

# VIRGINIA CONSERVATION BRIEFING BOOK 2007



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**BETTER COMMUNITIES TODAY, A BETTER CLIMATE TOMORROW**

AIR QUALITY • CLEAN ENERGY • SMART GROWTH  
TRANSPORTATION CHOICE • FORESTRY • LAND CONSERVATION  
WETLANDS PROTECTION • CITIZEN INVOLVEMENT



## **Virginia Conservation Network**

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### **BALD EAGLE MEMBERS**

Chesapeake Bay Foundation • Garden Club of Virginia  
Piedmont Environmental Council • Southern Environmental Law Center • Virginia Chapter of the Sierra Club

### **CARDINAL MEMBERS**

Audubon Naturalist Society • The Nature Conservancy • Virginia Council of Trout Unlimited  
Virginia League of Conservation Voters • Virginia League of Conservation Voters - Education Fund

### **TIGER SWALLOWTAIL MEMBERS**

American Lung Association • Clean Water Action • Citizens for a Better Eastern Shore  
Coalition for Smarter Growth • Episcopal Diocese of Virginia Committee on the Stewardship of Creation  
Elizabeth River Project • James River Association • National Parks Conservation Association  
Scenic Virginia • Southeastern Rural Community Assistance Project • Trust for Public Land  
Valley Conservation Council • Virginia Native Plant Society  
Western Service Area of the Virginia Recreation and Parks Society • Wildlife Center of Virginia

### **DOGWOOD MEMBERS**

Alliance for Community Choice in Transportation • Alliance for the Chesapeake Bay  
Arlington Coalition for Sensible Transportation • Audubon Society of Northern Virginia • BikeWalk Virginia  
Blue Ridge Environmental Network • Cabell Brand Center • Cape Henry Audubon Society  
Chesapeake Bay Foundation-York Chapter • Chesapeake Climate Action Network • Citizens for Fauquier County  
Civil War Preservation Trust • Conservation Park of Virginia • Dan River Basin Association  
*Flora of Virginia* Project • Friends of Chesterfield's Riverfront • Friends of Daniel's Run Park  
Friends of Powhatan Creek Watershed • Friends of Rockfish Watershed • Friends of Stafford Creeks  
Friends of the North Fork of the Shenandoah • Friends of the Rappahannock • Friends of the Rivers of Virginia  
George Washington's Fredericksburg Foundation • Goose Creek Association  
Greater Lynchburg Environmental Network • Hands Across the Lake • Highlanders for Responsible Development  
Northern Neck Audubon Society • Northern Virginia Conservation Trust • Partnership for Smarter Growth  
People's Alliance for Clean Energy • Potomac Conservancy • Rail Solution  
Rappahannock League for Environmental Protection • Richmond Audubon Society  
Rockbridge Area Conservation Council • Rockfish Valley Foundation • Rural Nelson • Save Crow's Nest  
Scenic 340 Project • Virginia Association of Soil and Water Conservation Districts • Virginia Audubon Council  
Virginia Bicycling Federation • Virginia Eastern Shore Land Trust • Virginia Forest Watch  
Virginia Interfaith Center for Public Policy • Virginia Sustainable Building Network  
Virginia Wilderness Committee • Western Virginia Land Trust • Wetlands Watch • Wild Virginia  
Wintergreen Nature Foundation

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Albemarle, Ashland, Augusta, Boxwood, Brunswick, Fairfax, Norfolk, Northern Neck, Hunting Creek, James River, Leesburg, Lynchburg, Martinsville, Mill Mountain, Nansemond River, Nelson County, Rappahannock Valley, Rivanna, Spotswood, Tuckahoe, Virginia Beach, Williamsburg

### **SIERRA CLUB CHAPTERS**

Blue Ridge, Chesapeake Bay, Falls of the James, Great Falls, Mount Vernon,  
New River, Piedmont, Rappahannock, Roanoke River, Thunder Ridge, York River

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## VIRGINIA CONSERVATION NETWORK

### *The voice of conservation*

Representing more than 100 conservation and environmental organizations active throughout the Commonwealth, Virginia Conservation Network (VCN) is the nonprofit, nonpartisan voice of conservation in Virginia.

