

**Board of Conservation and Recreation
Conference Room 3, Patrick Henry Building
Richmond, Virginia
June 15, 2010**

MINUTES

Board of Conservation and Recreation Members Present

Mark E. Smith, Chair	Stephen Murray, Vice Chair
Linda Crandell	Sheryl D. Swinson
Jennifer Wagner	David Watts
Robert L. Wilkerson	W. Bruce Wingo

Board of Conservation and Recreation Members Not Present

Alan D. Albert	Richard Formato
Gwen Mason	

DCR Staff Present

David A. Johnson, Director	Jeb Wilkinson, Chief Deputy
David C. Dowling	Joe Elton
Michael Fletcher	Robert Munson
Rick Myers	Danette Poole
Larry Smith	Thomas Smith
Synthia Waymack	

Call to Order and Introductions

Chairman Smith called the meeting to order and declared a quorum present.

Chairman Smith introduced Jeb Wilkinson, Chief Deputy Director for DCR, David Johnson, DCR Director and Doug Domenech, Secretary of Natural Resources.

Secretary Domenech thanked the Board members for their service to the Commonwealth. He mentioned that Governor McDonnell has committed to preserving another 400,000 acres during his term. He said that the Governor is also committed to doing everything possible to clean and preserve the Chesapeake Bay. He noted that the Virginia Bay TMDL Stakeholder Advisory Group was scheduled to meet later in the day.

Secretary Domenech said that the goal was to achieve the Bay goals through voluntary efforts where possible.

Secretary Domenech said that the Administration is also interested in energy development. Virginia is the second highest importer of energy in the United States.

Secretary Domenech said that the other item on his agenda was Fort Monroe. Fort Monroe is an Army base being closed through the BRAC process. The land reverts back to the Commonwealth if not used as a military base.

Mr. Smith thanked Secretary Domenech for joining the meeting.

Approval of Minutes

MOTION: Mr. Wingo moved that the minutes of the December 15, 2009 meeting be approved as submitted.

SECOND: Ms. Crandell

DISCUSSION: None

VOTE: Motion carried unanimously

Director's Report

Mr. Johnson thanked Mr. Smith for the introduction. He gave an overview of his background and his vision for DCR.

Mr. Johnson noted that Secretary Domenech outlined the Governor's agenda as it relates to Natural Resources. He noted that the quantitative issue was related to the conservation of land. He said that he has asked Mr. Wilkinson to spearhead that effort. He asked Board members to suggest areas that might qualify for an easement or purchase.

Mr. Johnson said that the focus on the Chesapeake Bay was a main focus, largely due to pressure from the EPA, but said that DCR is not unmindful of the Southern Rivers area.

Mr. Johnson introduced Mr. Wilkinson

Mr. Wilkinson said that he looked forward to working with the Board.

Mr. Johnson asked Mr. Dowling to give a legislative update. Mr. Dowling distributed an update. A copy of Mr. Dowling's report is included as Attachment #1.

Mr. Dowling noted that HB627, patroned by Delegate Kilgore had been brought to the Board before it was prefiled. This legislation authorizes the DCR Director to establish a directory of historical facilities and sites. Staff will present findings to the Board, and the Board will make recommendations to the Director regarding approval. The Director may designate sites with the approval of the Governor.

Mr. Elton said that State Park's staff hoped to have information on the agency website prior to July 1. He noted that the Daniel Boone Wilderness Trail Association had expressed interest in a gateway on Route 58 to all of the Daniel Boone historic attractions in Southwest Virginia.

Mr. Watts asked if evaluation standards had been developed.

Mr. Elton said that the agency would look to the Director and the Board for guidance.

Mr. Dowling said that would be a program function that would periodically need to be revised.

Mr. Johnson said that there may not be a specific checklist but that there would be a subjective narrative about what needs to be included.

Mr. Wingo asked if there would be a plaque or recognition when a location is recognized.

Mr. Elton said that DCR did not wish to compete with the Dept. of Historic Resources. He said that there were probably many sites that would not qualify for state or federal designation.

Mr. Dowling said that HB774 dealt with the potential aspects on the Department regarding Explore Park.

Mr. Elton said that the agency had been in ongoing discussions regarding the potential of Explore Park being transferred to DCR. He said that DCR is not prepared to receive this property.

Mr. Dowling noted that the remainder of the information was for Board members to review. He said that members should contact him if there were questions.

Mr. Dowling said that members had been sent a link to the revised State Park Regulations. There are no other regulatory efforts under the BCR.

Mr. Johnson introduced Danette Poole as the new director of the Division of Planning and Recreation Resources.

Recreational Trails Program Awards

Ms. Waymack gave a presentation regarding the Recreational Trails Program awards.

Recreational Trails Program

- An 80-20 matching reimbursement program.
- Created in 1991, under the Symms Act and continued with the Intermodal Surface Transportation Efficiency Act (ISTEA), the Transportation Equity Act for the 21st Century (TEA-21) and the Safe, Accountable, Flexible, Efficient Transportation Equity Act- A Legacy for Users (SAFETEA-LU).
- Since 1991, Virginia has received over \$13 million in funding making possible over 200 projects in more than 100 localities.
- Funds for the program come from federal gasoline tax revenues.
- Rules require that 30% of the funding be used for motorized trails, 30% for non-motorized trails and 40% for diversified trails.
- Requires a Recreational Trails Advisory Committee that meets at least once per year. Must be comprised of representatives from trail users groups. Current TAC has 8 members.
- Funding may be used for construction and/or rehabilitation of trails and trail related facilities.
- Federal, state, local and Tribal governments are eligible to receive funding through the program. Registered, non-profit groups in operation in Virginia for at least 5 years are also eligible to compete for funding.
- DCR administers the program in partnership with the Federal Highway Administration. The FHWA is the approving entity on all project recommendations from DCR.

RTP Selection Process

- Two step process: Preliminary Application and Proposal Description and Environmental Assessment Application (PDESA)
- Grant cycle and deadline announced.
- RTP grant workshop held.
- Preliminary Applications reviewed and scored by RTP TAC.
- Site visits of the highest ranking applications are made.
- Selected projects advance to the PDESA phase.
- Applications and environmental impacts are reviewed and analyzed by DCR and FHWA.
- FHWA approval received.
- RTP Award Workshop held.
- Grantees have 3 years to complete project.

