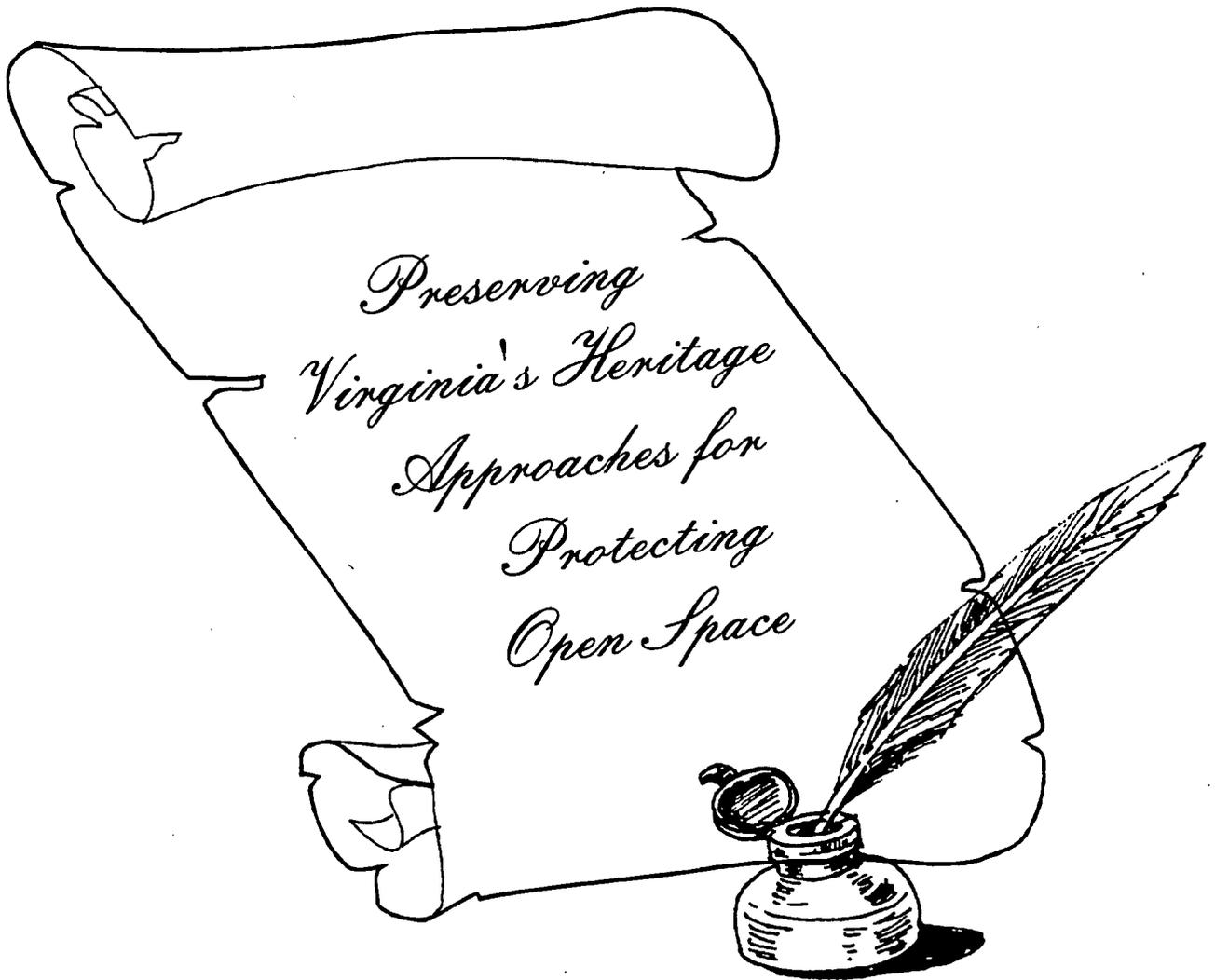


THOMAS JEFFERSON INSTITUTE FOR PUBLIC POLICY

Campaign '99 Issue Paper



Gregory C. Evans

Director

Northern Virginia Soil & Water
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Thomas Jefferson Institute for Public Policy

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This Campaign '99 Issue Paper, "Preserving Virginia's Heritage: Approaches for Protecting Open Space," is published by the Thomas Jefferson Institute for Public Policy. It is sent to all state elected officials, all candidates running for state office in 1999, business executives, academic leaders, policy experts, and the media in Virginia.

The ideas in this Issue Paper do not necessarily reflect the views of the Thomas Jefferson Institute or its Board of Directors and nothing in this study should be construed as an attempt to hinder or aid any legislation.

Foreword

A consequence of our success as a nation and a state is, among others, traffic congestion, overcrowded schools, and a disappearing rural landscape in our suburbs. As our economy expands and prospers, people move into the state for the jobs being created. With new families, we get the demand for new schools. With more jobs, we get the demand for better transportation systems. And on top of all this, our citizens desire an environment with clean air, clean water, trees, and quiet parks.

Can the issue of "urban sprawl" be confronted without destroying the jobs that make our economy function and our standard of living one of the highest in the world? That question will be answered over the next few years as our policy makers and our decision leaders confront this issue in cooperation with our citizens.

This paper, "Preserving Virginia's Heritage: Approaches for Protecting Open Space," is an outline of the available actions for preserving undeveloped land while our economy expands. The various methods and approaches that our policy makers can use under current law are detailed. This issue paper shows that we are not lacking the tools needed to properly protect our developing suburbs or to enhance already developed areas. We are only lacking the will to carefully and realistically use these tools for the good of our communities

This paper is a primer on currently available actions that our local and state officials already have available to them and/or which are being used in other parts of the country and could be considered for use here in Virginia.

The author is a well-known and well-respected environmental and business leader who understands that economic development and protection of our environment do not have to be mutually exclusive.

This study is published by the Thomas Jefferson Institute. It is part of its *Campaign '99 Project* series of issue papers sent to all candidates running for state office as well as business leaders and the media. It is hoped that it will be read and used both in the campaign and by those who will be making policy in the coming months and years.

Michael W. Thompson
Chairman and President
Thomas Jefferson Institute for Public Policy
September 1999

**PRESERVING VIRGINIA'S HERITAGE:
APPROACHES FOR PROTECTING OPEN SPACE**

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PRESERVING VIRGINIA'S HERITAGE: APPROACHES FOR PROTECTING OPEN SPACE

By: Gregory C. Evans

"I believe that local governments should be able to exempt wetlands and riparian buffers - both existing and new - from real estate taxes....I will work with local governments to control the harmful effects of urban sprawl and encourage conservation easements."

Gubernatorial Candidate James Gilmore, 1997

Introduction

"Open space": the term conjures different images in the mind depending on to whom one is speaking. To some, it means scenic vistas or natural areas that should be protected for future generations. To others, it represents opportunities to bring economic growth that create jobs and new neighborhoods that increase tax bases for local jurisdictions. To still others, it represents the preservation of an agricultural way of life. And to yet another set, it might mean parks and places for recreation. Whatever the interest, there has been growing public pressure and a sense of urgency throughout Virginia to develop programs to preserve open space either by purchase, providing expanded incentives to property owners to donate land or by the acquisition of conservation and other similar types of easements.

In its simplest sense, open space has been defined as land that has not been developed for intensive human uses; it has no (or very few) buildings, roads, and other structures associated with human development. The state of Utah takes that definition a step further and defines open space as "land that is important, as determined by the local entity, to be used for wildlife habitat, watershed, recreational use, or another use related to the quality of life or cultural heritage of the citizens of the state." This definition of open space also includes agricultural land. Given Virginia's strong tradition of preserving local government's authority in land use decisions, Utah's definition would seem to be applicable to the Commonwealth.

Generally, in the discussion of what land should be considered for preservation as open space, priority is usually given to three areas: protection of environmental and natural/cultural features which would encompass forestland; farmland preservation; and meeting park and recreation needs.

Virginia Actions Regarding Open Space

Virginia's Open Space Preservation Act, the Open Space Land Act and the Virginia Land Conservation Foundation laws currently in the Virginia Code provide the legal basis for acquiring and preserving open space in the Commonwealth. Governor Gilmore, as Attorney General chaired a Governor's Commission on Environmental Stewardship that addressed, among other issues, the desirability and benefits of open spaces such as

riparian buffers and wetlands. As Governor, he has now charged his staff with looking at approaches for adding to Virginia's open space.

The General Assembly in 1997 established the Joint Subcommittee to Study the Future of Virginia's Environment chaired by Speaker of the House Tom Moss. Acting on the recommendations of the "Moss Commission", they passed several bills providing additional incentives for protecting open space. In 1999, the General Assembly reconstituted the Virginia Conservation Recreation Foundation as the Virginia Land Conservation Foundation, funded with a \$1.75 million appropriation. The Foundation, operating under the direction of the Secretary of Natural Resources has authority to expend funds for farmland, forests, historic sites, natural areas, parks and open space.

This past year, House Republican Leader Delegate Vance Wilkins created a legislative committee headed by Delegate David Albo (42 District) to work with organizations representing both the development and the environmental communities on the open space funding issue. The Committee's charge has been to develop a set of general principles to preserve open space in Virginia while still protecting a citizen's constitutional right to ownership of property. The recommendations of the Albo committee are expected to be introduced as a bill in the 2000 session of the General Assembly.