The network sponsors educational conferences and workshops, including the annual Virginia Environmental Assembly. VCN also monitors legislation relevant to the environment, keeping members informed through the *VCN E-News*, the website [www.vcnva.org](http://www.vcnva.org), and action alerts.

In addition, VCN is the official state affiliate of the National Wildlife Federation. Protecting wildlife habitat is a common aim for the network's members.

## VCN WORK-GROUPS AND WHITE PAPERS

### *Bringing expertise to the issues*

VCN workgroups provide open forums for experts and advocates to discuss conservation issues. In addition to "talking shop," the network's six workgroups—air, energy, water, land use and transportation, land conservation and rural issues, and forestry—evaluate proposed legislation and identify policy solutions for the Commonwealth.

Through an open, deliberative process, these workgroups draft white papers, which are reviewed by VCN's legislative committee and board, then compiled in this, the annual *Conservation Briefing Book*.

## VIRGINIA LEAGUE OF CONSERVATION VOTERS — EDUCATION FUND

### *Information for accountability*

Established in 2001, the Virginia League of Conservation Voters — Education Fund (VALCV-EF) helps citi-

zens and organizations better understand conservation issues and more effectively participate in government and policy development.

VALCV-EF works in three main areas: citizen education, public policy advocacy, and voter participation.

Public education is a critical step in the protection of Virginia's natural resources. Each year, VCN and VALCV-EF legislative forums bring citizens and legislators together.

## GET INVOLVED

### *Legislative Contact Teams*

VALCV-EF and VCN also jointly administer the Legislative Contact Team (LCT) program, which mobilizes activists to serve as citizen lobbyists, promoting conservation issues to their state senator or delegate. To learn more or sign up, visit [www.vcnva.org/lct.htm](http://www.vcnva.org/lct.htm).

### *Conservation e-Action*

#### *Virginia (CAV) Alerts*

The Conservation eAction Virginia (CAV) network is a free service that uses e-mail alerts to put LCT members and concerned citizens in touch with key decision makers. Register for CAV alerts with the click of a mouse at <http://capwiz.com/valcvelf/mlm/signup/>.

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# GLOBAL WARMING

## OPPORTUNITIES FOR COOLING THE COMMONWEALTH

### STATEMENT OF THE ISSUE

#### *Scientific consensus on global warming*

The world is warming. And human activities—from coal-fired power plants, to automobiles, to deforestation—are primarily responsible. The scientific consensus on this point is overwhelming.

As the U.S. National Academy of Sciences concluded five years ago, “Greenhouse gases are accumulating in Earth’s atmosphere as a result of human activities...” These increases translate to rising global temperatures, radically changing our world in the process.

The basic science of global warming is well-known. Greenhouse gases, such as carbon dioxide, warm the Earth by trapping outgoing infrared radiation. Unable to leave the Earth’s atmosphere, this infrared radiation warms the planet. As humans burn more fossil fuels and clear-cut forests, the concentration of greenhouse gases in the atmosphere increases.

Once emitted, greenhouse gases persist in the atmosphere, continuing to warm the planet. In fact, scientists warn that we must take steps immediately if we are to avert the worst of the dangers with which global warming threatens our children and grandchildren. *Now is the time to act.*

Over the last 400,000 years, carbon dioxide concentrations in the atmosphere have naturally fluctuated generally between 180 and 300 parts per million (ppm). Low concentrations have coincided with ice ages; high concentrations have coincided with warm periods. What we are seeing now is a troubling increase far outside the norm.

Current levels are at 380 ppm, higher than they have been at any point over the last 1 million years. At the present rate of increase, levels could reach 680 ppm by the end of this century.

### BACKGROUND

#### *How global warming is changing our planet*

We are already seeing the effects of global warming. The World Health Organization reports that malaria and other diseases are spreading. Ice floes from melting

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*The effects of global warming on Virginia and the Chesapeake Bay will be especially acute ... Virginia should seize the opportunity to join its sister states in crafting solutions to this gathering crisis.*

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Greenland glaciers have more than doubled in the last ten years. A Cambridge University study predicts that the Arctic Ocean may be completely ice free by the summer of 2050.