2009-2010 RTP Grant Cycle

- \$824,000 available
 - \$247,200 for non-motorized trails
 - \$247,200 for motorized trails
 - \$329,600 for diversified trails
- 66 applications received
 - Over \$6 million requested
- 9 projects selected for funding

Ms. Waymack gave an overview of projects receiving funding. A list of those projects is available from DCR.

Land and Water Conservation Fund Project Update and Overview

Mr. Elton gave a presentation regarding the Land and Water Conservation Fund.

Land and Water Conservation Fund

- 1958 – President Eisenhower creates bipartisan Outdoor Recreation Resources Review Commission chaired by Laurence Rockefeller. Rockefeller says “states play a pivotal role in providing for Outdoor Recreation – They’re close to home”
- September 3, 1964 President Johnson signs the LWCF Act into law

Nationwide

Stateside 40,400 grants

\$3.7 billion, matched for \$7.4 billion

Federal side \$5.5+ billion

- Over time the Congress has altered the original act from 60% statewide and 40% federal and today it states that not less than 40% goes to federal side projects. In reality, less than 10% annually has been given to the stateside program over the past decade – some years the states get NO funding
- The Obama Administration is committed to full funding at \$900 million by 2014. President proposes \$650 million in the current budget. Only \$38 million appropriated to states, territories and Washington, D.C. in 2009.
- The Act requires a State Comprehensive Outdoor Recreation Plan (SCORP) for each state. Virginia published its first on November 1, 1965. “The rich and varied resources of the Virginia Outdoors are indeed our Common Wealth, and every Virginian justly expects to enjoy its benefits. Furthermore, millions of other Americans are willing and able to spend in our state tens of millions of dollars annually to share those benefits.” - *Senator Fitzgerald Bemiss, Chairman Virginia Outdoor Recreation Study Commission*. Our 2007 VOP was recognized as one of the top three SCORPs in the country.

Virginia's Record:

- Since 1965 this grant program has been the catalyst for the acquisition/development of state and local parks in the Commonwealth.
- Over 400 state and local park projects in Virginia have been funded through this program.
- The amount of Land and Water Conservation Fund (L&WCF) received by Virginia from 1965-2009 is approximately \$ 77 million.
- This program has leveraged more than \$154 million for public parks in Virginia
- The annual need for L&WCF assistance is 10 times greater than available funds
- Lack of sustainable funding has caused uneven stateside appropriations throughout the life of the program. For example, Virginia received \$7.6 million in 1979 and no L&WCF dollars during the period 1996-1999. Current Virginia appropriations have averaged approximately \$2 million at the beginning of the decade. Reductions in the program starting around the year 2003, reduced funding to approximately \$350,000 on average since then.
- Parks that receive L&WCF assistance are dedicated in perpetuity for outdoor recreation, thereby ensuring the preservation of Virginia's public recreation estate for future generations.
- Statewide LWCF can be used for acquisition and development of outdoor recreation lands. These funds can be used to help Virginia accomplish Governor McDonnell's goal of protecting 400,000 acres during his administration – a top priority for DCR.

Ms. Waymack made additional comments concerning the Land and Water Conservation Fund Project Selection Process. The selection steps are as follows:

- Pre-Application
- Application Review & Scoring
- Site Inspections
- PDESA
- NPS Review & Approval
- Authorization of DCR – Grantee Agreements

Who and What are eligible?

- Local, State and Tribal Governments
- Acquisition of land for park development
- Construction of recreation facilities and supporting facilities

2009-2010 Grant Round

- \$400,000 available
- 13 applications received
- Over \$1 million requested
- \$75,000 average grant request
- \$179,000 average total project costs
- 5 projects undergoing site inspections for advancement to second stage of the competition
- Next grant cycle planned for Fall 2010

Natural Heritage Update

Mr. Tom Smith gave an update regarding the Natural Heritage Program.

The Natural Heritage Mission is, “To conserve Virginia’s biodiversity through inventory, protection, and stewardship.”

DCR participates in an international network of natural heritage programs. The network helps Virginians make informed decisions and helps carry our efforts and information to conservation decision-makers throughout the Western Hemisphere.

Natural Heritage highlights

- VA Native Plant Society – lost species project
Target is ten globally rare plants
species considered historic (not
seen in VA in 20 – 40 years).
Since 1986: 30 species new to science
 300 species new to VA
- Fort A.P. Hill Vegetation Mapping
- White Nose Syndrome in Bats
- Completed pilot Climate Change Vulnerability Index assessments on 40 plant and animal species
- Tracking progress on Governor McDonnell’s 400,000 acre land conservation goal. 21,786 acres as of May 31.
- Mapped 419 new locations for natural communities and rare species; updated 1,012 mapped locations in 2009.

- Virginia Conservation Lands Needs Assessment continues to be in-demand product by local governments, planning district commissions, non-profits.
- Species Predictive Range Mapping.
- In 2009, Natural Heritage provided unbiased scientific information in a timely and cost-effective manner for 2,287 formal, written land planning and land-conservation requests.
- Wrapping up User Survey. 60 user responses to date. “This website has made our jobs easier and allows us to quickly complete T&E reviews for planned projects.
- Concerted effort to cooperate with VA Outdoors Foundation and land trusts on easements.
- Just released Natural Area Preserve System Guide, and Natural Area Preserves for the first time featured on/in the Virginia Travel Guide 2010
- Crow’s Nest field day – 120 slots filled in first 3 hours.
- 59 state Natural Area Preserves protect 49,531 acres and 573 natural community and rare species locations.
- Since 2002, a total of 25 new NAPs, 75 tracts, 29,414 acres, and 382 species and community mapped locations protected.
- NAP Nonpersonnel GF Budget
- FY10 \$30,000 compared to
- \$250,000 in 2002.

Ms. Wagner expressed a concern that there were 30 preserves west of I-95 and only three staff persons.