The legal basis for actions pertaining to open space in Virginia are found under Title 10.1 of the Code of Virginia. Transactions involving public entities are covered under the Open Space Land Act. Transactions involving private entities are covered under the Conservation Easement Act. The distinctions require differences in terminology when discussing various open space acquisition tools and they will be discussed later in this paper.

Virginia is not alone in dealing with open space issues. Suburban growth patterns, long associated with economic expansion, have created rapid and scattered development throughout the United States that consumes farmland and wildlife habitat, compromises watersheds, and destroys scenic landscapes and recreational resources. The National Governors' Association has reported that Governors across the country have begun to target state investments to preserve open space and steer growth to developed areas with existing infrastructure and services in response to growing public concern about the pace and impacts of development.

Approaches to Open Space Preservation in Virginia

In Virginia, open space has traditionally been preserved through governmental actions including zoning, ordinance regulation and fee simple acquisition of federal, state and local parklands; and through voluntary private donations and acquisition of interests in land by private non-profit organizations. Governmental action regarding land use is traditionally reserved to localities. Voluntary land conservation efforts are being undertaken by national, state and local non-profit organizations.

Voluntary approaches have been very successful in some areas of Virginia, particularly in the eastern region. National organizations like the Nature Conservancy and the Conservation Fund have been very active there in protecting thousands of acres, through purchases, that are now state or federally owned such as battlefields and national wildlife refuges. Other regional land trusts like the Piedmont Environmental Council, the Valley Conservation Council, the Williamsburg Conservancy and the Western Land Trust have

also been very effective. Regional land trusts normally work with landowners to preserve open space through zoning and acquisition of conservation easements. Land trusts represent an innovative revolution in conservation based on the market principle: *If you want to have control over something, own it.* The national groups identify land they believe is important for conservation—land with scenic views, wetlands, habitat for rare species, and so on—and they buy it. However, the value of land in some areas of the Commonwealth, particularly in the increasingly urban centers of Northern Virginia, Richmond, and the Hampton Roads area, is so high that national land trusts with their limited funding, are often unable to compete with the return a landowner can receive in the market. In addition, regional land trusts rarely have the financial resources that are required to purchase land.

As such, a dedicated source of funding for the purchase of open space will be required if land in high value areas is to be targeted for preservation. This is what the Wilkins/Albo initiative is about. Virginia is currently one of only two states on the East Coast that does not have a state level dedicated source of funding for open space protection.

Thus, the challenge before Virginia is to put mechanisms in place that will preserve special places in the Commonwealth while remaining true to the values and goals that most Virginians share-- maintaining a strong economy, preserving local prerogatives, and recognizing the rights of private property owners.

Purpose of this Paper

The purpose of this paper is threefold. It will review existing tools for acquiring and preserving open space; propose guidelines for structuring a Virginia open space preservation program; and present options employed by other states for financing the preservation of open space together with an outline of the critical components of those programs. The ideas come from a study of approaches and programs used by others that is available from literature in the public domain. The goal is to provide Virginia policy makers with a set of tools with which to develop a sound strategy to identify, acquire, and protect open space for the use and enjoyment of present and future generations of Virginians.

"In my travels throughout the country, I see so many new suburbs utterly denuded of trees; ironic since the new owners first instinct is to plant as many trees as possible. My advice, leave the original trees. It's good for business and very good for the environment."

President George Bush, 1990

A Short Review of Land Use History in Virginia

Land and its development have been major factors driving Virginia's growth since its earliest days. The first English settlement in the New World was made in Virginia and was driven by prospects of economic gain derived from harvesting products from the land. Holders of land grants had to develop their land or risk losing the grant.

To encourage as many people as possible to develop land, changes were made to the land grant system so that by 1700, anyone could purchase rights to land for 5 shillings for each 50 acres. As before they were liable for payments and settling the property otherwise the land would revert to the Crown. Land companies and speculators also played an important role in the settling of the colony. Since that time, the right to own one's property and develop it as one saw fit has been a cardinal tenet to many Virginians.

As the United States grew, Virginia's population also increased. Today, it is the 12th-most populous state in the U.S. and much of that growth has occurred in the past twenty years. Virginia's population has increased by 50 percent since 1970. In the early days of the Commonwealth, most citizens were farmers. As industrialization occurred, people left the farms and moved to the cities seeking greater opportunities. This led to the conversion of farmland to other uses. Recent growth in the Commonwealth has reached a point where farmland is now being converted at an unprecedented rate. The Piedmont region, including Virginia, has been identified as the second most threatened farmland region in the United States. The current faltering farm economy and extended drought are adding still greater pressure to the conversion of farmland to non-agricultural uses.

Nonetheless, farming has been and continues to be a vital component of Virginia's economy, both economically and environmentally. An adequate water supply, fertile soils, favorable climate, and gentle topography have created the conditions necessary to generate \$19.5 billion in agricultural production for the Commonwealth. Farms also provide employment for 235,000 people. The contribution becomes even greater when one considers the 228,000 jobs generated by the forest products industry, another employer that requires large tracts of open space.

The move of people to the cities was followed by an exodus to the suburbs as Virginians once again, sought more living space and a better quality of life. The development of suburban land in Virginia has greatly expanded since 1970 as people moved further away from the cities; and the suburban areas have themselves, become employment centers. This development has brought with it the infrastructure requirements associated with communities such as more schools; new highways, roads, and transit systems; and sewer connections. This, in turn, is consuming more watersheds, natural habitats, forestland, open space and farmland as the cycle repeats itself. Development must and will continue, the question now before Virginia policy makers is how to preserve the substantial open space Virginians so value in the process.

"There is only one chance to protect open space. When it's gone it's gone....If we plan carefully now, we can build homes and save open lands. It is our duty to protect our land so that our children and grandchildren can enjoy the beauty and traditions we have known."

Utah Governor Michael Leavitt, 1997

Current Avenues for Preserving Open Space in Virginia

In Virginia, open space has traditionally been acquired and preserved through zoning, ordinance regulation, and private donations and purchases of land. However, no single approach, be it acquisition, voluntary efforts, regulations or incentives, will work by itself. The size of the Commonwealth, the diversity of interests and competing economic and social factors make that impossible. Indeed, few if any, successful open space initiatives in Virginia or anywhere in the Country have worked by relying exclusively on a single tool so a review of the many options available is very desirable if Virginia is to craft the best open space acquisition, preservation and maintenance program possible.

The following section reviews many of the administrative and zoning tools available for open space acquisition and preservation. Many of the definitions were derived from the final report of the Washtenaw County, Michigan Agricultural Lands and Open Space Task Force for their own state. They have been modified here to meet Virginia requirements. Policy and purchase options are also discussed as are some creative voluntary conveyance programs.

I. GOVERNMENTAL TOOL BOX

Administrative Tools

- ◆ Dedications - These are requests from a local government that a developer dedicate a negotiated portion of his or her land to open space as a condition to obtaining approval to build.
- ◆ Impact Fees - These are fees assessed to the developer to help pay for infrastructure and public amenities necessitated by the new development. Impact fees may be applied to off-site (ex: fund for a new school or firehouse) as well as on-site improvements (ex: roads and sewer lines).
- ◆ Development incentives - These includes bonus densities offered to landowners or developers who wish to set aside large portions of their land (usually more than half) as open space.
- ◆ Development disincentives - These discourage conventional "cookie cutter" development designs. A disincentive could involve significant density reduction in lot yield (i.e. 33 percent or more) for those developers who discount community open space objectives.
- ◆ Deed Restrictions - This is a constraint on the use of one's property that is recorded on the property's deed. Deed restrictions can be required of new developments or

negotiated with current landowners. The right to enforce the restriction is given to a tax-exempt charitable organization or a government agency. A common form of deed restriction is a conservation easement which will be discussed separately (see page14).

Zoning Tools

Zoning is the traditional method for Virginia counties and municipalities to influence development. The application of zoning tools can be an effective way to minimize the impact of development on significant natural or unique features of the land. Local jurisdictions that create zoning districts with the intent to preserve open space are more apt to preserve large areas of land, and as such, preserve larger ecosystems. Concerns over zoning as a preservation tool include the fairness to property owners, the loss of both property rights and potential development profit, and the need for collaboration among local governments to preserve features that overlap into other jurisdictions.

The following are a number of zoning tools that can be used by local governments to preserve open space:

- ◆ Agricultural and Forestal Districts - These help protect blocks of agricultural and forest lands, are initiated by individual or adjacent landowners, generally require a large minimum aggregate acreage, and must be kept in agricultural or forestal use for the length of the agreement which may vary from four to 10 years. In exchange, the community agrees to minimize the impact of adjacent development on agriculture. (In this example, forest land would be treated in the same manner as agricultural land). In Virginia, statewide enabling legislation provides for four categories of land use that qualify for a reduced land use valuation as special districts: agriculture, forestal, horticulture and open space. However, adoption of land use taxation for all or some of the categories is a local government decision.
- ◆ Sliding Scale Zoning - The key concept of this zoning tool is that the number of development rights is *inversely* proportional to the size of the parcel. This means a baseline number of development rights for a parcel are granted above which the number of development rights permitted become inversely proportional to the size of the parcel. Sliding scale is most effective when applied to large tracts of land that have not been subdivided.
- ◆ Performance Standards/Zoning - These zones are based on permissible impacts rather than on permissible uses. The zoning would involve a review of the impacts of a proposed development and would encourage innovative site plans with the intent of reducing negative impacts upon natural and unique features of the land. Factors considered may include local growth rate, infrastructure, municipal services, design and natural resources. Performance zoning can target either single or multiple impacts and can supplement or replace traditional zoning regulations.
- ◆ Planned Unit Developments (PUD's) - These allow for more flexible development practices while continuing to meet overall density and land use goals. Development within the PUD may be of mixed use, massed, or clustered so that the individual lots are small and open space is preserved. Communities can also require that PUD's set aside a portion of the development for recreation and/or natural areas. Local

jurisdictions may create a PUD zoning district or permit a PUD in a conventional district if it meets all zoning requirements.

