the Commission on Constitutional Revision (Charlottesville, Virginia: The Michie Company; 1969).
2. Ibid., pp. 21-22.
3. Ibid., pp. 485 et seq.
4. Ibid., p. 7.
5. §58.1-3237(B) of the Code of Virginia (1950), as amended (hereinafter "Code") states:

"The roll-back tax shall be equal to the sum of the deferred tax for each of the five most recent complete tax years including simple interest on such roll-back taxes at a rate set by the governing body, no greater than the rate applicable to delinquent taxes in such locality. . .for each of the tax years. The deferred tax for each year shall be equal to the difference between the tax levied and the tax that would have been levied based on the fair market value assessment of the real estate for that year. In addition the taxes for the current year shall be extended on the basis of fair market value which may be accomplished by means of a supplemental assessment based upon the difference between the use value and the fair market value."
6. John L. Knapp and Bruce K. Johnson, "Use-Value Taxation in Virginia," Land: Issues and Problems (No. 62; August 1982-February 1983).
7. Article X, §2, Constitution of Virginia, emphasis added
8. §§58.1-3229 et seq. of the Code
9. §§15.1-1506 et seq. of the Code
10. §§15.1-1513.1 et seq. of the Code
11. §§10.1-1009 et seq. of the Code
12. §58.1-3229 of the Code
13. §§58.1-3229, 15.1-1507, and 15.1-1513.2 of the Code

14. §58.1-3229 of the Code
15. §§58.1-3229, 15.1-1507, and 15.1-1513.2 of the Code
16. §§15.1-1507 and 15.1-1513.2 of the Code
17. Ibid.
18. §§58.1-3229, 15.1-1507, and 15.1-1513.2 of the Code
19. §58.1-3229 of the Code
20. §15.1-1512(C) of the Code; emphasis added
21. §58.1-3229 of the Code
22. §§15.1-1507 and 15.1-1513.2 of the Code
23. §58.1-3229 of the Code
24. §58.1-3231 of the Code
25. The law enacted by the Legislature defines these terms as follows:

"Real estate devoted to agricultural use" shall mean real estate devoted to the bona fide production for sale of plants and animals useful to man under uniform standards prescribed by the Commissioner of Agriculture and Consumer Services or devoted to and meeting the requirements and qualifications for payments or other compensation pursuant to a soil conservation program under an agreement with an agency of the federal government. Real estate upon which recreational activities are conducted for a profit or otherwise, shall be considered real estate devoted to agricultural use as long as the recreational activities conducted on such real estate do not change the character of the real estate so that it does not meet the uniform standards prescribed by the Commissioner.

"Real estate devoted to horticultural use" shall mean real estate devoted to the bona fide production for sale of fruits of all kinds, including grapes, nuts, and berries; vegetables; nursery and floral products under uniform standards prescribed by the Commissioner of Agriculture and Consumer Services; or real estate devoted to and meeting the requirements and qualifications for payments or other compensation pursuant to a soil conservation program under an agreement with an agency of the federal government. Real estate upon which recreational activities are conducted for profit or

otherwise, shall be considered real estate devoted to horticultural use as long as the recreational activities conducted on such real estate do not change the character of the real estate so that it does not meet the uniform standards prescribed by the Commissioner.

"Real estate devoted to forest use" shall mean land including the standing timber and trees thereon, devoted to tree growth in such quantity and so spaced and maintained as to constitute a forest area under standards prescribed by the State Forester pursuant to the authority set out in §58.1-3240. Real estate upon which recreational activities are conducted for profit, or otherwise, shall still be considered real estate devoted to forest use as long as the recreational activities conducted on such real estate do not change the character of the real estate so that it no longer constitutes a forest area under standards prescribed by the State Forester pursuant to the authority set out in §58.1-3240.

"Real estate devoted to open-space use" shall mean real estate used as to be provided or preserved for park or recreational purposes, conservation of land or other natural resources, floodways, historic or scenic purposes, or assisting in the shaping of the character, direction, and timing of community development or for the public interest and consistent with the local land-use plan under uniform standards prescribed by the Director of the Department of Conservation and Recreation pursuant to the authority set in §58.1-3240, and the local ordinance."

(§58.1-3230 of the Code)

26. §58.1-3231 of the Code
27. §58.1-3233 of the Code
28. §58.1-3236 of the Code
29. §58.1-3239 of the Code
30. §58.1-3239 of the Code
31. §58.1-3240 of the Code
32. §58.1-3240 of the Code
33. §58.1-3234 of the Code
34. §58.1-3238 of the Code

35. §58.1-3242 of the Code
36. §58.1-3237 of the Code
37. §58.1-3236(D) of the Code. The Department of Taxation approves and provides to localities the land book form in which such values are recorded.

The taxpayer has a right to appeal use values to a board of equalization, by virtue of §§58.1-3350 and 58.1-3243.