The effects of global warming on Virginia and the Chesapeake Bay will be especially acute. Oyster populations, already decimated, will be further stressed. Rising sea levels will submerge many of the Bay’s historic islands, along with a way of life for Chesapeake watermen.

Scientists agree that we will see at least 1 meter of sea level rise in the Chesapeake Bay by the end of this century and perhaps much more. This increase will mean that much of historic Jamestown will be underwater by the time of the 500<sup>th</sup> anniversary of the Jamestown landing in 2107.

With warming and rising waters flooding the bay, Virginia is on pace to suffer from its own Hurricane Katrina. As the *Washington Post* recently cautioned, “the once vast and buffering wetland grasses and ‘speed bump’ islands” will be replaced by a “hot and swollen Chesapeake Bay” that could funnel massive hurricanes directly into the nation’s capital and surrounding areas. Already, homeowners’ insurance companies are redlining parts of Hampton Roads because the risks of flooding and hurricane damage are increasing.

#### *The role of the Commonwealth*

Virginia is a serious contributor to global warming, releasing more greenhouse gas pollutants than many in-

dustrialized nations, such as Belgium and Austria. Transportation, both of individuals and goods bound for market, is a major culprit. However, homes and businesses also bear a great responsibility. Our thermostats, light bulbs, computers, and appliances all consume energy—much of which comes from fossil fuels.

BETTER COMMUNITIES TODAY	
	Investing a mere 1% of the world's GDP to fight global warming now will avert economic crisis on par with the Great Depression, says noted economist Sir Nicholas Stern.
A BETTER CLIMATE TOMORROW	

Unfortunately, Virginia power companies are looking to spend billions of dollars on outmoded coal-fired power plants, including one on the edge of the Jefferson National Forest in Southwest Virginia. So far, Virginia's electric utility industry has refused to consider Integrated Gasification Combined Cycle (IGCC) plants with carbon sequestration, a potentially promising new technology that could limit an IGCC coal-fired facility's impact on global warming.

In fact, to bring even more coal plants on line Allegheny Power and Dominion Virginia Power are lobbying the U.S. Department of Energy to designate—without reviewing the environmental impacts—a National Interest Electric Transmission Corridor (NIET corridor) through rural lands and across family farms currently under conservation easement.

## RECOMMENDATIONS

*Virginia can reduce greenhouse gas emissions by taking the following actions:*

- Opposing new power plants that exacerbate the Commonwealth's contribution to global warming pollution;

- Rejecting the Allegheny/Dominion proposal for a new transmission corridor *and* their request for NIET corridor designation;
- Increasing the efficient of energy use in residential, commercial, and industrial sectors, thereby decreasing demand;
- Working with Governor Kaine to preserve an additional 400,000 acres in Virginia by the end of the decade;
- Reforming Virginia's land use and transportation planning practices, to ensure that Virginians can live in communities where walking, bicycling and transit use are maximized;
- Supporting federal legislation to impose mandatory "hard" caps on greenhouse gas emissions;
- Promoting responsible development of solar, wind, and other low-carbon renewable energy sources. Importantly, we must do so without encouraging additional fossil-fuel combustion, such as waste coal or re-mined coal facilities.
- Promoting climate protection programs, policies, and goals in the 10-Year Virginia Energy Plan now being developed, including establishing numerical goals for reduction of the state's future carbon dioxide emissions relative to current levels by specified dates.

Federal policy on climate change has been slow in coming. As the Pew Center on Global Climate Change recently observed, "In the absence of federal leadership ... many U.S. states and regions have begun taking actions to address the issue." Virginia should seize the opportunity to join its sister states in crafting solutions to this gathering crisis.

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# A RENEWABLE PORTFOLIO STANDARD

## ENERGY CHOICES FOR VIRGINIA

### STATEMENT OF THE ISSUE

Global warming is a serious threat to Virginia's communities, wildlife, natural resources, and economy. It is clear that we in the United States must change the way we meet our energy demands in order to reduce the amount of greenhouse gasses released into our atmosphere. In the absence of federal leadership, individual states have begun to lead the way, moving forward to develop sustainable energy solutions. The most effective step, which Virginia should take immediately, is to save as much energy as possible through energy conservation and efficiency measures. But we cannot rely on conservation and efficiency alone. We must take a comprehensive approach that also includes increasing the availability of renewable sources of energy in order to reduce our reliance on electricity produced from fossil fuels.