Mr. Smith said that the agency had budget constraints with regard to the Natural Area Preserve system. He said that due to general fund restrictions the agency did not have the ability to hire regional staff.

Ms. Wagner if there were restrictions on hiring seasonal workers even when budget times were good.

Mr. Smith said that the ability remained to hire, but not the funding.

Mr. Dowling noted that DCR experienced an almost \$10 million loss in one fiscal year.

Mr. Mark Smith said that the Board and DCR needed to be careful not to set up an expectation in the community until there was a permanent solution to opening facilities.

At this time the Board recessed for lunch.

Natural Area Management Guidelines

Mr. Myers presented an update regarding the Natural Area Preserve Management Guidelines. He noted that the guidelines were first adopted by the Board in 2000. He said there had been a significant increase in the number of Natural Area Preserves and acreage since that time.

Mr. Myers presented a draft copy of the revised guidelines. A copy of this revised version is available from DCR.

Changes included the addition of kayaking and geocaching. Also caving activities were moved to an area that were conditionally appropriate.

Mr. Myers noted that the Director had reviewed and approved the revised guidelines and that staff was asking for Board approval.

Mr. Mark Smith asked Mr. Myers to review the process on the adoption of guidelines.

Mr. Myers said that the guidelines were made public on the agency website.

Mr. Tom Smith said that the guidelines were provided in signage where available and appropriate.

Mr. Dowling said that the guidelines were posted as part of the state guidance documents adopted by the Board.

Mr. Watts asked how Natural Area Preserves were designated and whether there was a public approval process.

Mr. Myers said that there was not a formal participation on the part of the general public. He said that sites were located by agency staff or nominated by others with expertise in the area.

Mr. Watts asked why the process was not public.

Mr. Dowling said that the selection was part of a real estate process.

Mr. Watts asked about penalties for non-compliance.

Mr. Dowling said that the document provided was guidance.

Mr. Myers noted that DCR had the authority to enforce the law through the State Parks Regulations on all DCR properties.

MOTION: Mr. Murray moved that the Board of Conservation and Recreation approve the revised Natural Area Management Guidelines as presented by staff.

SECOND: Ms. Swinson

DISCUSSION: None

VOTE: Motion carried unanimously

Natural Area Preserve Name Approval

Mr. Tom Smith said that the guidelines for the naming of Natural Area Preserves were approved in 2006. He said that the criteria provided for the naming to have relevance to the local community. He said that staff brings recommendations to the Board, and that the Board makes a recommendation to the DCR Director who gives final approval.

Mr. Smith reviewed the three Natural Area Preserves under consideration for naming.

Mill Creek Springs

- Location: Montgomery County
- Owner: The Nature Conservancy
- Size: 222 +/- acres
- Natural Heritage Resources:
 - Montane dry calcareous forest/woodland G2 S2
 - Significant cave
- Protection method: Land donated by Evelyn Blake to TNC. TNC to donate Natural Area Deed of Dedication to DCR
- Recommended name: Mill Creek Springs Natural Area Preserve

MOTION: Ms. Swinson moved that the Board recommend approval of the naming of Mill Creek Springs Natural Area preserve as presented by staff.

SECOND: Ms. Crandell

DISCUSSION: None

VOTE: Motion carried unanimously

Blackwater Sandhills

- Location: Isle of Wight County
- Owner: Isle of Wight County
- Size: 812 +/- acres
- Natural Heritage Resources:
 - Bald Cypress – Tupelo Swamp G5 S4
 - Eastern Big-eared Bat G3G4 S2 SE
 - Southeastern Myotis Bat G3G4 S2
- Protection method: Natural area deed of dedication donated by Isle of Wight County
- Recommended name: Blackwater Sandhills Natural Area Preserve

MOTION: Wingo moved that the Board recommend approval of the naming of Blackwater Sandhills Natural Area preserve as presented by staff.

SECOND: Mr. Murray

DISCUSSION: None

VOTE: Motion carried unanimously

Pickett's Harbor

- Location: Northampton County
- Planned ownership: Dept. of Conservation & Recreation

- Size: 94 +/- acres
- Natural Heritage Resources:
 - Northeastern beach tiger beetle G4T2 S2 FT
 - Globally Significant migratory songbird concentration area
- Protection method: Land to be purchased by DCR (under negotiation)
- Recommended name: Picketts Harbor Natural Area Preserve

MOTION: Ms. Swinson moved that the Board recommend approval of the naming of Pickett’s Harbor Natural Area preserve as presented by staff.

SECOND: Ms. Crandell

DISCUSSION: None

VOTE: Motion carried unanimously

State Park Master Plans

Mr. Munson presented the State Park Master Plans for consideration. He said that the Code of Virginia requires Master Plans for state parks and that they are to be updated every five years. The process includes public meetings, an advisory committee and a presentation to the public. The draft plans are brought to the Board for recommendation, then to the General Assembly for review and are finally adopted by the DCR Director.

Mr. Munson said that six of the Master Plans under consideration were updates. One to be presented was for a new park.

Mr. Munson presented the following updates:

First Landing State Park

First Landing State Park was originally named Seashore State Park and was opened in 1936 as one of six original parks in the Virginia State Parks System. Since 1991, estimated park attendance has exceeded one million visitors per year. Officially renamed First Landing State Park on April 26, 1999, to commemorate the April 1607 landing of English settlers, the park consists of some 2,888 acres of beaches, dunes, maritime forests, salt marshes, and fresh water wetlands located at the mouth of the Chesapeake Bay in Virginia Beach, Virginia. The park is in the Hampton Roads Planning District, Region 23; this area is home to more than 1.4 million people. Access to the park is provided off of U.S. Route 60 (Shore Drive in Virginia Beach).

Mr. Munson provided an overview of the recommended changes to the Master Plan for First Landing State Park. A copy of the Executive Summary is available from DCR.

