

Code of Virginia
Title 10.1. Conservation
Subtitle II. Activities Administered by Other Entities
Chapter 17. Open-Space Land Act

Chapter 17. Open-Space Land Act.

§ 10.1-1700. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Open-space easement" means a nonpossessory interest of a public body in real property, whether easement appurtenant or in gross, acquired through gift, purchase, devise, or bequest imposing limitations or affirmative obligations, the purposes of which include retaining or protecting natural or open-space values of real property, assuring its availability for agricultural, forestal, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural or archaeological aspects of real property.

"Open-space land" means any land which is provided or preserved for (i) park or recreational purposes, (ii) conservation of land or other natural resources, (iii) historic or scenic purposes, (iv) assisting in the shaping of the character, direction, and timing of community development, (v) wetlands as defined in § 28.2-1300, or (vi) agricultural and forestal production.

"Public body" means any state agency having authority to acquire land for a public use, or any county or municipality, any park authority, any public recreational facilities authority, any soil and water conservation district, any community development authority formed pursuant to Article 6 (§ 15.2-5152 et seq.) of Chapter 51 of Title 15.2, or the Virginia Recreational Facilities Authority.

1966, c. 461, § 10-156; 1974, c. 348; 1986, c. 360; 1988, c. 891; 1997, c. 130; 2000, cc. 181, 724, 747; 2011, cc. 85, 159.

§ 10.1-1701. Authority of public bodies to acquire or designate property for use as open-space land.

To carry out the purposes of this chapter, any public body may (i) acquire by purchase, gift, devise, bequest, grant or otherwise title to or any interests or rights of not less than five years' duration in real property that will provide a means for the preservation or provision of open-space land and (ii) designate any real property in which it has an interest of not less than five years' duration to be retained and used for the preservation and provision of open-space land. Any such interest may also be perpetual.

The use of the real property for open-space land shall conform to the official comprehensive plan for the area in which the property is located. No property or interest therein shall be acquired by eminent domain by any public body for the purposes of this chapter; however, this provision shall not limit the power of eminent domain as it was possessed by any public body prior to the passage of this chapter.

1966, c. 461, § 10-152; 1974, c. 259; 1981, c. 64; 1988, c. 891.

§ 10.1-1702. Further powers of public bodies.

A. A public body shall have the powers necessary or convenient to carry out the purposes and provisions of this chapter, including the following powers:

1. To borrow funds and make expenditures;
2. To advance or accept advances of public funds;
3. To apply for and accept and utilize grants and any other assistance from the federal government and any other public or private sources, to give such security as may be required and to enter into and carry out contracts or agreements in connection with the assistance, and to include in any contract for assistance from the federal government such conditions imposed pursuant to federal laws as the public body may deem reasonable and appropriate and which are not inconsistent with the purposes of this chapter;
4. To make and execute contracts and other instruments;
5. In connection with the real property acquired and designated for the purposes of this chapter, to provide or to arrange or contract for the provision, construction, maintenance, operation, or repair by any person or agency, public or private, of services,

privileges, works, streets, roads, public utilities or other facilities or structures that may be necessary to the provision, preservation, maintenance and management of the property as open-space land;

6. To insure or provide for the insurance of any real or personal property or operations of the public body against any risks or hazards, including the power to pay premiums on the insurance;

7. To demolish or dispose of any structures or facilities which may be detrimental to or inconsistent with the use of real property as open-space land; and

8. To exercise its functions and powers under this chapter jointly or cooperatively with public bodies of one or more states, if they are so authorized by state law, and with one or more public bodies of this Commonwealth, and to enter into agreements for joint or cooperative action.

B. For the purposes of this chapter, the Commonwealth or a county, city or town may:

1. Appropriate funds;

2. Issue and sell its general obligation bonds in the manner and within the limitations prescribed by the applicable laws of the Commonwealth;

3. Exercise its powers under this chapter through a board or commission, or through such office or officers as its governing body by resolution determines or as the Governor determines in the case of the Commonwealth; and

4. Levy taxes and assessments.

1966, c. 461, § 10-154; 1988, c. 891.

§ 10.1-1703. Acquisition of title subject to reservation of farming or timber rights; acquisition of easements, etc.; property to be made available for farming and timber uses.

Any public body is authorized to acquire (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 designed to maintain the character of such land as open-space land. Any such interest may also be perpetual. Whenever practicable in the judgment of the public body, real property acquired pursuant to this chapter shall be made available for agricultural and timbering uses which are compatible with the purposes of this chapter.

1966, c. 461, § 10-158; 1974, c. 259; 1981, c. 64; 1988, c. 891.

§ 10.1-1704. Diversion of property from open-space land use; conveyance or lease of open-space land.

A. No open-space land, the title to or interest or right in which has been acquired under this chapter and which has been designated as open-space land under the authority of this chapter, shall be converted or diverted from open-space land use unless: (i) the conversion or diversion is determined by the public body to be (a) essential to the orderly development and growth of the locality and (b) in accordance with the official comprehensive plan for the locality in effect at the time of conversion or diversion and (ii) there is substituted other real property which is (a) of at least equal fair market value, (b) of greater value as permanent open-space land than the land converted or diverted and (c) of as nearly as feasible equivalent usefulness and location for use as permanent open-space land as is the land converted or diverted. The public body shall assure that the property substituted will be subject to the provisions of this chapter.

B. A public body may convey or lease any real property it has acquired and which has been designated for the purposes of this chapter. The conveyance or lease shall be subject to contractual arrangements that will preserve the property as open-space land, unless the property is to be converted or diverted from open-space land use in accordance with the provisions of subsection A of this section.

1966, c. 461, § 10-153; 1988, c. 891; 1997, c. 338.

§ 10.1-1705. Chapter controlling over other laws; powers supplemental.

Insofar as the provisions of this chapter are inconsistent with the provisions of any other law, the provisions of this chapter shall be controlling. The powers conferred by this chapter shall be in addition and supplemental to the powers conferred by any other law.

1966, c. 461, § 10-157; 1988, c. 891.

§ 10.1-1705.1. Construction.

Notwithstanding any provision of law to the contrary, an easement held pursuant to this chapter shall be construed in favor of achieving the conservation purposes for which it was created.

2021, Sp. Sess. I, cc. 274, 317.

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