- ◆ Open Space Districts - This is a zoning district created to protect the natural and/or unique features within an identified area. An open space district usually imposes density limitations and other development restrictions intended to protect a natural or unique feature. Land in Virginia can be valued at an open space rate for tax purposes but there is currently no basis in Virginia open space law to establish such districts through zoning actions. Open space lands can qualify under the Agricultural/Forestral District Act for designation as Agricultural or Forestal Districts but not as Open Space Districts. The definition of open space in Section 58.1 of the tax code, if made applicable as well to the various Virginia open space enabling legislation could remedy this situation.
- ◆ Overlay District - This can be used for areas containing one or more natural or unique feature worthy of protection. Overlay districts involve superimposing an additional district boundary (i.e. floodplain district) over the current zoning. The overlay district creates a supplementary set of regulations intended to protect the specific feature of the land.
- ◆ Limited Development - This is often called creative or conservation development. It is intended to limit development to a small portion of a parcel to help protect natural or unique features located on the property. If the plan adheres to local ordinances, limited development effectively becomes a private approach to cluster zoning. A limited development may be combined with the donation or sale of conservation easements (see page 14 for discussion of conservation easements).

Zoning techniques have many benefits, which is why they are the most used tool across the Country. Using zoning as a preservation tool is appealing to many jurisdictions because of its low costs and its familiarity. One of the flaws attributed to zoning is that it is often a temporary solution due to political pressure. To be effective, zoning also requires political will to enforce it. Because of this, the effectiveness of zoning methods varies greatly among jurisdictions. Property owners are often unenthusiastic about zoning restrictions because they get no compensation for the limitations on future use of their property. In addition, zoning is often criticized on a broad scale because if area jurisdictions don't coordinate when developing their zoning ordinances the land use pattern across a region can become disjointed.

Policy Option Tools

- ◆ Cluster Development - Cluster Development allows residences to be grouped on a portion of a development site to preserve the remaining open space, agricultural land or a unique natural feature (wetlands, woodlands, wildlife habitat). The owner of a property is given the right to increase the density of development beyond what the applicable zoning regulations may allow in one section of his or her property in return for leaving the remainder of the property as open space. Clustering allows the same number of lots on a given parcel of land, but requires that they be clustered on one portion of the parcel. Sensitive areas, buffers, and open space are situated on the remaining land. Much of the development in the town of Reston in Northern Virginia was designed as clustered development. The City of Charlottesville and its

surrounding counties also utilize clustered development in their growth plans to preserve some of the area's rural character.

Design standards or guidelines are sometimes used with cluster development to maintain a particular style or character of architecture as well as protecting certain natural or visual characteristics of the community. This fosters a more cost-effective development pattern that enables local governments and developers to incur savings on public services. Because clustered development maintains the prescribed density (and often offers bonuses), there is a greater compromise between the developer looking for economic return and the local jurisdiction seeking land preservation.

Clustered development is a two-edged sword for local government officials responsible for making land use decisions. On the one hand, it creates more open space in a development and as stated, reduces infrastructure costs for such things as roads and stormwater management systems because less impervious surfaces are required. The County of Albemarle, Virginia for example, has estimated that clustering its rural development could save landowners hundreds of thousands of dollars in internal road costs. A 1993 study by CH2MHill, a large national engineering firm, also confirmed that clustered development reduces the amount of infrastructure installed by developers. This savings can constitute more than half their total cost of subdivision development. As such, allowing clustered development represents a major economic incentive to a developer.

On the other hand, the quality and appearance of dense development often generates a negative reaction from community residents who take out their anger at the voting booth. This in turn has caused local officials to react by excluding multi-family housing or requiring larger minimum lot sizes when considering zoning requests.

In addition, mandatory clustering can be subject to "takings" questions because of the smaller lot sizes and the restricted location of the homes built on the site. A "taking" refers to the protections under the Fifth Amendment of the Constitution which says essentially that private property shall not be taken for any purpose without due compensation. The takings issue generally arises in down zoning cases where governmental actions result in a diminution of the value of a property. Persons wishing to challenge property restrictions as a taking under the Fifth Amendment must first attempt to resolve their disputes through local and state processes before bringing suit in federal court. The heart of the debate over the takings issue focuses on how much diminution of property value constitutes a taking that must be compensated by the government. Traditionally, the courts have held that it is not a taking if the landowner is left with a reasonable use of the property, e.g. lesser density, continuation as farmland, etc.

Moreover, the permitting and approval process for cluster developments is often long and complicated, and some developers view clustering as being financially risky. Nevertheless, cluster development can contribute to the more efficient use of land. Jurisdictions with successful clustering regulations claim active public participation and a supportive comprehensive plan to be key factors.

For the public to accept clustered development that optimizes existing infrastructure and preserves open space, more densely populated communities must provide premium services and attractive environments for the people living there. Many state

governors are now beginning to target investments to developed areas to draw residents and businesses back to urban centers. State investments can also attract and leverage funding from federal, local, and private-sector sources.

- ◆ Proffers - Proffers are voluntary offers made through negotiation with a local government by a rezoning applicant to offset the impact of a requested rezoning. They are used widely in Virginia and in reality, are not really voluntary in the strict sense of the word. Developers of large parcels do not normally have the option of offering no proffers. Proffers can limit uses allowed on the site, and provide public improvements, land or cash to mitigate development impact. The local government estimates what it will cost to provide infrastructure to new projects, then suggests what percentage developers should offer to pay. If the developer agrees with or comes close to the government's proffer, the rezoning request is likely to be approved. Proffers have been used successfully to create tree buffers and open space for lot lots, etc. within new developments on a localized scale but are of limited use in preserving large areas as open space.
- ◆ Concurrency - Concurrency compares the availability and adequacy of service provision to the timing and amount of land use demand. A concurrency policy essentially requires that public facilities will be available concurrently with development through development permit negotiations or exactions. One of the objectives of a concurrency program is to ensure that localities do not incur large infrastructure debts as they grow. Rather, localities use the provision of public services as a mechanism for managing growth.

The advantages associated with concurrency mainly involve monetary savings. A concurrency program can ensure that no new developments occur until infrastructure is provided, and is generally seen as a more efficient way to use infrastructure dollars than traditional capital improvements programs. Many jurisdictions using concurrency believe it fits well with other preservation programs, like urban service areas, land use planning and zoning.

On the down side, the costs of new infrastructure are often shifted to developers, which are then passed on to new home buyers. Also, a concurrency program needs inter-jurisdictional and/or multi-agency cooperation to be successful. There is also some uncertainty whether supporting or enabling legislation is required to make concurrency legal.

- ◆ Urban Growth Boundaries - An Urban Growth Boundary can be defined as a line on a map marking the separation of open land from land on which development should be concentrated. This concept is often compared to the greenbelts created in England centuries ago to separate cities and the countryside. The goals for an urban growth boundary generally focus on protecting urban land, containing urban sprawl, and providing for an orderly transition from urban to open land uses.

Most jurisdictions that have successfully implemented an urban growth boundary attribute this success to strong regional planning and cooperation between localities. Many also mention state growth management laws or enabling legislation as a key factor to the boundary's success. Some other advantages of such a program include the relatively small cost of implementation and the possibility of integrating an urban growth boundary with a transfer of development rights program.

Takings issues are common problems with urban growth boundaries for property owners outside the boundary who are excluded from the developable area. This creates the potential for high litigation costs for the jurisdictions implementing the boundary.

- ◆ Purchase of Development Rights (PDR) - Purchase of Development Rights (PDR) programs use public money to purchase development rights to privately owned land. PDR programs are generally seen by their advocates as a more permanent approach to preserving agricultural and forestal lands and open space than traditional zoning methods. In such a program, a landowner is paid the difference between the value of the land based on its development potential and the value of the land in its present use. Funding for PDR programs varies between jurisdictions, with many communities using bonding or tax schemes to raise money for PDR.

According to most analysts, a PDR program must be part of a land preservation strategy that includes a variety of different tools, particularly planning and zoning tools. To be successful, lands must be ranked and objectives clearly defined so that limited funds can be used to derive the greatest benefit. In light of small budgets, PDR offers a way for local governments to preserve lands in perpetuity without incurring the cost of purchasing the lands outright. PDR also has a legal advantage over other preservation tools in that most PDR programs are voluntary, and they offer compensation to a landowner placing restrictions on his/her land.