False Cape State Park

False Cape State Park consists of some 4,321 acres of maritime forests, dunes, marshes, shrub areas, and several islands. It is located in the southeast corner of Virginia, within the jurisdiction of the City of Virginia Beach. The park site is bordered by North Carolina to the south, the Atlantic Ocean to the east, Back Bay to the west, and Back Bay National Wildlife Refuge to the north. Access to the park is from the Indian River Road exit (Route 407) on

Interstate 64. The park is reached by taking Indian River Road to Newbridge Road, Newbridge Road to Sandbridge, the south on Sandpiper Road.

Mr. Munson provided an overview of the recommended changes to the Master Plan for False Cape State Park. A copy of the Executive Summary is available from DCR.

Claytor Lake State Park

Claytor Lake State Park is located in Pulaski County in the New River Valley with the Blue Ridge Mountains to the east and the Allegheny Mountains to the west. Claytor Lake State Park is located off exit 101 on Route 81, 45 miles south of Roanoke. The park enjoyed an attendance of 249,022 people in 2008.

Mr. Munson provided an overview of the recommended changes to the Master Plan for Claytor Lake State Park. A copy of the Executive Summary is available from DCR.

Mason Neck State Park

Mason Neck State park consists of 1825 acres and is located in the southwest corner of Fairfax County, approximately 20 miles south of Washington, DC. The park is situated on a peninsula and fronts on three picturesque embayments of the Potomac River. Mason Neck was acquired to conserve and interpret the unique natural features, including biological reserves, fishers and wildlife, as well as to provide a range of recreational opportunities to park visitors, including access to hiking trails, guided canoe trips, and picnicking.

Mr. Munson provided an overview of the recommended changes to the Master Plan for Mason Neck State Park. A copy of the Executive Summary is available from DCR.

Leesylvania State Park

Leesylvania State Park is located in the southeastern corner of Prince William County, approximately 25 miles south of Washington, DC. The park covers 500+ acres on a peninsula bordered by the Potomac River on the east, Neabsco Creek on the north, and Powells Creek on the south. An area referred to as the Neabsco Community also borders the park on the north. The park is cut almost exactly in half by property owned by CSX railroad, which operates an active railway through the area. Leesylvania has evolved as one of the most popular destinations for water access in Northern Virginia.

Mr. Munson provided an overview of the recommended changes to the Master Plan for Leesylvania State Park. A copy of the Executive Summary is available from DCR.

Staunton River Battlefield State Park

In 1956 the United Daughters of the Confederacy transferred a portion of Staunton River Battlefield to the Virginia Department of Conservation and Recreation. The 6.5-acre Fort Hill was managed as a satellite of Staunton River State Park until additional park land was acquired and it became a separate state park in 2000. In 1999, the Butler Family donated the 35-acre Mulberry Hill Plantation house and grounds to the state as an addition to the park. While the property and its owner at the time played a role in the Battle for Staunton River Bridge, the Plantation's history goes back to the mid-1700s. The property is listed on the National Historic Register as being significant for the period between 1750 to 1824.

Mr. Munson provided an overview of the recommended changes to the Master Plan for Staunton River Battle State Park. A copy of the Executive Summary is available from DCR.

Middle Peninsula State Park

The Middle Peninsula State Park is located off Route 632 in Gloucester County. The park was acquired in the spring of 2006. It encompasses 431 acres within Gloucester County. The park has 2,260 linear feet of the York River shoreline where the river is approximately two miles wide. The park also includes approximately 3,776 linear feet along Aberdeen Creek. Only a portion of this part of the creek is suitable for paddling. Currently a portion of the park property is leased for agriculture.

Mr. Munson provided an overview of the proposed Master Plan for Middle Peninsula State Park. A copy of the Executive Summary is available from DCR.

MOTION: Mr. Wingo moved that the Board of Conservation and Recreation recommend approval of the revised Master Plans for First Landing State Park, False Cape State Park, Claytor Lake State Park, Mason Neck State Park, Leesylvania State Park and Staunton River Battlefield State Park as presented by staff.

SECOND: Mr. Wingo

DISCUSSION: None

VOTE: Motion carried unanimously

MOTION: Mr. Murray moved that the Board of Conservation and Recreation recommend approval for the proposed Master Plan for Middle Peninsula State Park as presented by staff.

SECOND: Ms. Crandell

DISCUSSION: None

VOTE: Motion carried unanimously

State Parks Update

Mr. Elton gave an update regarding State Parks. A full copy of his presentation is available from DCR.

May 28-31, 2010 - Record Memorial Day Weekend

- 15.9% higher visitation
- 271,683 in 2010/269,552 in 2007 (previous high)
- Visitation through May 31 was 2.2 million, 8.8% more than this time last year when we had a record 7,534,960 visits. Nearly one million overnight visits
- Record revenues: \$539,778 – 17% higher than last year
- Record website page views – 144,985 and 41,224 visitors – 21% higher than last year

2009 Attendance and Economic Impact

- Attendance - 7,534,960
- Economic Impact - \$175,565,001
- General Funds \$15.7 million
- 11 Fold Return on investment

State Park’s Project Fund

MOTION: Ms. Swinson moved that the Board of Conservation and Recreation recommend approval of the following State Park Project Fund request:

Project 10-01 Wilderness Road State Park:

Request to use \$10,000 of the remaining \$35,000 of park Visitor Center construction funds to repair split rail fence surrounding the property and to upgrade playground surface area as a safety measure.

SECOND: Ms. Crandell

DISCUSSION: None

VOTE: Motion carried unanimously

Scenic Rivers Program 40th Anniversary

Ms. Poole said that she would like to recognize Mr. Munson for the work that he has done. She noted that Mr. Munson was retiring from DCR. She said that a lot of the credit for Division successes over the past years was due Mr. Munson.

Ms. Poole gave a brief presentation regarding the 40th Anniversary of the Virginia Scenic Rivers Program. She noted that in April, Governor McDonnell had participated in an event recognizing the 40th Anniversary.

Ms. Poole said that four river had been added into the system in 2010. They are:

Blackwater River
Isle of Wight & Southampton Counties, Franklin & Suffolk

Hughes River
Rappahannock, Madison & Culpeper Counties

Jordan River
Rappahannock County

Russell Fork River
Dickenson County

Other Business

There was no other business.

