



American Planning Association
Virginia Chapter

Making Great Communities Happen

POSITION STATEMENT ON HB 1931 (D. MARSHALL)/ SB 783 (WATKINS)

SUMMARY: HB 1931/SB 783, as introduced, will irrevocably harm the management of cluster subdivisions in the Commonwealth; the Virginia Chapter of the American Planning Association (Chapter) opposes these bills.

PROPOSED PROVISIONS: Mandates that Comprehensive Plans for localities required to adopt UDAs must provide for by-right clustering of single-family dwellings in residential and agricultural zoning districts within the UDA.

Local clustering ordinances may not include the following:

1. Any prohibition against the extension of groundwater source systems to adjacent residential subdivisions
2. Any requirement for permanent conservation areas
3. Any requirement that conservation areas be excluded from the calculation of density in a cluster subdivision.
4. Any prohibition against allowing roads, parking areas, or stormwater management areas from being located in conservation areas
5. Any requirement that lots in the clustered subdivision abut open space or a pathway providing direct access to the open space
6. Any requirement that dedications of conservation areas be contingent upon the locality approving who will own and maintain the conservation area
7. Any requirement for acreage and density minimums for cluster subdivisions

DISCUSSION: The Chapter supports the use of clustering and open space techniques, as currently found in Code of Virginia §§ 15.2-2223 and 15.2-2286.1, as one means for local government to ensure quality development within their jurisdiction and to efficiently and effectively provide needed public services.

The prohibited activities proposed in HB 1931/SB 783, however, do exceptional harm to the entire concept of cluster or open-space development which is to allow the density permitted under conventional subdivision regulations in the locality to be developed more densely on a portion of the property with the remaining land preserved or devoted to continued agricultural production. The tradeoff is a permanent legal arrangement that prevents the open space or areas used in the density calculation, but not residentially developed, from being residentially developed in the future.

- To prohibit the use of permanent conservation easements on the undeveloped balance of a cluster subdivision removes the certainty that the permanently reserved area would not be developed in the future. If such future development should occur in the conservation area, the result will contribute to sprawl, demands for more public services, and even greater transportation network deficiencies.
- To require that public utilities be extended to cluster development outside of utility service areas also promotes sprawl and makes it impossible for a locality to properly and effectively plan for its future utility needs and requirements.
- To require open space to be open for parking and roads in conservation area places environmentally-damaging features in the very area where the environmentally-sensitive lands are located which contravenes the purposes and benefits of clustering.
- To prohibit a local requirement that lots abut open space or be connected to it in some physical manner precludes creating a positive spatial arrangement for the future residents of the cluster of having the open space incorporated visually within the reduced lot areas.

Many localities in the Commonwealth have responded positively to the cluster mandate of § 15.2-2286.1 and have adopted programs that the landowners, developers, conservation advocates and agricultural interests have all embraced. HB 1931/SB 783, however, would force successful clustering programs to be amended so as to make them significantly less workable and in a manner which would be opposed by many of the groups that now support clustering.

For the reasons stated above, the Chapter opposes SB 783 / HB 1931 as introduced; however, the Chapter is ready and willing to sit down and provide constructive input should there be a desire to redraft these bills with a goal of preserving local land use authority while simultaneously providing some additional certainty into the cluster or open-space development process.

Adopted by APA Virginia Chapter Executive Committee
14 January 2011