However, the fact that many local governments don't have the funds to purchase development rights on all the lands they want to preserve can result in a "patchwork pattern" of open space or agricultural/forestal land. There is also no guarantee that the owners of the undeveloped land will be willing to sell their development rights, which may prevent large blocks of land from being preserved. In the case of agricultural lands, most jurisdictions with successful PDR programs believe that having a supportive farm community with a desire to continue farming is crucial. From a market perspective, it should be also noted that if the agricultural economy is not strong enough to survive long term, a PDR program is not likely to maintain the economic viability of farming on its own.

- ◆ Transfer of Development Rights (TDR) - Like PDR, Transfer of Development Rights (TDR) programs include protection techniques designed to compensate the landowner for the real or perceived loss of land value. They are not currently legal in Virginia. The debate over TDRs has focused on concern over how the initial TDRs would be allocated. Geographic distribution has been the issue. Under a TDR, development rights (or density units) are transferred from an area where preservation is desired to a more developed area with the ability to accommodate a higher density (usually an area with existing infrastructure). Unlike PDR programs, which are often publicly funded, the developer pays the land owner directly for the development rights. Usually the developer profits from the higher density in the development area.

The TDR system works best if the development rights are transferred to an existing urban development and do not contribute to urban sprawl. Other advantages and disadvantages are similar to a PDR program. A TDR program also requires the coordination of several governing bodies to set up sending and receiving zones for the

development rights. Furthermore, for a TDR program to be successful at preserving agriculture and open space, the community must be willing to actively participate.

II. OUTRIGHT PURCHASE PROGRAMS

The full title to land and all rights associated with it are purchased at a price equivalent to its value at its "highest and best" use. The appraised fair market value of the property is the standard for all sales and donations. Purchasing land at its fair market value has two principal advantages: the acquisition process is relatively simple, and the rights and privileges of fee simple ownership are rarely challenged. Outright ownership makes it easier to manage open space. The Nature Conservancy, a national organization dedicated to preserving open space, has purchased and owns outright, 45,000 acres on Virginia's Eastern Shore and 8,000 acres in Virginia Beach.

Unfortunately, national organizations like the Nature Conservancy do not have sufficient funds to purchase all the open space desired in Virginia, nor do they necessarily have the same preservation interests as local and state policymakers or regional land trusts. Without a dedicated source of funding to purchase and manage open space, Virginia may lack funding to make purchases of priority sites or manage properties over the long term. This would include joint purchases with land trusts or other private entities, as well as purchases made solely on behalf of the Commonwealth.

The following are examples of how land can be purchased for open space:

- ◆ Fee Simple Acquisition - This involves the outright purchase of land. It fully compensates the landowner and is the most complete means of affecting control and preservation of land.
- ◆ Purchase and Lease-back - In this case, land is purchased outright (as described above) and then leased by the owner to another individual who will gain some economic return from the land as agriculture, forest or open space. Usually, the lessee is a farmer who will keep the land in agricultural use.
- ◆ Bargain Sale - In this case, land is purchased for less than fair market value. This type of sale is often used by land trusts or a government to acquire open space lands. It makes the land more affordable and provides the landowner with immediate cash and can provide a charitable income tax deduction for the difference in the price received for the property and its fair market value. It can also benefit the landowner by offsetting any capital gains tax.
- ◆ Land Banking - Under land banking, land is purchased and reserved for later use or development. Land could be leased for immediate use (i.e. agriculture or playing field). Essentially, land banking is a land trust operated by the government and funded by real estate transfer taxes, either at the local or state level.

III. VOLUNTARY LAND PROTECTION PROGRAMS

Land acquisition and voluntary programs are effective and efficient ways of preserving land, although their use is somewhat limited in scope. Most land acquisition and voluntary preservation programs have similar advantages and disadvantages. In general these programs involve few legal disputes over property rights and takings issues. Land acquired through these methods is seldom controversial and usually remains as permanent open space.

Many voluntary programs, such as easements and land donations, may qualify the property owner for tax incentives. Present federal tax law allows both individuals and corporations to take deductions from their taxable income for gifts of property to a tax-exempt nonprofit organization or to a government agency. Individuals may deduct the value of the gift up to a certain percentage of their income and spread a sizable deduction over several years. Property owners may also receive a tax break on their estate and property taxes for donating property or easements. Such tax incentives may encourage property owners to donate part or all of their property.

Disadvantages of these preservation programs include the relatively small amount of land acquired and the difficulties in creating large contiguous blocks of open space or natural habitat. This method of preservation can be an excellent tool, especially when used in combination with other preservation tools.

A discussion of different types of acquisition and voluntary programs follows:

- ◆ Conservation Easements - These are one of the most used tools of land trusts (see page 15). However, in Virginia the term "conservation easement" has a very strict definition and is not applicable to all situations so it is important to understand the distinction.

Easements in Virginia law are dealt with under two acts: the Open Space Land Act and the Conservation Easement Act. The Open Space Land Act deals with easements held by public bodies while the Conservation Easement Act deals with easements held by private bodies. Under Virginia law, the term conservation easement pertains only to easements held by private organizations. The more generic term for Virginia, one that would also include an easement held by a government body is *easement in gross*.

Conservation easements are legally binding agreements in which a landowner retains ownership of his private property yet donates specifically identified rights to an organization (usually non-profit, like a land trust). The parties agree to protect specified natural resources and cultural values by limiting the property's use and development. Each easement is different, reflecting the conservation values of the property and the goals of the landowner. The easement 'runs with the land', it does not change with the sale of the property and is recorded with the deed in the local courthouse. It is a less-than-fee interest in real property, an encumbrance on the title limiting future use of the property.

In most cases, conservation easements are perpetual but under the Virginia Open Space Land Act they can be extinguished by agreement of the parties involved.

However, in such a situation, the property owner's income and real estate taxes will be impacted. By contrast, a perpetual easement offers a landowner significant financial incentives. It allows the tax on the land in question to be qualified under the Commonwealth's open space land use rate which is substantially below other tax rate categories for land. As a result, the easement may provide significant property and federal income tax benefits to the landowner because he/she is allowed to write off the value of the easement when the holder of the easement is a non-profit or government organization. At the same time, natural and unique areas are permanently protected from development.

Granting an easement also generally allows the landowner to continue current uses including residential, farming activities and recreation. Disadvantages specific to easements include the need for monitoring and enforcement of the conditions of the deed, a task that many localities can't afford to perform. In addition, while the favorable tax treatment an easement receives helps the landowner, it also represents a revenue drain for the local government.

- ◆ Land Donations - In contrast to lands donated to public governmental agencies, land donated to land trusts and other private non-profit organizations may be managed as private open space or provide only limited, controlled public access to preserve sensitive and unique natural features. Landowners donating land to either government or non-profit organizations are often eligible to claim a federal tax charitable deduction value of the land at the time of the gift.
- ◆ Land Trusts - These are entities most often managed by private, non-profit, organizations which advise and assist landowners in negotiating land transactions and then purchase the land in question. They are formed to help protect lands important to the quality of life and environmental health of the regions they are operating in. Land Trusts represent the fastest growing sector of land conservation in the United States with over 1200 land trusts in 50 states.

The Virginia Outdoors Foundation (VOF), a quasi-public state agency created in 1966 ranks first in the nation in the number of voluntary conservation easements held and fifth in the total acreage protected. The VOF holds easements on over 700 properties protecting more than 130,000 acres of open space. Other private conservation organizations like the Nature Conservancy and the Western Virginia Land Trust, a regional organization, have been particularly effective in protecting open space in the Piedmont, eastern shore and southwestern regions of the Commonwealth. In Northern Virginia, where land values are very high, the Fairfax Land Preservation Trust has been created to work with the Fairfax County Park Authority, Fairfax County Government and national land trusts to pool resources so high priority open spaces can be purchased and preserved.

Governor Gilmore issued an Official Opinion when he was Attorney General interpreting Virginia's real estate tax laws to support the tax-exempt status of land held by private conservation groups, such as land trusts, to protect sensitive ecosystems from urban sprawl and other hazards.

To achieve land preservation goals, land trusts use a variety of creative methods that are designed to meet needs of both the community and the landowner. Some of the larger national organizations operate on the market principle: *if you want to have control over something, own it*. These groups identify land that they believe is

worthy of protection - land with scenic vistas, wetlands, habitat for rare species, and so on - and they buy it. However, by far, the majority of land trusts primarily pursue voluntary conservation/historic preservation easements, donations of land or PDR approaches. Few regional or local land trusts have the financial resources to purchase and retain ownership of land, although some may have revolving funds.

Factors that have contributed to the success of land trusts include public support, donations, and partnership approaches between landowners and management organizations. The success of land trusts as a preservation tool has been limited by their reliance on private donors, the lack of public knowledge regarding their function, and the difficulty in saving large blocks of land. Nonetheless, they represent a very market-oriented approach for acquiring open space. In most cases, the transaction is between willing buyers and willing sellers, or between an organization and a willing donor. There is often little to no government involvement as long as the transaction conforms to the local area government's comprehensive plan.

- ◆ Land Swaps - This most often involves the exchange of land between a governmental agency and a private landowner or organization. The intention of a land swap is to protect and preserve unique or natural features of the land while offering an exchange of surplus land that is usually more suitable for development. Land swaps may also be negotiated by private organizations and may involve the exchange of easements or property.
- ◆ Notification, Recognition and Non-binding Agreement Programs - A basic technique to prevent harm to important resources is a notification program. Owners who are made aware of important resources on their properties are usually more willing to protect them once they learn of their existence. A notification program may logically follow a comprehensive environmental and sensitive lands inventory. Notification generally consists of a brief letter describing why the property is significant.

