

# PUBLIC ACCESS water

## The Need For Cooperation

### Statement of the Issue

Virginians are fortunate to have some of the finest natural resources in the U.S., including thousands of miles of streams, rivers and trails. This includes many rivers that are fishable and boatable, and many trails that are used for hiking, biking and horseback riding.

Unfortunately, as citizens attempt to access some of our Commonwealth's resources, we have encountered major obstacles created by the railroads and their policies, which call for no new crossings for access and no multi-modal use of railroad right-of-ways. Such rail policies are often counter to the public interest, especially at a time when our population is growing and resources are not. The impacts of railroads are serious and extensive as, for example, a river may often have railroad tracks blocking access along both sides for hundreds of miles.

The railroads, for the most part CSX and Norfolk Southern, have not been cooperative with the Commonwealth and have not assisted state officials in developing a process to evaluate recreational access requests and analyze their viability.

The Commonwealth has asked the railroads to help develop a process to evaluate recreational access requests and analyze their viability. The railroads have largely ignored these requests.

### Background

In 2004, the Commonwealth of Virginia, through the offices of the Department of Conservation and Recreation (DCR) initiated some discussions and negotiations with the railroads to develop a process for accommodating recreational crossings of railroad tracks. These crossings would be used to access trails or rivers, and to expand opportunities for rails-to-trails or rails-with-trails. The railroads were not cooperative.



Additional discussions with the railroads have been handled by the Department of Rail and Public Transportation (DRPT). No report from DRPT on discussions with the railroads has been produced. Our understanding is that the railroads have not been cooperative with DRPT.

Railroads have raised the issue of liability as an excuse to oppose pedestrian rail crossings, but it is the assessment of the Attorney General's office that they are not subject to liability, because a 1994 law (Va. 29.1-509), the Landowner Liability Law, addressed this very issue. In its simplest form, the law says that if the railroads grant a public access crossing railroad tracks, they are no longer liable. On the other hand, if they do not grant a public access, then they remain liable.

Examples of opportunities for public access without liability to the railroads exist throughout

# Recommendations: Public Access

Because the policies of the two major railroads in Virginia, CSX and Norfolk Southern, are generally antithetical to the public interest of the Commonwealth regarding access to our natural resources:

- The Governor, Secretary of Natural Resources and Secretary of Transportation must continue their efforts to ensure greater public access across railroad tracks to our state's natural resources, particularly given the increasing public investment in our railroads.
- The legislature should follow the progress of HB2088 towards railroad and Commonwealth cooperation by reviewing the report due in December 2009. This report should indicate if a consensus can be reached that would provide a means to solve access problems.
- The Commonwealth should consider legislation to ensure greater cooperation between the railroads and the Commonwealth with regard to public interest. This could be accomplished by strengthening the Virginia Rail Advisory Board or by creating a Virginia Rail Authority, and including the authority to require expanded public access across railroad tracks to our state's natural resources in partial consideration for taxpayer funding. Such an Authority would be similar in purpose and construction to the Virginia Port Authority or Virginia Airport Authority. Its basic purpose would be to ensure that the public interest is protected in rail infrastructure improvements by assuming responsibility for planning and facilitating such improvements, and by assisting in financing such improvements. In doing so, it would be in a position to provide guidance on issues to the railroads and to seek reasonable public benefits including public access.

Without greater cooperation from the railroads, tax dollars may not be allocated wisely, in the public interest. Without greater access to and therefore use of our rivers, streams and trails, the public will not be able to use our natural resources or be aware of issues affecting them. It is the use of our resources by boaters, fishermen, bikers, hikers, hunters, bird watchers, and many others that allows us to appreciate and keeps us informed of the incalculable value of our natural resources.

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Virginia. One example, the Cushaw Project on the James River, is an effort to get an official, legal crossing from the railroads to replace several illegal crossings that are heavily used today. By designating a crossing, the railroads would no longer be liable, yet the railroads persist in raising liability as an obstacle to public access.

At the same time, the Commonwealth of Virginia in 2008 appropriated \$40 million to assist with railroad infrastructure improvements in Virginia for the Manassas to Front Royal line. In 2009, the Commonwealth will give another \$40 million to Norfolk Southern for the inter-modal rail center near Roanoke. Considering the economic support given the railroads by the Commonwealth from the taxes of its citizens, some reciprocity of support should be given the Commonwealth and its citizens by the railroads regarding access issues.

In 2009, Delegate William Fralin's HB2088

was passed directing the DRPT, in cooperation with DCR and the Department of Game & Inland Fisheries (DGIF), to develop a process to address railroad crossings. The three agencies met with the railroads in June 2008 and then met with stakeholders in July 2008 to begin development of this process. A final report is expected to go to the legislature by December 1, 2009.

## Contact

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