There are many viable options to increase the availability of renewable energy. One method would be for Virginia to establish a Renewable Portfolio Standard (RPS).

Currently, Virginians rely on just three major sources of electricity production: coal, natural gas, and nuclear. Both the extraction and burning of coal and natural gas cause significant environmental degradation, and both these fossil fuels are major sources of the global warming gasses now accumulating in our atmosphere. Coal in particular is a lead contributor to air pollution problems in Virginia and across the country. While it produces less carbon dioxide, nuclear energy is expensive and dangerous. In addition to security and safety concerns, the problems associated with managing nuclear waste have not been resolved.

Virginia needs more diverse sources of energy in order to meet our future energy demands without causing environmental harm and health problems for our citizens.

### BACKGROUND

In order to promote clean, sustainable sources of energy, 23 states have enacted some version of an RPS.

These laws require power companies to supply electricity generated in a renewable fashion and incentivize investment in new forms of clean energy, giving clean energy entrepreneurs the ability to compete against companies marketing more polluting energy sources. Over time, an RPS helps the renewable generation industry and related equipment manufacturers become more competitive.

The objectives of an RPS include fostering new, renewable technologies that would otherwise have difficulty achieving market penetration and reducing dependence on fossil fuels in order to minimize the associated carbon dioxide emissions, air pollution, and vulnerability to fossil fuel price increases.

An RPS typically requires electricity utilities to obtain a minimum percentage of the electricity they sell from renewable energy sources or offset a percentage in savings from energy efficiency programs. Providers also may purchase credits from other parties, including individual electric customers, who generate renewable power or achieve energy savings.

The percentage requirements of the RPS are gradually increased from the current level to a target level by given dates. In Virginia, leaders have proposed RPS requirements of 17% by 2015, a timeframe deemed feasible to predict and regulate at this time. Of that 17%, 12% would come from renewable generation and 5% from energy efficiency/conservation savings. This reasonable target, in line with those set by other states, will move Virginia in the right direction—towards a cleaner and more sustainable energy future.

To keep track of actions that provide renewable energy or that result in energy efficiency savings, an RPS bill would establish a system of marketable Renewable Energy Credits (REC's). Electricity providers would be allowed to purchase credits from parties that create renewable energy or savings in lieu of direct purchases of qualified renewable energy.

All sources of energy, even renewable sources, will have some negative impact on communities and the environment. Despite these impacts, the benefits of re-



photo: Sandia National Laboratories

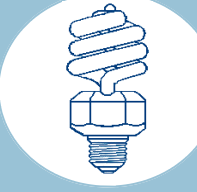
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***23 states have enacted some version of an RPS. These laws require power companies to supply electricity generated in a renewable fashion and ... give clean energy entrepreneurs the ability to compete .***

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newable energy can far outweigh the disadvantages, especially when compared to traditional energy sources. An RPS should take into account the impacts of renewable energy and be structured in a way to alleviate and mitigate these impacts when possible.

The RPS requirement is expressed as a percentage of total electric energy supplied by each provider. The total requirement is divided into categories or “tiers” in order to insure that niche sources that are promising but relatively expensive at present, such as photovoltaic cells, are not crowded out of the market by less expensive renewable sources. Also, tiers give preference to the sources that have the least environmental impact. In other words, the RPS is designed to create a broad energy market that is reliant on many more sources of energy, not just one or two additional renewable sources on top of the current few traditional sources of energy.