Recognition programs have been used by federal, state and local governments as well as non-profit organizations to offer public relations incentives to a property owner in return for protecting an important resource. Non-binding agreements, many in association with recognition programs, serve to protect natural resources. Property owners would agree in writing to protect specified features of their properties and would usually receive in return a plaque or certificate that acknowledges the special nature of the property and the owner's contribution to its protection. These agreements can be terminated at any time. The Natural Area Registry Program under the Natural Area Preserve Act (VA Code 10.1-216) is an example of a Virginia recognition program.

- ◆ Remainder Interests & Reserved Life Estates - These are essentially the same. A "remainder interest" in land allows the owner to reserve the right to live on and use the land during his/her lifetime and/or the lifetime of other family members he/she chooses. The value of such a donation is different from an outright gift, but can still be considered a charitable contribution for federal income tax deduction purposes.
- ◆ Stewardship Agreement - This is a temporary or permanent donation of specifically identified property rights to an organization (usually non-profit). The agreement may provide significant property tax benefits to the landowner while permanently protecting

natural and unique areas from development. It works in the same way that a conservation easement does but might be used for areas that may not meet the requirements necessary to be protected through a conservation easement.

- ◆ Verbal Easement - This is an agreement in which a landowner retains ownership of his private property yet donates specifically identified rights (such as recreational access) to the public or to another identified organization. The agreement is only contingent upon the landowner's voluntary consent to waive his rights and may be terminated at any time. There is very little incentive under Virginia law to grant such an easement. Without any written record, there is no way the grantor of the easement would receive any of the financial benefits associated with easement conveyances. In addition, Section 29.1-509 of the Virginia code establishes certain landowner liabilities with regard to property and the lack of a record showing that an easement had indeed been granted would subject the landowner to the liability law for anything that happened on the land.

"By a vast majority, the people of Virginia do not believe that you must degrade the environment to have economic prosperity, nor do they believe that you must sacrifice economic prosperity in order to preserve the environment. They expect us to do both, and we are going to do both."

VA Secretary of Natural Resources John Paul Woodley, 1998

Recommended Guidelines for a Virginia Open Space Preservation Program

For more than two decades, Virginia has been among the fastest growing states on the East Coast. Its national reputation for quality of life, culture, history, and unique charm is the result in part of its open countryside, scenic vistas, and farm fields. These characteristics also contribute to making it a desirable place for development. Land use decisions in the Commonwealth have historically been the province of local government and respect for the land and property rights is a basic tenet of Virginia's heritage. For an open space preservation program to be successful in Virginia, it must take all these factors into consideration.

The following are offered as guidelines for consideration in structuring a Virginia Open Space Acquisition, Preservation and Management Program:

- ✓ Focus on protecting significant and sensitive natural, cultural and historic areas, preserving farmland and forestland and meeting park and recreation needs.
- ✓ Design a program that will coordinate open space preservation efforts among local, state, and federal governments, private organizations and individuals. This will leverage resources and avoid duplication of efforts. In 1999, the General Assembly recreated the Virginia Land Conservation Foundation to serve this function.
- ✓ Develop a program that can be effectively implemented and recommend to the Governor and General Assembly a specific plan, funding methods, and a timetable for open space preservation initiatives.
- ✓ Recognize the role of local governments in open space preservation. Counties and municipalities have the responsibility for making land use decisions through local planning and zoning. It is important for local governments to be involved in making plans and making decisions about what should be saved as open space. Local officials and residents are knowledgeable about local needs and conditions, and have a better understanding of what will improve the quality of life for their residents. Local officials and residents can also balance the needs for open space with other community needs.
- ✓ Encourage and support county and municipal efforts to identify and meet open space needs. Encourage local governments to plan for open space preservation. This can include preserving farmland, forestland, creating parks and trail systems, preserving stream valleys, or protecting scenic roads, rivers and landscapes.
- ✓ Provide resources to address local open space needs that complement state priorities.
- ✓ Encourage public-private partnerships to identify and protect natural and cultural resources of local, regional and statewide significance.

- ✓ Encourage localities to make full use of the suite of existing proffers, zoning, and ordinance regulations currently being used to secure and protect open space.
- ✓ Expand the use and variety of easements in existence for open space preservation.
- ✓ Consider changes in the Virginia tax code to provide further incentives to property owners to keep and maintain open lands.
- ✓ Identify a dedicated source of funding within the Commonwealth for open space acquisition.
- ✓ Encourage voluntary land conservation efforts of land trusts and other private non-profit organizations by establishing a matching fund within a Virginia dedicated fund.
- ✓ Ensure that open space purchased with Commonwealth funds remains open to future generations by using easements, deed restrictions, or other legally enforceable restrictions to limit future development.

"I think we should reward individuals who are willing to pass up large sums of money so that their property can be preserved in its natural state....Without ... tax relief, only the very wealthy farmers will be able to afford to sell their property to conservation organizations. This bill will provide this opportunity to a larger number of people and help preserve farmland and natural areas for the enjoyment of future generations.... Not only will this bill help protect the environment, but it will also reduce the tax burden on the American public."

Congressman John J. Duncan, Jr. (R-TN),
introducing the Land Preservation Tax Fairness Act, 1998

Examples of State/Municipal Open Space Financing Programs

There are many precedents begun by other states for creating a dedicated funding source for the purchase and preservation of open space. While none may be appropriate for Virginia, they do offer some interesting insights.

The National Governors' Association (NGA) recently commissioned a survey to determine who is doing what and found that forty-six states have some kind of program in-place for financing the acquisition of open space. The NGA findings are summarized in a table at the end of this paper. Some of these programs have involved heavy, direct state financial and planning involvement. Others have utilized broad goals to guide local decisions and have established frameworks within which the state and local governments can coordinate their policies and actions. In still other states, the programs are mainly voluntary. In addition, many cities and counties throughout the United States have adopted programs as well.

Some examples of these open space financing programs are discussed below:

Arizona

Governor Jane Dee Hull has made preserving open space and managing growth a priority since she took office in September 1997. She introduced a proposal in March 1998 that included a public vote on the use of \$19 million a year of state funds to purchase state trust lands for preservation as open space. It also toughened the planning provisions used by cities and counties to ensure more public participation and fewer changes to general plans once they are adopted. Major provisions of the proposal included:

- A ballot proposition to appropriate \$19 million a year for 10 years beginning in fiscal year 2000 to acquire state trust lands for preservation near or within urban areas. The money would come from corporate income tax revenues and would be used as matching funds for local government preservation efforts. Since the money paid for trust lands goes into the school trust, the effort also provides more funds for Arizona schools.
- A legislative proposal that would strengthen the general plans prepared by cities and counties. These plans would be required to include open space and growth corridors. Amendments to general plans would require a two-thirds vote.

- A new Growth Commission with responsibility for reporting on regional open space, infrastructure, in-fill and other growth issues.

The Governor began the development of her proposal by convening a series of meetings to find common ground on the growth and open space issues. The final proposal included provisions from representatives of Arizona cities and counties, the business community, environmentalists, ranchers, farmers and others.

Boulder, Colorado

Boulder has one of the oldest open space preservation programs in the United States, dating back to 1898. Its current program began in 1967 when Boulder became the first city to pass a sales tax of 0.40 percent for the acquisition and management of open space lands. An additional 0.33 percent was approved by the voters in 1989. Since the program's inception, over 28,000 acres of land has been preserved and protected. Funding for the purchases has come from sales tax revenues, bond issues, private donations and development dedications. To date, nearly \$100 million have been spent on the acquisition of open space. Acquisitions are approved by the City's Open Space Board of Trustees and City Council, with extensive opportunity for public input.

Connecticut

The goal of Connecticut's overall open space initiative is to preserve 21 percent of the state's land as open space by the year 2023, a total of 673,210 acres. The initiative requires ten percent of open space to be state-owned with the remaining eleven percent owned by municipalities, private nonprofit open space organizations, farmland development rights and water company watershed. Currently, 460,566 acres of open space are owned by the state, municipalities and other land conservation organizations, leaving a balance of 212,644 acres to be preserved. Acquisitions are made through state purchases and a Natural Heritage, Open Space and Watershed Land Acquisition Grant Program.

The first grant program projects received funding support earlier this year. Nineteen projects were chosen from 59 applicants. A total of \$4.9 million for preservation of 2,800 acres of open space in 18 municipalities was awarded. The program allows for the acquisition of three categories of land: open space, agricultural preservation, and watershed protection. The Land Acquisition Grant Program differs from previous state programs by adding nonprofit land conservation organizations and water companies as participants. It also emphasizes the preservation of lands as a natural community.

New Jersey

In 1998, Governor Christine Whitman launched a statewide effort to establish a stable source of funding for land acquisition to preserve 1 million acres of New Jersey's open space during the next decade. The Governor proposed a ballot initiative to dedicate sales tax revenues to preserving open space and launched radio addresses and personal appearances to campaign for the measure. The Republican-controlled legislature voted to place a referendum on the Nov. 3 ballot for the state to dedicate \$98 million annually in sales tax and use tax revenues to preserve open space, farmland and greenways. The money is to be divided 60-40 between the state's Green Acres and Farmland Preservation programs. The former is for more urbanized areas. The ballot initiative passed with 68 percent of the vote enabling the state to permanently preserve two-fifths of its land area

and create an interconnected system of open spaces. County and municipal governments will identify most of the million acres to be preserved, and they will share the land acquisition costs.