38. §15.1-1511 of the Code
39. §§15.1-1511 and 15.1-1513 of the Code
40. §15.1-1508 of the Code
41. §15.1-1512 of the Code
42. §15.1-1509 of the Code
43. §15.1-1513.6 of the Code
44. §15.1-1513.3 of the Code
45. §15.1-1513.6 of the Code
46. §15.1-1513.3 of the Code
47. §15.1-1513.7 of the Code
48. §§15.1-1513.8 and 15.1-1513.9 of the Code
49. The remaining amount of the budget is encumbered for printing The State Land Evaluation and Advisory Manual ("the Manual") and other miscellaneous expenses. The Manual, created, edited, and published by the Department of Taxation, is distributed to localities, and upon request is provided to any other interested person or organization at no cost. The Manual consists of three general sections and addendum; reprints of all statutes from Title 58.1 governing the special assessment for agriculture, horticulture, forest and open space land; official opinions of the Attorney General of Virginia, and the statements of standards adopted by the agency heads. The addendum consists of a draft model ordinance for localities and a copy of the state land-use application form (LU-1). The Manual is published from time to time as needed owing to changes in legislation, the statements of standards or opinions of the Attorney General affecting the local administration of all land-use programs. There have not been any special assessment cases heard by the Virginia

Supreme Court. Any decision issued by the Supreme Court of Virginia affecting land-use taxation would be distributed by SLEAC to all localities.

Appendixes

A. HJR 669

B. James W. Folmar, et al., Procedures Employed to Determine Use-Value of Agricultural Land in Virginia with Estimated Use Values for 87 Jurisdictions Authorizing Use-Value Taxation of Such Land (Blacksburg, Virginia: September, 1992), 48 pp.

C. 1994 Forest Land Use Values, Land Use Assessment Law (Department of Forestry, August, 1993)

D. State Land Evaluation Advisory Council, 1994 Suggested Dollar Per Acre Assessment Ranges for Qualifying Open Space Land under the Use Value Tax Assessment Program

E. State Land Evaluation Advisory Council, 1993 Suggested Dollar per Acre Assessment Ranges for Qualifying Open Space Land under the Use Value Tax Assessment Program

F. Virginia Outdoors Foundation, Number of Acres under Easement in Each County

G. Board of Historic Resources Easements (Current as of August 13, 1993)

H. Counties and Cities with ordinance for special assessment for land preservation for agricultural, horticultural, forest and open space

I. Virginia Agricultural and Forestal Districts, Breakdown by Counties and Cities as of 08/25/93

(This document contains a listing of the counties and cities having agricultural and forestal districts, the total number of districts in each county or city, and the total number of acres in each county or city devoted to agricultural and forestal districts. The information contained in this document is that which is reported to the Department of Agriculture and Consumer Services by the counties and cities.)

J. A listing of agricultural and forestal districts, by name

K. Application for Taxation on the Basis of a Land Use Assessment

L. Model Ordinance for Special Assessments for Agricultural, Horticultural, Forest or Open Space Real Estate

M. Selected Bibliography

(The appendixes may be viewed in the Office of the Director of the Office of Policy, Planning, and Agricultural Development; Department of Agriculture and Consumer Services; Washington Building; Room 211; 1100 Bank Street; Richmond, Virginia 23219 (804) 786-3538.)

GENERAL ASSEMBLY OF VIRGINIA--1993 SESSION

HOUSE JOINT RESOLUTION NO. 669

APP. A

Requesting the Virginia Department of Agriculture and Consumer Services, assisted by the Departments of Conservation and Recreation, Forestry, and Taxation, to study the extent of use and fairness of the Commonwealth's various "land use" tax programs.

Agreed to by the House of Delegates, February 18, 1993

Agreed to by the Senate, February 16, 1993

WHEREAS, Virginia values its open spaces, forests and agricultural industries; and
WHEREAS, agriculture and forestry businesses comprise the Commonwealth's first and third largest industries, respectively; and

WHEREAS, it is important to the welfare of the citizens of Virginia to continue to enjoy the jobs, products, foods, consumer goods and qualities of life provided by the agricultural and forestry industries; and

WHEREAS, Virginia has had several ad valorem taxation assessment programs in place since the 1970s for qualified landowners to avail themselves of; and

WHEREAS, localities have promoted the knowledge and use of these programs in varying degrees; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Department of Agriculture and Consumer Services, assisted by the Departments of Conservation and Recreation, Forestry, and Taxation, be requested to study cooperatively the extent of use and fairness of the several "land use" tax incentive programs currently existing in Virginia and recommend any needed improvements and ways for localities to promote the availability of the programs to qualified landowners. This study shall include landowners from the farming and forestry communities and representatives from local governments and shall be accomplished at no net cost to the Commonwealth. An interim report shall be completed no later than November 1, 1993, and a final report shall be completed no later than November 1, 1994.

The Department of Agriculture and Consumer Services shall submit its findings and recommendations to the Governor and the 1995 Session of the General Assembly in accordance with the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