Public Comment

There was no public comment.

Next Meeting

Mr. Smith said that he would work with staff regarding a meeting date in October.

Adjourn

There was no further business and the meeting was adjourned.

Respectfully submitted,

Mark E. Smith
Chairman

David A. Johnson
Director

**Virginia Department of Conservation and Recreation
2010 Legislative, Budget and Regulatory Update
June 15, 2010**

LEGISLATION

State Parks

- **HB 627 (Kilgore) - Cultural heritage sites; Director of DCR to establish directory of historical facilities and sites.** Authorizes the Director of the Department of Conservation and Recreation to establish a state directory of cultural heritage facilities and sites that would be composed of commemorative and historic facilities and sites that interpret significant aspects of national, state, or regional history. The sites included in the directory would be those owned or operated by entities other than state agencies. The Director would have the responsibility of evaluating whether the facility or site qualifies for inclusion in the directory and then presenting his findings to the Board of Conservation and Recreation, which makes its recommendations. The recommendations would be sent to the Governor for his written approval. *Acts of Assembly Chapter 29 (effective 07/01/2010)*
- **HB 774 (Cleaveland) and SB 502 (Smith) - Recreational Facilities Authority; develop alternate plan for utilization, etc., of property.**
Delays the reversion of title to real property from the Virginia Recreational Facilities Authority to the Commonwealth, in the event that the Authority ceases to operate, until July 1, 2011. The bill provides that the Virginia Recreational Facilities Authority and Roanoke County shall work with other stakeholders to develop an alternate plan for the appropriate utilization and management of the property. The plan shall be consistent with the mission of the Explore Park and shall include conservation, outdoor recreation, environmental awareness, and public access and utilization of the property. The plan shall also provide ways for the park to become financially independent. The plan shall be completed and transmitted to the Governor and the General Assembly by December 31, 2010. *Acts of Assembly Chapter 279; Acts of Assembly Chapter 731 (effective 07/01/2010)*
- **HB 1302 (Tyler) Roanoke River Rails-to-Trails, Inc.; conveyance of certain property in Town of Lawrenceville.**
Authorizes the conveyance of certain real property in the Town of Lawrenceville owned by the Commonwealth (declared surplus by the Department of Corrections) to Roanoke River Rails-to-Trails, Inc. to maintain and operate a trail for public park purposes. The sale and conveyance shall be approved by the Governor. *Acts of Assembly Chapter 647 (effective 07/01/2010)*

Outdoor Recreation

- **HB 501 (Gilbert) - Jordan River; designates portion thereof as component of State Scenic Rivers System.**
Designates a seven-mile portion of the Jordan River as a component of the Virginia Scenic Rivers System. *Acts of Assembly Chapter 231 (effective 07/01/2010)*
- **11B 503 Hughes River; designates portion thereof as component of State Scenic Rivers System.**
Designates a 10-mile portion of the Hughes River as a component of the Virginia Scenic Rivers System. *Acts of Assembly Chapter 232 (effective 07/01/2010)*

- JIB 951 (Jones) and SB 17 (Lucas) - Blackwater River; designates a portion as component of State Scenic Rivers System.**
 Designates a 56-mile portion of the Blackwater River as a component of the Virginia Scenic Rivers System. *Acts of Assembly Chapter 308; Acts of Assembly Chapter 139 (effective 07/01/2010)*
- IIB 1180 (Phillips) - Russell Fork River; designates portion thereof as component of State Scenic Rivers System.**
 Designates a nine-mile segment of the Russell Fork River in Dickenson County as a component of the State Scenic Rivers System. The designation is not to be used (i) to preclude the land along the river from being mined or (ii) to be a criterion for imposing water quality standards. *Acts of Assembly Chapter 290 (effective 07/01/2010)*
- SB 546 (Edwards) - Railroad rights-of-way; passage permitted for access to lands used for recreational purposes, etc.**
 Ensures that railroad rights-of-way may be used for recreational purposes and for access to lands being used for recreational purposes without the easement holder owing a duty of care to the user. This exemption from civil liability already exists for landowners, but does not explicitly include railroad rights-of-way. The exemption does not apply if the landowner charges a fee for the use of the lands and does not include gross negligence or willful or malicious failure to guard or warn against a dangerous condition. *Approved by Governor – Chapter 43 (effective 07/01/2010)*
- HR 6 (Abbitt) - Commending the Virginia Department of Conservation and Recreation and the Virginia Department of Transportation**
 Commending the Virginia Department of Conservation and Recreation and the Virginia Department of Transportation on their collaborative efforts to develop the High Bridge Trail State Park. *House agreed to*

Land Preservation Tax Credits

- SB 341 (Hanger) - Land preservation tax credit; DCR to provide estimate of land used for production agriculture, etc.**
 Requires the Department of Conservation and Recreation to consult and coordinate with the Department of Taxation and the Departments of Forestry and Agriculture, and Consumer Services when preparing its annual Land Preservation Tax Credit Report in order to provide an estimate of the number of acres of land currently being used for "production agriculture and silviculture" as defined in § 3.2-300 that have been protected by qualified donations of less-than-fee interests. The bill also requires that the report include information, when available, on land qualifying for credits being used for "production agriculture and silviculture" that have onsite operational best management practices (BMPs), which are designed to reduce the amount of nutrients and sediment entering public waters. The bill specifies that the BMP information shall be reported in summary fashion as appropriate to preserve confidentiality of information. *Acts of Assembly Chapter 384 (effective 07/01/2010)*
- IIB 447 (Ware) and SB 264 (Whipple) - Income tax, state; remainder of revenues transferred to Land Conservation Fund for distribution.**
 Removes the \$10,000 cap on the 2 percent fee imposed on the transfer arising from the sale of land conservation tax credits and directs up to 50 percent of revenues be paid to the Department of Taxation and the Department of Conservation and Recreation first. The remaining revenues will be transferred to the Virginia Land Conservation Fund for distribution to the public or private conservation agencies responsible for enforcing the conservation

purposes of the donated interest. *Acts of Assembly Chapter 229; Acts of Assembly Chapter 248 (effective 07/01/2010)*