BETTER COMMUNITIES TODAY	
	Energy efficiency is one of the fastest and most effective ways to reduce CO <sub>2</sub> emissions, save Virginians money, and step down our use of fossil fuels.
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## RECOMMENDATIONS

The following is a structure that would work to promote the cleanest sources of renewable energy in Virginia while maintaining protections for the natural environment and Virginia communities:

- Requires the development of clean, renewable energy sources to supply a significant (10% or more)

portion of electricity consumption in Virginia by no later than 2020;

- Gives credit to energy conservation and efficiency savings as well as renewable energy sources, thereby reducing the impact of all sources of electricity. There is an incredible amount of energy waiting to be saved in our buildings and in the transportation and manufacturing sectors. Including efficiency will lower total energy consumption, making it easier to meet the goals for renewable sources.
- Prioritizes cleaner, lower-impact energy sources over higher-impact sources;
- Significantly limits inclusion of combustible sources of energy, and prohibits these sources from reducing the portion of the state’s electricity needs that must be generated from non-combustible renewable sources.
- Addresses the siting of wind facilities—unless siting standards have already been developed— in order to ensure adequate protection of wildlife, contiguous forest habitat, national and state parks, national forests, historic sites and other cultural and scenic resources. These siting standards should be in place prior to the RPS taking effect. (See the VCN Wind Project Siting white paper, page 9.)
- Does not include any fossil-fuel combustion, (e.g. waste coal or remined coal).

An RPS is an effective policy for moving Virginia toward a more sustainable future in which electricity demand is lessened through conservation and efficiency and in which renewable energy supplies a significant part of our energy demand. While this proposal would offset a modest percentage of Virginia’s fossil-fuel consumption in the near term, it would create a lasting market for renewable energy that could benefit renewable energy suppliers, energy efficiency consultants, and customers in all sectors, including home owners. That could lead to both creation of a robust infrastructure of energy businesses and a broad awareness by electricity users of the energy innovations possible in Virginia.

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# ENERGY EFFICIENCY

## SAVINGS FOR HOME, OFFICE, INDUSTRY AND TRANSPORTATION

### STATEMENT OF THE ISSUE

The United States, and Virginia in particular, have reached a watershed moment in energy policy. As electricity demand continues to increase and natural gas and petroleum prices rise, there is a tremendous rush to build new coal-fired power plants. Vehicle fuel economy standards have remained unchanged for years, but the average Virginian now spends more time behind the wheel than ever before. At the same time, we are seeing unmistakable signs that the global warming predicted by scientists is already occurring. We must move vigorously to reduce greenhouse gas emissions or global warming will endanger ecosystems around the world, threatening many human communities and decimating our economy.

Already, fossil-fuel power plants are the largest sources of the pollutants that cause acid rain and urban smog—and force millions of Virginians to live where the air fails to meet federal health-based air quality standards. Each year, these plants and their emissions cause 1,000 premature deaths, 23,700 asthma attacks, and 140,600 lost work days in Virginia.

A new generation of coal-fired power plants would only exacerbate Virginia's air quality problems. If these plants are built without the capacity to sequester carbon dioxide (CO<sub>2</sub>), the battle to mitigate global warming will be lost. Most of the coal-fired power plants now on the drawing board lack this technology and are designed to operate for 40 to 50 years or longer. Thus, they would continue to spew CO<sub>2</sub> for decades, totally frustrating any effort to control greenhouse gas emissions. Even if costly but unproven carbon controls are adopted, the new plants could become economic white elephants: a tremendous waste of capital and materials.

While electricity production is of acute concern, CO<sub>2</sub> and other pollutants are also emitted from combustion of fossil fuels for heating, industrial processes, and transportation. Those sources will continue to increase unless strong governmental action is taken to spur change in our energy supply system and energy con-

sumption habits. In addition, natural gas and petroleum fuels increasingly arrive in Virginia from foreign nations, creating concerns about security of supply. Recent price spikes resulted in economic hardship for many consumers and additional operating costs for commerce and industry, affecting Virginia's bottom line and the viability of many small businesses.

As a result of a bill passed by the General Assembly in 2006 (SB 262 sponsored by Senator Wagner), Virginia is crafting an energy policy for the next ten years. How can that policy address the economic and environmental factors that will impact Virginians tomorrow and in the decades ahead?

### BACKGROUND

Balancing energy supply and demand while solving environmental problems is difficult with current technologies and will require a multi-faceted approach. Key components should include reducing energy demand through efficiency measures and deployment of renewable and low-carbon energy sources (for example, through a renewable portfolio standard [RPS]). Energy

experts have long argued that the lowest cost solution to the energy crunch is improved energy efficiency. Many efficiency measures actually save consumers money: the upfront costs are repaid through energy savings within a few years.