Voter enthusiasm for local funding to preserve open space equaled the support for the statewide initiative; six counties and forty-five municipalities approved local tax increases to match the state preservation funds.

New York

In 1996 New York passed a Clean Water and Clean Air Bond Act. This act established a \$1.75-billion plan to promote economic growth in the state by combating pollution problems. The bond act provides significant financial support to acquire open space to protect water resources, preserve agricultural land, and expand public parks.

In 1998, led by Governor George E. Pataki, New York State joined with the Conservation Fund, The Trust for Public Land and The Forestland Group (TFG) in a public-private partnership to permanently conserve 144,300 acres of the northwest Adirondack Mountains for public recreation and timber production. One of the drivers for the agreement was the fact that it was less expensive to use the watershed as a passive water treatment system for New York City's water treatment needs than it would have been to add to the existing water treatment infrastructure.

The agreement is the largest land conservation transaction in the state's history. Using a combination of land acquisition and conservation easements, the agreement will stimulate the creation of a harvestable hardwood forest to support a forest products industry in the area; conserve river corridors, wetlands, and forests; and provide recreational opportunities on land that has been closed for more than a century. New York will pay \$24.9 million for the conservation easement using funds from the Bond Act.

Utah

Utah's preferred way to preserve open space is to establish perpetual conservation easements to maintain an area in a natural, scenic, or open condition, or for recreational, agricultural, cultural, or other use consistent with the protection of the open space. The restrictions are binding on present and future owners. This approach has been successful to a point, but a dedicated funding source was determined to also be needed. In 1998, Governor Leavitt signed legislation creating the Critical Lands Conservation Revolving Loan Fund. Utah is like Virginia in that land use decisions are made primarily at the local level. Because of this, the fund was designed to provide loans to local governments and nonprofit organizations that work to preserve open lands. It emphasizes protecting private property rights and ensuring that land-use decisions are made locally.

The fund also provides a foundation for Utah's Quality Growth Act of 1999, which the Governor proposed in October 1998. The bill creates state funding incentives for local governments to conserve green spaces, make better use of infrastructure, and increase the availability of housing through more efficient land use. Leaders of the state legislature supported the measure.

To help local communities conserve open lands, the Governor issued an executive order in May 1996 to create the Utah Open Lands Committee. According to a 1999 NGA report,

the initiative is designed to support local conservation efforts by offering technical expertise, establishing a conservation information clearinghouse, and facilitating cross-jurisdictional and multi-agency partnerships. Committee members were quoted as saying "The committee is not advocating government ownership of land, but is hoping to facilitate land exchanges and land conservation and management partnerships."

Virginia Beach Agricultural Reserve Program

In 1995, the City Council of Virginia Beach established a voluntary, market-based program for the city to purchase conservation easements from farm and forestland owners. The program is funded at \$3.5 million per year from a dedicated property tax increase, a new cellular phone tax, and the payment in lieu of taxes made by Back Bay National Wildlife Refuge. Under the voluntary program, farmland owners may sell development rights to the city in exchange for working capital that can be reinvested on the farm.

The impetus for the program came from Virginia Beach's explosive growth. From 1963 to the present, the city has grown 387%. Over half the farmland in Virginia Beach has been lost to development in the last three decades. The remaining land has the highest per acre yield for corn and soybeans in Virginia.

Major State Land Acquisition and Conservation Easement Programs

The following table was developed by the National Governors' Association. It summarizes state-funded programs that purchase land or conservation easements for open space preservation or other conservation purposes. The information was obtained through a telephone survey of officials from state agencies with land purchasing authority and may not include every state-funded program. Funding levels represent best estimates as of December 31, 1998, based on variable annual levels or actual levels for the most recent year of available data.

State	Program	Funding Sources and Acquisition Methods
Alabama	Forever Wild (est. 1994)	A percentage of oil royalty funds totaling approximately \$8 million/year is applied to direct land purchase and some conservation easements.
Alaska	Exxon Valdez Oil Spill Trustee Council (est. 1993)	Exxon settlement provides \$400 million for council to purchase land or conservation easements on behalf of the state or federal government.
Arizona	Growing Smarter Act (est. 1998)	Beginning in fiscal 2000, \$19 million per year for eleven years in general-fund appropriations will purchase development rights for state trust lands.
	Arizona Preserve Initiative (est. 1996)	Variable annual funding through land sales is used to sell or lease state lands to cities, private trusts, or other state agencies for conservation uses.
	Water Protection Fund (est. 1994)*	Approximately \$5 million per year in funds from the general fund and surcharges on sales of Central Arizona Project water to out-of-state utilities provide grants for protection and restoration of rivers and streams.
	Arizona Heritage Fund (est. 1990)*	Lottery sales of \$10 million per year are dedicated to parks, recreation, cultural resources, and environmental education.
Arkansas	Natural Heritage Commission (est. 1997)*	Conservation sales tax funds, real estate transfer tax funds, general funds, and grants, totaling \$4 million in fiscal 1999, preserve land, including threatened habitat areas, that retain their presettlement characteristics.
California	Agricultural Land Stewardship Program (est. 1996)*	General fund provides funding \$1 million in fiscal 1997 to protect agricultural lands from development.
	Inland Wetlands Conservation Program (est. 1991)*	Cigarette tax funds totaling \$14 million per year are dedicated to a public resources account.
	Habitat Conservation Fund (est. 1990)*	Cigarette tax funds totaling \$30 million per year for 30 years are used to acquire, protect, and restore habitat.
	Environmental Enhancement Mitigation Program (est. 1989)*	This ten-year program uses \$10 million per year in gas tax funds to acquire lands.
	Natural Areas Conservation Program (est. 1988)*	Since 1988, \$776 million in bond funds acquire and protect habitats, open space, parklands, and wetlands.
Colorado	Great Outdoors Colorado (est. 1992)*	Lottery income of \$10 million to \$20 million per year through fiscal 1999 and \$44 million per year thereafter funds grants to preserve open space, wildlife, parks, trails, and rivers.

<i>State</i>	<i>Program</i>	<i>Funding Sources and Acquisition Methods</i>
Connecticut	Open Space Acquisition and Water Resource Protection Program (est. 1998)	General fund appropriation of \$10 million in fiscal 1999 provides grants to municipalities, nonprofit organizations, and water suppliers to take title of land having conservation and public access easements.
	Recreation and Natural Heritage Trust Fund (est. 1986)*	General obligation bonds will provide \$19.5 million in fiscal 1999 for fee-title land purchases and some conservation easements by nonprofit organizations.
Delaware	21st Century Fund (est. 1995)	One-time funding from state's settlement over rights to escheat funds, totaling \$220 million, is helping purchase land for open space, parks, recreation, farmland preservation, education, and community development.
	Open Space Program (est. 1990)	Bonds, the general fund, the 21st Century Fund, and a portion of the real estate transfer tax are providing \$70 million over ten years to acquire land for open space, parks, recreation, and farmland preservation.
Florida	Preservation 2000 (est. 1990)	Bond sales provide \$300 million per year for ten years for fee-simple land acquisition and the purchase of easements and mining or forestry rights by the five water management districts and the three primary state land managers.
	Florida Communities Trust	Money from Preservation 2000 fund provides \$30 million per year in matching-fund grants to local governments for land acquisition.
	Save Our Rivers (est. 1981)	Document stamp tax revenue and \$90 million per year from Preservation 2000 fund helps purchase lands needed for water management, conservation of water resources, implementation of surface water improvement and management plans, and the Everglades Construction Project.
	Conservation and Recreational Lands Program (est. 1979)	Document stamp tax revenue of approximately \$60 million per year and \$150 million per year from Preservation 2000 fund helps purchase large wilderness tracts or lands with recreational uses.
Georgia	Nongame Wildlife Conservation and Habitat Acquisition Fund	Nongame check-off and environmental license plate sales totaling \$6.3 million in fiscal 1997 fund land acquisition and habitat conservation.
	River Care 2000 (est. 1995)*	Bond funds totaling \$25 million per year fund riparian land acquisition and river corridor protection.
	Preservation 2000 (est. 1990)	Bond sales have provided approximately \$115 million over eight years for fee-simple land purchases and a few easements.
Hawaii	Natural Areas Partnership and Forest Stewardship (est. 1991)*	Matching funds of approximately \$2.3 million per year purchase conservation easements for native ecosystems.
	Natural Areas Reserve Fund (est. 1987)*	General funds are used to create and maintain natural area reserves.
Idaho	General land purchase (est. early 1900s)	Hunting license fees totaling \$0.5 million per year are used for fee-title land purchases and easements.