Stormwater

- **HB1220 (Hugo) and SB 395 (Wagner) - Stormwater management regulations; changes effective date that establishes local program criteria.**
Delays the effective date of the Virginia Soil and Water Conservation Board's stormwater regulations that establish local program criteria and delegation procedures and the water quality and water quantity criteria. The regulation, however, shall be adopted within 280 days after the establishment of the U.S. Environmental Protection Agency's Chesapeake Bay - wide TMDL, but no later than December 1, 2011. The bill also directs the Virginia Soil and Water Conservation Board to establish an advisory panel to review the regulation and make recommendations on possible revisions to the regulation. *Acts of Assembly Chapter 137; Acts of Assembly Chapter 370 (effective 07/01/2010)*
[Incorporates similar bills by Delegates Bulova (I-LB 1311) and Dance (HB 155) and Senators Hanger (SB 677), Watkins (SB 245) and Whipple (SB 681). A Senate budget amendment, item 351 #5s also contains the delay language.]
- **LLB 1221 (Bulova) Water Facilities Revolving Fund; loans for stormwater runoff control best management practices.**
Provides that loans may be made from the Virginia Water Facilities Revolving Fund, at the State Water Control Board's discretion, to a local government for construction of facilities or structures or implementation of best management practices that reduce or prevent pollution of state waters caused by stormwater runoff from impervious surfaces. However, under the bill wastewater treatment facilities will have the first priority in obtaining financing from the Fund. *Acts of Assembly Chapter 644 (effective 07/01/2010)*
- **SB 627 (Wagner) - Nutrient reduction credits; nonpoint nutrient offsets to be credited against a nutrient allocation.**
Clarifies who receives credit for the nutrient reductions associated with a stormwater nonpoint nutrient offset. Offsets are used to achieve compliance with construction site stormwater nutrient discharge requirements. The nonpoint nutrient offsets system works very similar to wetland banks. These offsets are only available when capturing all nutrients is too difficult on a development site. If the land disturbing activity using a nonpoint nutrient offset discharges to an MS4, the locality receives credit toward its nutrient allocation. If the discharge is not to a MS4 then the reductions are applied toward compliance with the nutrient allocation applicable to that area. *Acts of Assembly Chapter 686 (effective 07/01/2010)*

Dam Safety

- **HB 438 (Toscano) - Dam safety; Soil and Water Conservation Board to establish incremental damage analysis procedure.**
Directs that the Virginia Soil and Water Conservation Board shall establish in their Impounding Structure Regulations an incremental damage analysis procedure that permits the spillway design flood requirement for an impounding structure to be reduced to the level at which dam failure does not significantly increase downstream hazard to life or property, provided that such spillway design flood requirement shall not be reduced to below the 100-year flood event for high or significant hazard potential impounding structures, or to below the 50-year flood event for low hazard potential impounding structures. The bill also directs the Board to consider the impact of limited-use or private roadways with low traffic volume and low public safety risk that are downstream from or across a dam in the determination of the hazard potential classification of the dam. The legislation further allows for a dam owner to submit to the Board his or her own

plan and schedule for correction of impounding structure deficiencies; the Board would then determine whether such alternative plans and schedules are appropriate. *Acts of Assembly Chapter 270 (effective 07/01/2010)*

- **SB 244 (Watkins) - Dam Safety Act; Soil & Water Conservation Board to adopt regulations concerning low traffic roadway.**

Requires the Virginia Soil and Water Conservation Board to adopt regulations that consider the impact of downstream limited-use or private roadways with low traffic volume and low public safety risk on the determination of the hazard potential classification of an impounding structure. *Acts of Assembly Chapter 41 (effective 07/01/2010)*

- **SB 276 (Houck) - Dam safety; requirements of Soil and Water Conservation Board's Impounding Structure Regulations.**

Specifies that the Virginia Soil and Water Conservation Board's Impounding Structure Regulations shall not require any impounding structure in existence or under a construction permit prior to July 1, 2010, that is currently classified as high hazard, or is subsequently found to be high hazard through reclassification, to upgrade its spillway to pass a rainfall event greater than the maximum recorded within the Commonwealth, which shall be deemed to be 90 percent of the probable maximum precipitation.

Additionally, an impounding structure shall be determined to be in compliance with the spillway requirements of the regulations provided that (i) the impounding structure will pass two-thirds of the reduced probable maximum precipitation requirement (the 90 percent of the probable maximum precipitation) and (ii) the dam owner certifies annually that such impounding structure meets eight specified non-structural conditions including an update emergency action plan, annual engineering inspections and insurance for possible damage to downstream property. The legislation also contains an emergency enactment clause specifying that the act is in force from its passage.

Acts of Assembly Chapter 249 (effective 04/08/2010)

- **HB 1320 (Sherwood) - Dam safety; DCR to award grants to local government and private entity for dam break analysis, etc.**

Authorizes the Director of the Department of Conservation and Recreation, with the approval of the Virginia Soil and Water Conservation Board, to award grants from the Dam Safety, Flood Prevention and Protection Assistance Fund to local governments and private entities for dam break analysis, the mapping and digitization of dam break inundation zones, and incremental damage analysis. Currently, only local governments are eligible to receive grants. The bill also establishes the Dam Safety Administrative Fund, which is capitalized with moneys from the dam application permit fees. The moneys in the fund are to be used for administration of the dam safety program.