In spite of the potential savings, businesses and consumers need stronger incentives to help them overcome psychological and market barriers and take action. Consumers and small businesses are often unaware of the potential savings or lack the technical knowledge or capital to identify and implement energy saving measures. In the past, electric and gas utilities in other states instituted their own programs of education, assistance, and incentives. However, major utilities in Virginia have done little in that regard, and impending deregulation will fragment the electric power industry in a way that tends to discourage such utility programs. Some cities and counties in Virginia are undertaking programs to reduce their own governmental energy use. However,



photo Brand X

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*Virginia is last in the U.S. in terms of providing funding for electricity conservation programs.*

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if efficiency and conservation are to work more broadly, we need substantial new policies and programs to encourage and assist consumers. That will most likely require state initiatives.

In some parts of the U.S. there are substantial state programs to support efficiency. Virginia has taken a few steps, but lacks a well-financed and comprehensive program to assist energy users; indeed, Virginia is last in the U.S. in terms of providing funding for electricity conservation programs.

In the transportation sector, automobile and truck use continues to increase while neither Virginia nor the federal government has implemented effective transportation programs that reduce energy consumption and greenhouse gas emissions. Changes in vehicle technologies and fuels potentially could reduce consumption and emissions, but increases in vehicle miles traveled tend to offset many of the modest technological changes that have reached the market. More effective reductions will require major shifts in vehicle use such as shifting truck freight to railroads, shifting commuters to mass transit, and changing land-use patterns to reduce the need for automotive transportation. In addition to developing a more rational state transportation policy, Virginia could directly affect consumers' choice of transportation mode and of personal vehicles, as well as how they are used, through several state initiatives described below.

## RECOMMENDATIONS

Virginia should develop and implement a comprehensive, statewide energy efficiency initiative. A well-funded program will ultimately save taxpayers money. The Commonwealth should model efficiency in its own operations, educate home and business owners on how to save energy, and provide financial incentives that help them do so.

### *Potential components of an efficiency initiative*

There are several components that can be applied individually to energy services in the residential and commercial sectors. That includes energy use for electric appliances, lighting, and HVAC (heating, ventilation, and air conditioning of buildings). The objective is ei-

ther to reduce energy use or substitute on-site renewable energy sources for purchased electricity, natural gas, or other fuels. Several possible measures are listed below.

**State energy plan goals.** The state energy plan currently in development should make energy efficiency a primary priority. The plan should establish goals for reducing energy consumption in each economic sector and include specific policies and programs to achieve those goals, which might include some or all of the following measures.

**System benefits fund.** This state-controlled fund would support a program of energy analysis, public education, financial incentives, and technical support to consumers, businesses, and local governments. The program should be broad and might address many of the other measures described in this paper. The program should support measures to increase energy efficiency and encourage on-site energy services from renewable energy sources. It would be funded by a small fee (up to as much as 3% of total revenue) assessed on electric and natural gas utility bills to pay for implementing efficiency programs and other energy-related public services, such as low-income heating assistance. Some states implement programs through utilities while others have established a quasi-independent agency to operate parts of the program. Legislation passed in Vermont and Oregon provides two models for Virginia.

**Building standards.** Virginia already has adopted progressive energy codes for new buildings and updated them effective November 2005. But experts tell us that those codes are not effectively being enforced. Some of the code requirements can only effectively be enforced at the permitting stage, while others require on-site inspection to see that the prescriptive measures and design features have satisfactorily been implemented. Local governments typically have insufficient building certification and inspection programs and inadequate time or training to check on compliance with energy codes. While Virginia already offers training in codes, it could help in several additional ways: establishing state requirements for inspections and review of permit applications; providing financial assistance for local inspection programs; and providing incentives for builders to comply with or exceed higher energy performance standards.

**Distributed generation.** Increase the present ceiling on net metering of electricity (0.1%) to 1% or more to encourage more use of on-site, grid-connected renewable generation such as solar photovoltaics or small-scale wind.