<i>State</i>	<i>Program</i>	<i>Funding Sources and Acquisition Methods</i>
Illinois	Open Space Land Acquisition and Development Fund*	Thirty-five percent of real estate transfer tax funds, totaling approximately \$14 million in fiscal 1996, provide grants to local governments to purchase open space.
	Natural Areas Acquisition and Management Fund*	Fifteen percent of real estate transfer taxes are used to acquire, protect, and restore natural areas.
	Conservation 2000 (est. 1995)	General fund or capital fund provides \$2.7 million per year in fiscal 1998 and fiscal 1999 for grants for land acquisition and conservation easements.
	Build Illinois (est. 1985)*	Bonds provide \$7.5 million over four years to preserve natural areas.
	Natural Heritage Endowment Trust Fund (est. 1985)*	General funds and nongame tax check-off funds are used to protect natural heritage lands.
Indiana	Heritage Trust Fund (est. 1992)	Fund leverages approximately \$1.5 million per year in revenues from environmental license plate sales, state general funds, and donated money for land purchases.
Iowa	Resource Enhancement and Protection Program (est. 1989)*	Funds from lottery sales, the general fund, and environmental license plate sales totaling \$15 million in fiscal 1999 are used for ten-year program for city parks, open space acquisition, and other land conservation activities.
Kansas	General land purchase (ongoing)	Wildlife fee fund (from license sales), the general fund, and the park fee fund provided \$1.3 million in fiscal 1999 and will provide \$1.5 million in fiscal 2000 for fee-title land purchases and some easements.
Kentucky	Kentucky Heritage Land Conservation Fund (est. 1994)	Sales of nature license plates, the state portion of unmined mineral taxes, and water violation fines provide approximately \$3 million per year for fee-title land purchases.
Louisiana	Wetland Conservation and Restoration Trust Fund*	Severance tax on off-shore oil drilling provides a \$53-million trust fund to conserve and restore coastal vegetated wetlands.
Maine	Maine Outdoor Heritage Fund (est. 1995)	Lottery proceeds fund fee-title land purchases or easements.
	Land for Maine's Future Bond (est. 1988)	Legislature appropriated \$3 million in fiscal 1998 in addition to funds from a \$35-million bond sale for fee-title land purchases or easements.
Maryland	Rural Legacy Program (Part of Program Open Space) (est. 1997)	In fiscal 2000, a 10 percent transfer tax increase and \$5 million from general obligation bonds will provide \$6 million for competitive grants to local governments to acquire land.
	Agricultural Land Preservation Foundation Program	Real estate transfer tax and agricultural transfer tax provide funds for state department of agriculture to purchase agricultural easements.
	Natural Heritage Program	Real estate transfer tax provides funds for protecting endangered species through land title purchases and easements.

State	Program	Funding Sources and Acquisition Methods
Maryland continued	Heritage Area Finance Authority	Real estate transfer tax and occasional bonds for specific projects provide approximately \$1 million per year to protect natural, historic, and cultural sites along linear corridors.
	Program Open Space (est. 1969)	Real estate transfer tax provides approximately \$70 million per year for fee-title land purchases and easements.
Massachusetts	Wildlife Acquisition Account	Wildlife stamp and fishing and hunting license fees totaling approximately \$1.5 million per year fund land purchases to protect wildlife habitat.
	Open Space Bond Act (est. 1996)	A \$318-million bond fund is used to preserve open space and water resources.
Michigan	Michigan Natural Resource Trust Fund (est. late 1970s)	Oil and gas lease revenues fund purchase of recreational land or development rights and easements.
Minnesota	Environmental and Natural Resources Trust (est. 1988)*	Fifty percent of state lottery funds (cumulative total capped at \$1 billion) provide funding to acquire agricultural lands, wetlands, and natural areas.
	Reinvest in Minnesota (est. 1986)*	Successive bond sales totaling \$60.7 million to date provide funding for acquisition of agricultural lands, wetlands, habitats, forests, and natural areas.
	Critical Habitat Matching Program (est. 1986)*	Environmental Trust Fund (from lottery funds), environmental license plate fees, and matching funds from the private sector provide funds to acquire wildlife management areas, restore wetlands, and protect spawning sites.
	Minnesota Future Resources Board*	Cigarette taxes of \$1.3 million per biennium fund grants for special environmental projects.
Mississippi	Wildlife Heritage Fund (est. late 1940s)	A portion of license fees, a portion of income tax check-offs, and occasional legislative appropriations fund fee-title land purchases.
Missouri	Conservation and Natural Resources Departments Land Purchase Authority (est. 1976)	A 1/8 percent sales tax and the sale of hunting and fishing licenses, totaling \$1.5 million in fiscal 1998, fund fee-title land purchases.
Montana	Habitat Montana Program (est. 1992)*	A portion of state game license fees totaling \$2.5 million per year is used to purchase easements and some fee-title land.
	Bonneville Power Administration Mitigation Fund (est. 1987)*	Environmental penalty money provides \$500,000 to \$800,000 per year to protect wetlands and certain species habitat.
	General land purchase (est. 1973)	Hunting license fees provide \$5 million every two years for conservation easements.

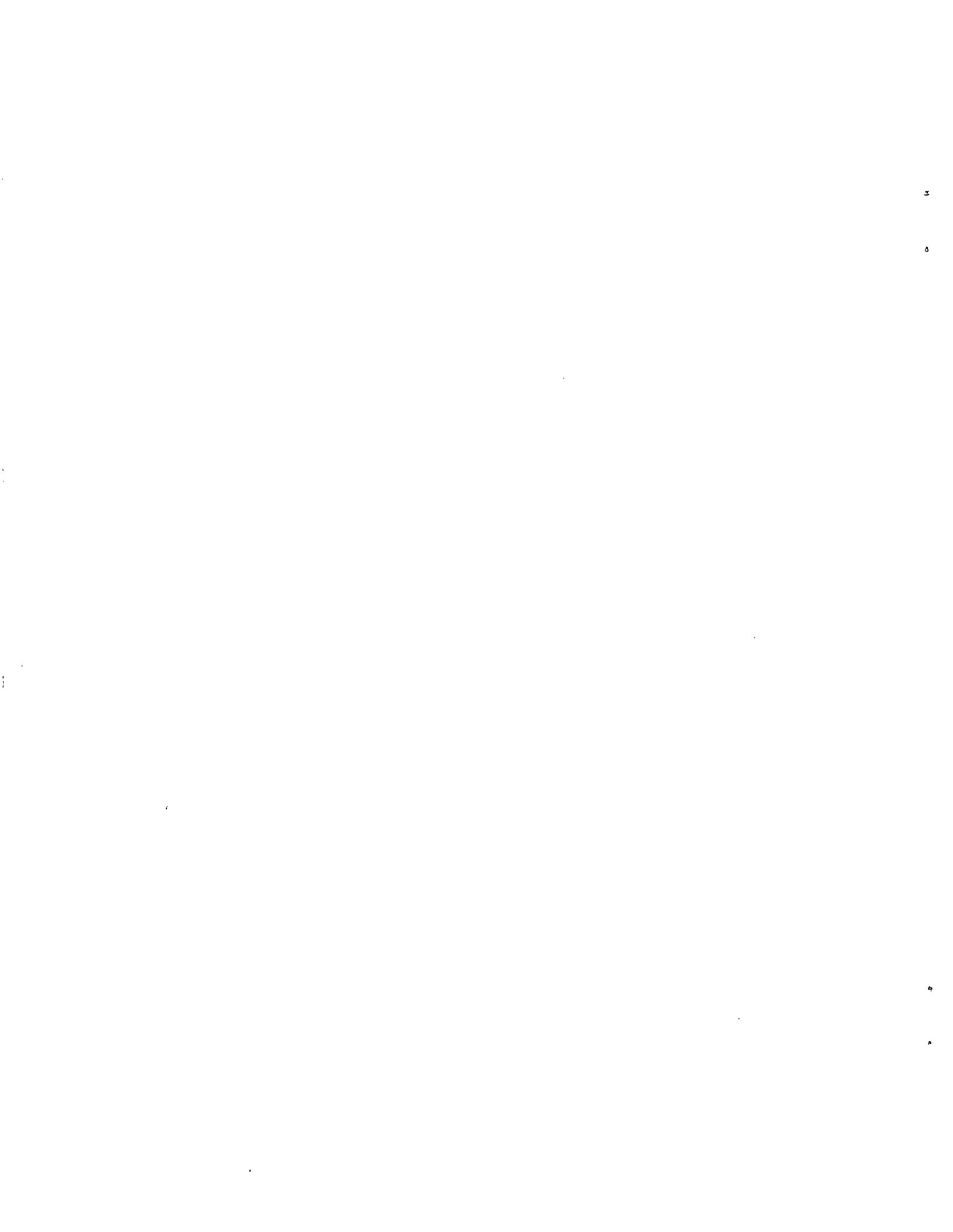
State	Program	Funding Sources and Acquisition Methods
Nebraska	Nongame and Endangered Species Conservation Act*	Nongame check-off funds are used for habitat acquisition for species conservation.
	Environmental Trust Fund (est. 1992)*	Nearly 50 percent of lottery funds are used to purchase land or easements to protect habitat for rare or endangered species.
Nevada	Nevada Parks and Wildlife Board*	A 1990 bond sale created fund of \$47.2 million that can be used to purchase land and easements.
	Tahoe Bond Act Program (est. 1986)	A \$31-million bond sale has provided \$27.8 million since 1986 for land acquisition and some easements.
	Tahoe Mitigation Program (est. 1997)	Mitigation fees collected by the California and Nevada Tahoe Regional Planning Agency are used to purchase conservation easements and land coverage.
New Hampshire	Land and Community Heritage Commission (est. 1997)	State is designing a program to allow fee-title purchase of lands.
	Land Conservation Investment Program (est. 1987)*	Bonds and general funds are used to purchase open space, forests, natural areas, and wildlife habitat.
New Jersey	1998 Ballot Initiative	Initiative will annually dedicate \$98 million in sales-and-use tax revenues to preserve 1 million acres of open space, farmland, and historic areas from 1999 through 2009. After ten years, up to \$98 million per year for twenty years will be available to repay or refinance bonds issued for land conservation.
	Farmland Preservation Program (est. 1983)	Bond sales of \$200 million and federal funds of \$2.6 million are used to pay for 50 percent of soil and water conservation efforts on voluntarily restricted private farmlands, for grants to counties for development easement purchases, and for some fee-simple land purchases. Some funds of the 1998 ballot initiative will be used to protect 500,000 acres of farmland.
	Green Acres Program (est. 1961)	Bond sales and sales tax revenues totaling \$1.4 billion since 1961 fund fee-title land purchases, easements, grants and loans to local governments to purchase and maintain areas, and matching grants to nonprofit organizations.
New Mexico	State Parks and Youth Conservation Corps (YCC) (est. 1995)*	A portion of gross receipts tax on water and sewer utilities provides \$2.5 million per year for state parks and \$1.5 million per year for Youth Conservation Corps projects.
	Natural Land Protection Fund (est. 1988)*	Bonds, severance taxes, and general funds provide funding for protection of threatened and endangered species and natural areas.