Acts of Assembly Chapter 13 (effective 07/01/2010)

Erosion and Sediment Control

- **FLB 619 (Orrock) - Erosion and sediment control; may assess civil penalty.**

Removes the specific authority of a locality to impose a \$1,000 civil penalty on a person who engages in a land-disturbing activity without having an approved plan. Instead, any violation of any erosion and sediment control regulation or order of the Virginia Soil and Water Conservation Board, any provision of a local program, or condition of a permit will be subject to a civil penalty of \$100 to \$1,000. *Acts of Assembly Chapter 275 (effective 07/01/2010)*

Other Water Quality

- **SB 346 (Hanger) - Land conservation practices; information management.**

Requires the Secretary of Natural Resources, with assistance from the Secretary of Agriculture and Forestry, to establish and maintain a database of the critical data attributes for onsite best management practices that limit the amount of nutrients and sediment entering state waters. The database is intended to document voluntary actions taken by the agricultural and silvicultural sectors and should enable the application of the collected data towards projections of progress towards Virginia's water quality goals. The data may be shared with the appropriate federal or state agencies and shall be exempt from the Freedom of Information Act. The bill declares that an emergency exists and that the bill is effective upon passage. *Acts of Assembly Chapter 172 (effective 03/13/2010)*

BUDGET

2010 General Assembly Budget

State Park Support: \$500,000 to support State Park visitor centers and facilities as part of the Governor's Economic Development tourism promotion efforts.

Virginia Land Conservation Fund: \$500,000 per year for VLCF grants {and \$2 M in stewardship funding pass thru authority from LPTC pursuant to HB447 and SB264}

Agricultural Best Management Practices: \$9.1 M in NGF for Ag BMPS is included (from \$10 recordation fee)

WQIF reversion: \$6.2 M is reverted from the existing WQIF balance.

Budget Status:

General Fund support declined from \$55.6 M (FY 07) to \$38.8 M (FY 11-12.)

General Fund Budget Reductions agreed to by 2010 General Assembly

FY 2010 - \$4,282,707 (This is in addition to the \$5.7 M that FY 2010 has already been cut.)

FY 2011 and FY 2012 \$4,609,735

REGULATORY STATUS

Virginia State Park Regulations: Updated through fast-track action — Effective 03/18/2010

An Act to amend the Code of Virginia by adding in Article 3 of Chapter 1 of Title 10.1 a section numbered 10.1-114.1, relating to the establishment of a directory of cultural heritage facilities and sites.

[H 627]

Approved March 4, 2010

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 3 of Chapter 1 of Title 10.1 a section numbered 10.1-114.1 as follows:

sr 10.1-114.1. Directory of cultural heritage sites.

A. The Director is authorized to develop a state directory of cultural heritage facilities and sites. The directory shall recognize commemorative and historic facilities and sites that interpret significant aspects of national, state, or regional culture or history. Sites included in the directory shall not be owned or operated by state agencies.

B. Owners or managers of a potential commemorative or historic facility desiring to be included in the directory of cultural heritage sites shall submit an application to the Department. To be eligible for inclusion in the directory, the application shall include a discussion of the cultural and historic significance of the facility or site; a description of how the facility or site is staffed and managed; information on any oversight or advisory boards, including their mission statements and goals; information regarding the accessibility of the site to persons with special needs; information confirming the availability of the facility or site to the public for tours and educational or recreational programs on a regular basis; letters of support from local governments, chambers of commerce, tourism bureaus, or other supporting entities; and other information as the Department determines to be necessary. The Department may develop additional qualification criteria and application materials that may be necessary to implement the registry program. Such criteria may be adopted by the Director after considering the recommendations of the Board of Conservation and Recreation.

C. The Director shall evaluate whether the facility or site qualifies for inclusion in the directory. In evaluating the facility or site, the Director shall consult with the Department of Historic Resources, the Virginia Tourism Corporation, and other state and federal agencies when such consultation would benefit the evaluation.

D. The Director shall present any findings to the Board for its recommendation. Upon the favorable recommendation of the Board the Director may designate a facility or site for inclusion in the directory with the Governor's written approval.

E. The Department shall maintain the directory of cultural heritage facilities and sites on its website and actively promote those facilities or sites.

• VIRGINIA ACTS OF ASSEMBLY -- 2010 SESSION

CHAPTER 279

An Act to amend and reenact § 1 of Chapter 655 of the Acts of Assembly of 2008, as amended by Chapter 739 of the Acts of Assembly of 2009, relating to delaying the reversion of property owned by the Virginia Recreational Facilities Authority.

[II 774]

Approved April 8, 2010

Be it enacted by the General Assembly of Virginia:

1. That § 1 of Chapter 655 of the Acts of Assembly of 2008, as amended by Chapter 739 of the Acts of Assembly of 2009, is amended and reenacted as follows:

§ 1. That the provisions in § 10.1-1618 of the Code of Virginia requiring a reversion of title to real property from the Virginia Recreational Facilities Authority to the Commonwealth, in the event that the Authority ceases to operate a project, shall not be enforceable until July 1, 2011.

2. That the Virginia Recreational Facilities Authority and Roanoke County shall work with other stakeholders to develop an alternate plan for the appropriate utilization and management of the property. The plan shall be consistent with the mission of the Explore Park and shall include conservation, outdoor recreation, environmental awareness, and public access and utilization of the property. The plan shall also

provide ways for the park to become financially independent. The plan shall be completed and transmitted to the Governor and the General Assembly by December 31, 2010.

**VIRGINIA ACTS OF ASSEMBLY -- 2010 SESSION
CHAPTER 647**

An Act to convey certain real property to Roanoke River Rails-to-Trails, Inc.

[H 1302]

Approved April 11, 2010

Be it enacted by the General Assembly of Virginia:

1. *sC 1. That the Board of Corrections is hereby authorized to sell and convey, in its "as is" condition and for the nominal monetary consideration of \$1, to Roanoke River Rails-to-Trails, Inc., approximately 1.833 acres of property with improvements thereon being bounded on the north by the right-of-way of the Southern Railway, on the east by Beach Street, on the south by Fourth Street, and on the west by Belt Road, and being all of block 16, (containing lots 57, 59, 61, 62, 63, 64, and 65) as shown on the map of the Town of Lawrenceville recorded in Deed Book 2, Page 35, in the Office of the Clerk of the Circuit Court of the County of Brunswick.*

§ 2. Roanoke River Rails-to-Trails, Inc., shall pay all costs and expenses incurred in the transfer of the property and shall be responsible for all costs related to the abatement, in accordance with applicable law, of any existing environmental contamination of the property.

§ 3. Such property is for the use of Roanoke River Rails-to-Trails, Inc. In the event Roanoke River Rails-to-Trails, Inc., or a successor organization ceases to use the property primarily for the management and operation of a trail for public park purposes, all of the property or interests therein shall revert to the Department of Conservation and Recreation.