**Appliance efficiency.** The federal government and several states set minimum efficiency standards for some

appliances. Several approaches could be considered for encouraging better appliance efficiency in Virginia, including: a sales tax holiday for certified (e.g., Energy Star) energy-efficient appliances, establishing minimum appliance efficiency standards that go beyond federal requirements, or a *feebate* system for appliances in which the sales tax on appliances is adjusted up or down according to their ranking on energy consumption based on federal energy labeling.

**Energy Efficiency Resource Standard (EERS).** An EERS consists of electric and/or gas energy savings targets for utilities, often with flexibility to achieve the target through a market-based trading system. An EERS includes end-user energy saving improvements that are aided and documented by utilities or other program operators. Sometimes distribution system efficiency improvements, combined heat and power (CHP) systems, and other high-efficiency distributed generation systems are included as well. This approach targets electric and gas utilities and is a less desirable alternative to a system benefits fund that establishes a state agency to pursue efficiency measures, but it could be implemented by existing agencies.

**Decoupling legislation.** Innovative rate structuring can also be a way to incentivize energy efficiency. Most utilities are motivated by selling more electricity rather than saving it—the more they sell, the more money they make. Decoupling or revenue neutralization policies remove this economic disincentive for utilities.

**Renewable Portfolio Standard (RPS).** Including a requirement to achieve numerical energy efficiency savings in an RPS would create pressure on utilities to generate electric energy savings.

### ***Initiatives for greater energy efficiency in transportation***

Many economists argue that the most effective tools for reducing fossil energy consumption in the transportation sector involve economic incentives or disincentives that directly discourage fuel use and that put the burden on the user—the “user pays” principle. Discussion of transportation in the Virginia Energy Plan process

should include consideration of better long-term policies in order to initiate public education and political dialogue in that direction. However, disincentives such as tolls or fuel taxes face the current political prejudice against raising gasoline taxes, and environmentalists are wary of funding mechanisms that might increase highway construction rather than better transportation solutions. Hence, other partial solutions to transportation that may be more politically acceptable now should be supported in the immediate future, including the following policies:

- A revenue-neutral adjustment (“feebate”) of the Commonwealth’s new vehicle sales tax to reward high mileage vehicles and penalize low mileage vehicles. A resolution to study such an adjustment, SJR 108 was introduced by Senator Deeds and Delegate McClellan in the 2006 General Assembly session.
- Provide that any passenger-type vehicles purchased or leased by the Commonwealth shall be of the highest fuel economy and lowest pollutants available for the vehicle’s intended purpose. In the 2006 session, Senator Whipple introduced SB 551, which addressed this issue.
- Adoption of an enhanced tailpipe emission standard for vehicles that includes requirements for reductions in CO<sub>2</sub> emissions, as adopted by 11 other states.
- Revamping the State Transportation Plan and policies, especially to increase funding for mass transit systems and walking and bicycle paths.
- Advance smart growth policies to reduce transportation demand.

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# WIND POWER PROJECT SITING

## PROTECTING VIRGINIA'S NATURAL AND CULTURAL RESOURCES WHILE DEVELOPING WIND ENERGY

### STATEMENT OF THE ISSUE

Wind energy is a renewable energy option of great potential in Virginia. Wind energy projects are increasing in number around the country, in part because of tax incentives and other subsidies provided for wind energy projects in the Energy Policy Act of 2004. Advocates for clean energy, greenhouse gas reductions, and energy security embrace wind energy since it is a renewable domestic energy source.

However, industrial wind projects are largely unregulated. With the exception of projects that may occur on federal lands and federal waters, no federal permit is currently required for these industrial wind facilities, the protections of the National Environmental Policy Act (NEPA) and other federal laws that would otherwise require an environmental impact review process are missing. Virginia needs to develop an effective state review and approval process to reduce or eliminate impacts of industrial wind projects to wildlife, contiguous forested areas, and other natural, cultural, and historic resources of the Commonwealth.

This process should give consideration to cumulative benefits and cumulative adverse impacts of proposed industrial wind projects. Having such a review process in place for all industrial wind projects will allow Virginia to encourage development of renewable energy while ensuring that Virginia's natural and cultural resources are not destroyed in the process.