State	Program	Funding Sources and Acquisition Methods
New York	Clean Water and Clean Air Bond Act (est. 1996)	Approximately \$150 million (of \$1.75-billion fund) can be used for water-related open space projects. An additional \$50 million is provided for water-related state and local park and historic preservation projects.
	Environmental Protection Fund—Open Space Account (est. 1993)	Bluebird license plate sales and real estate transfer tax provide approximately \$50 million per year to fund fee-title land purchases, conservation and agricultural easements, and agreements with nonprofit organizations to purchase specific parcels from them when funds become available.
	Environmental Protection Fund—Parks Account	Environmental Protection Fund provides grants of up to 50 percent of project costs to municipalities and nonprofit organizations for state and local parks, historic preservation, and waterfront revitalization, totaling more than \$14 million in fiscal 1998.
North Carolina	Park and Recreation Trust Fund (est. 1995)	Sixty-five percent of land transfer tax revenues, totaling approximately \$18 million in fiscal 1998 is used for fee-title land purchases.
	Natural Heritage Trust Fund (est. 1987)	Sales of personalized license plates and 25 percent of land transfer tax revenues provide funds (\$8.2 million in fiscal 1997) for fee-title land purchase and some easements.
	National Wetland Research Reserve (est. 1981)	General-fund appropriations of \$6.8 million in fiscal 1998 fund fee-title land purchases.
Ohio	General Land Purchase	Four state agencies use federal matching funds, license fees, and tax check-off donations for fee-title land purchases and some easements.
	Nature Works Bond Issue (est. 1993)*	Bond funds authorized at \$50 million per year, up to a cap of \$200 million, are used for park and recreation acquisition and development as well as other conservation activities.
Oregon	Fisheries Restoration and Enhancement Program (est. 1989)*	Fishing license fees and lottery funds provide approximately \$15 million per biennium for grants to restore fisheries.
Pennsylvania	Keystone '93 (est. 1993)	Real estate transfer taxes provide \$3.5 million per year to land trusts and \$10 million per year to communities for grants for fee-title land purchases.
	Farmland Purchase of Development Rights Program*	Cigarette tax provides approximately \$20 million per year to purchase easements on agricultural lands.
Rhode Island	1998 Bond Initiative Program Open Space (est. 1986)	Bond initiative provides \$5 million for open space acquisition, \$5 million for local greenways projects, and \$5 million for state greenways projects. Bond sales provide approximately \$5 million per year for fee-title land purchases and occasionally conservation or agricultural easements through a zero-interest loan program to municipalities and nonprofit organizations.

State	Program	Funding Sources and Acquisition Methods
South Carolina	Legacy Program	One-time appropriation of \$5 million provides grants for land purchases.
	Heritage Trust Program (est. 1976)	Real estate transfer tax provides approximately \$2 million per year for fee-title land acquisition.
Tennessee	State Land Acquisition Fund (est. 1991)	Real estate transfer tax provides approximately \$3 million per year for fee-title land purchases and some easements.
Utah	Critical Lands Conservation Revolving Loan Fund (est. 1998)	State surplus land sale income, donations, and a general-fund contribution of \$100,000 in fiscal 1999 are used to assist municipalities or nonprofit organizations in preserving lands related to quality of life or cultural heritage.
	Habitat Management Program (est. 1995)*	Habitat authorization fee provides funds totaling \$3.4 million in fiscal 1997 to protect fish and wildlife habitat and improve public access to recreational land.
Vermont	Vermont Housing and Conservation Trust Fund (est. 1987)	Funds from real estate transfer tax, state general fund, and occasional bond sales, totaling \$5 million in fiscal 1999, are used for agricultural easements and some forestland purchases.
Virginia	Open Space Preservation Trust Fund	Bond sales provide funding for landowners to donate easements.
	VA Land Conservation Foundation	\$1.75M fund to acquire and protect sensitive lands.
	General Obligation Bond	1992 Bond provided \$26.4M for Parks & \$11.47M for natural areas.
Washington	Trust Land Transfer Program (est. 1989)	General funds totaling \$33 million in the fiscal 1999–2000 biennium are used to purchase land.
	Legacy Program (est. 1988)	Program leverages funds to acquire conservation easements.
	Special land acquisition	Funds from license taxes and other fees provide between \$8 million and \$20 million per year for fee-title land purchases.
West Virginia	General land purchase (est. 1933)	Bond sales and hunting and fishing license fees, totaling \$1.5 million in fiscal 1998, fund fee-title land acquisition and some easements, as necessary.
Wisconsin	Stewardship Program (est. 1989)*	Bond funds provide \$250 million over ten years to protect sensitive lands, expand state parks, and acquire recreational land.
Wyoming	Wildlife Trust Fund	Budget surpluses, hunting and fishing license fees, and sales of a conservation stamp create a \$14-million fund; interest on the fund is used for habitat development and protection and may be used for land purchase.
	Game and Fish Easement Program (est. 1919)	Hunting and fishing license fees provide funds, totaling \$1 million in fiscal 1999, for easements and some fee-title land purchases and one-year leases.

Source: *State Investment Strategies to Save Open Space and Steer Development* by Barbara Wells of the Natural Resources Policy Studies Division, NGA Center for Best Practices. February 21, 1999

Note: *Program data could not be obtained through the telephone survey, so this information is derived from the April 1998 report *A Legacy to Future Generations: A Study of State Land Conservation Activities* by Carol Brinkerhoff of the Division of Travel Development, Utah Department of Community and Economic Development.



About the author

Gregory Evans is completing his first term as an elected Director of the Northern Virginia Soil & Water Conservation District and serves as Secretary/Treasurer for the Board. He is a member of the Steering Committees for Governor Gilmore's Operation Spruce-Up and Fall Rivers Renaissance Waterway Clean-up Campaigns that focus attention on the role of volunteers as environmental stewards. He is also on the Advisory Board for the Virginia Agricultural Extension Service in Fairfax County and was a member of EPA 's National Drinking Water Advisory Council Benefits Working Group. He co-chaired Park Partners, a citizens' coalition group formed to promote passage of a successful \$87 million Fairfax County park bond referendum in 1998 and is a member of the Virginia Association of Soil & Water Conservation Districts and the Virginia Environmental Business Council.

Prior to his election to the Conservation District Board, Mr. Evans represented the Springfield Magisterial District on the Fairfax County Park Authority Board for five years. During his tenure, he was Chairman of the Board, Chairman of the Board's Planning & Development Committee and Chairman of its Natural Resources and Trust Fund Subcommittees. Mr. Evans sponsored the Park Authority's first Comprehensive Policy Plan. That document provides guidelines and criteria for the development of parks and natural areas in Fairfax County well into the 21st century. He sponsored the Authority's Wildlife Dispute Resolution Policy that has been nationally recognized for its innovative approach for settling disputes where natural and human habitat requirements clash. He helped create the Fairfax Land Preservation Trust; and he made land use recommendations to the Fairfax County Board of Supervisors as a member of a special planning task force.

In addition to his civic work, Mr. Evans is Vice President of the Environmental Services and Technology Division for Coleman Research Corporation, a company with 300 employees in Northern Virginia. Prior to joining Coleman in 1992, Mr. Evans directed the intergovernmental offices at the U.S. EPA and U.S. Department of Energy under President Bush and served in the White House under President Reagan as Associate Director of the Public Liaison Office.

He and his wife Sue have lived in Fairfax County, Virginia since 1978. They have three children, Matt, Erica and Kimberly. Mr. Evans holds Masters and Bachelors degrees in business from The George Washington University and Bryant College in Rhode Island and has been a speaker at numerous forums dealing with environmental issues.



“... a wise and frugal government, which shall restrain men from injuring one another, shall leave them otherwise free to regulate their own pursuits of industry and improvement, and shall not take from the mouth of labor the bread it has earned. This is the sum of good government, and this is necessary to close the circle of our felicities.”

Thomas Jefferson

1801