VIRGINIA ACTS OF ASSEMBLY -- 2010 SESSION
CHAPTER 43

§ 4. Such sale and conveyance shall be approved by the Governor pursuant to § 2.2-1150 of the Code of Virginia and made in a form approved by the Attorney General. The appropriate officials of the Commonwealth are hereby authorized to prepare, execute, and deliver such deed and other documents as may be necessary to accomplish the sale and conveyance.

VIRGINIA ACTS OF ASSEMBLY -- 2010 SESSION
CHAPTER 43

An Act to amend and reenact § 29.1-509 of the Code of Virginia, relating to landowner liability arising from recreational activities; railroad rights-of-way.

[S 546]

Approved March 4, 2010

Be it enacted by the General Assembly of Virginia:

1. That § 29.1-509 of the Code of Virginia is amended and reenacted as follows:

§ 29.1-509. Duty of care and liability for damages of landowners to hunters, fishermen, sightseers, etc.

A. For the purpose of this section:

"Fee" means any payment or payments of money to a landowner for use of the premises or in order to engage in any activity described in subsections B and C of this section, but does not include *license fees, insurance fees, handling fees, transaction fees, administrative fees*, rentals or similar fees received by a landowner from governmental, *not-for-profit, or private* sources, or payments received by a landowner *for rights of ingress and egress* or from incidental sales of forest products to an individual for his personal use, or any action taken by another to improve the land or access to the land for the purposes set forth in subsections B and C of this section or remedying damage caused by such uses.

"Land" or "premises" means real property *or right-of-way*, whether rural or urban, waters, boats, private ways, natural growth, trees, *railroad property, railroad right-of-way, utility corridor*, and any building or structure which might be located on such real property, waters, boats, private ways and natural growth.

"Landowner" means the legal title holder, *any easement holder*, lessee, occupant or any other person in control of land or premises, *including railroad rights-of-way*.

"Low-head dam" means a dam that is built across a river or stream for the purpose of impounding water where the impoundment, at normal flow levels, is completely within the banks, and all flow passes directly over the entire dam structure within the banks, excluding abutments, to a natural channel downstream.

B. A landowner shall owe no duty of care to keep land or premises safe for entry or use by others for hunting, fishing, trapping, camping, participation in water sports, boating, hiking, rock climbing, sightseeing, hang gliding, skydiving, horseback riding, foxhunting, racing, bicycle riding or collecting, gathering, cutting or removing firewood, for any other recreational use, *for ingress and egress over such premises to permit passage to other property used for recreational purposes* or for use of an easement granted to the Commonwealth or any agency thereof *or any not-for-profit organization granted tax-exempt status under § 501(c)(3) of the Internal Revenue Code* to permit public passage across such land for access to a public park, historic site, or other public recreational area. No landowner shall be required to give any warning of hazardous conditions or uses of, structures on, or activities on such land or premises to any person entering on the land or premises for such purposes, except as provided in subsection D. *The provisions of this subsection apply without regard to whether the landowner has given permission to a person to use their land for recreational purposes.*

C. Any landowner who gives permission, express or implied, to another person to hunt, fish, launch and retrieve boats, swim, ride, foxhunt, trap, camp, hike, *bicycle*, rock climb, hang glide, skydive, sightsee, engage in races, to collect, gather, cut or remove forest products upon land or premises for the personal use of such person, or for the use of an easement *or license* as set forth in subsection B does not thereby:

1. Impliedly or expressly represent that the premises are safe for such purposes; or
2. Constitute the person to whom such permission has been granted an invitee *or licensee* to whom a duty of care is owed; or
3. Assume responsibility for or incur liability for any intentional or negligent acts of such person or any other person, except as provided in subsection D.

D. Nothing contained in this section, except as provided in subsection E, shall limit the liability of a landowner which may otherwise arise or exist by reason of his gross negligence or willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity, The provisions of this section shall not limit the liability of a landowner which may otherwise arise or exist when the landowner receives a fee for use of the premises or to engage in any activity described in subsections B and C of this section. Nothing contained in this section shall relieve any sponsor or operator of any sporting event or competition including but not limited to a race or triathlon of the duty to exercise ordinary care in such events. Nothing contained in this section shall limit the liability of an owner of a low-head darn who fails, to implement safety measures described in subsection F.

E. For purposes of this section, whenever any person enters into an agreement with, or grants, an easement *or license* to, the Commonwealth or any agency thereof, any county, city or OF town *locality, any not-for-profit organization granted tax-exempt status under 501(c)(3) of the Internal Revenue Code, or* with any local or regional authority created by law for public park, historic site or recreational purposes, concerning the use of, or access over, his land by the public for any of the purposes enumerated in subsections B and C of this section, the government, agency, county city town *locality, not-for-profit organization,* or authority with which the agreement is made shall *indemnify and* hold a person *the landowner* harmless from all liability and be responsible for providing, or for paying the cost of, all reasonable legal services required by any person entitled to the benefit of this section as the result of a claim or suit attempting to impose liability. Any action against the Commonwealth, or any agency; thereof, for negligence arising out of a use of land *or railroad rights-of-way* covered by this section shall be subject to the provisions of the Virginia Tort Claims Act (§ 8.01-195.1 et seq.). Any provisions in a lease or other agreement which purports to waive the benefits of this section shall be invalid, and any action against any county, city, town, or local or regional authority shall be subject to the provisions of § 15.2-1809, where applicable.

F. Any owner of a low-head dam may mark the areas above and below the dam and on the banks immediately adjacent to the dam with signs and buoys of a design and content, in accordance with the regulations of the Board, to warn the swimming, fishing, and boating public of the hazards posed by the dam. Any owner of a low-head dam who marks a low-head dam in accordance with this subsection shall be deemed to have met the duty of care for warning the public of the hazards posed by the dam. Any owner of a low-head dam who fails to mark a low-head dam in accordance with this subsection shall be presumed not to have met the duty of care for warning the public of the hazards posed by the dam.