### BACKGROUND

All forms of energy come with problems. Wind turbines are very large industrial structures that may be hundreds of feet tall. Developers of wind energy need sites where conditions are favorable: often along mountainous ridgetops and offshore locations. In Virginia, these locations are sometimes areas of great ecological sensitivity, provide the Commonwealth's most spectacular scenery and recreational opportunities, and may include cultural and historic resources of great value to Virginians. Improperly sited wind turbines also kill or disrupt wildlife, especially birds and bats.

In addition to addressing onshore siting concerns, it will be critical to develop appropriate review of offshore wind projects in order to protect the value of the Chesapeake Bay and Virginia's coastal resources in a way that encourages wind projects where they can be built without harm to the ecology and character of these areas.

As Virginia encourages the development of renewable energy, the need to protect the remarkable natural, scenic, historic, and cultural resources that shape our quality of life is widely recognized. Much research has been done that can assist Virginia in developing a process to determine how to responsibly accommodate industrial wind development.

The U.S. Fish and Wildlife Service has developed interim guidelines for onshore wind generation projects: [www.fws.gov/habitatconservation/wind.pdf](http://www.fws.gov/habitatconservation/wind.pdf). The recommendations within this document appear to address the concerns with wind projects proposed to date in Virginia.

In addition, the National Academy of Sciences established an expert committee to carry out a scientific study of the environmental impacts of wind-energy projects, focusing on the Mid-Atlantic Highlands as an example. The study will consider adverse and beneficial effects and will develop an analytical framework for evaluating those effects that can inform siting decisions and provide guidance on how to reduce or mitigate negative environmental impacts. The report is scheduled to be available in pre-publication form in early 2007.

In recent years, a Landscape Classification System to address industrial wind siting issues was developed by an environmental working group, which included conservationists and scientists, under the auspices of the Virginia Wind Energy Collaborative (VWEC), an affiliation of wind energy advocates. The VWEC had the goal of developing a report in consultation with agency and organizational representatives. Two separate reports were published: [www.vawind.org/Assets/Docs/LCS-100805.pdf](http://www.vawind.org/Assets/Docs/LCS-100805.pdf); [http://vwec.cisat.jmu.edu/gis\\_lcs.htm](http://vwec.cisat.jmu.edu/gis_lcs.htm)

Considered together, these two reports provide valuable research and guidance that will aid and expe-



photo TVA

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*Given the potential environmental benefits and detriments ... it is necessary to have an effective process for locating wind projects in places that meet the need for sufficient wind while prohibiting locations that threaten ecologically sensitive, scenic, and historic resources.*


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dite the development of a Virginia review process. Under the Virginia Energy Policy Act of 2006, the considerations of the Landscape Classification System have been expanded to consider natural, cultural, and historic resources. This is in an effort to provide a Virginia Renewable Site Scoring System and is being conducted by James Madison University under the direction of the Department of Mines Minerals and Energy.

Given the potential environmental benefits and detriments of new wind development proposals, it is necessary to have an effective process for locating wind projects in places that meet the need for sufficient wind while prohibiting locations that threaten ecologically sensitive, scenic, and historic resources.

**BETTER COMMUNITIES TODAY**



**A BETTER CLIMATE TOMORROW**

With proper safeguards, wind energy can help reduce Virginia's reliance on fossil fuels, protecting our climate without harming scenery and wildlife.

## RECOMMENDATIONS

### *Next steps for responsible wind energy development*

- Virginia should form a technical advisory committee that would review all evidence and make recommendations for a state siting and permitting process that seeks to eliminate or reduce impacts on wildlife, contiguous forest habitat, national and state parks, national forests, historic sites and other cultural and scenic resources. Additional infrastructure (associated transmission lines, etc.) should be considered in this process. This process should include representatives from any affected state agency as well as the regulated community and interested public.
- In the absence of adopted wind siting standards, any Renewable Portfolio Standard should address the siting of wind facilities in order to ensure adequate protection of wildlife, contiguous forest habitat, national and state parks, national forests, historic sites, and other cultural and scenic resources, and these siting standards shall be in place prior to implementation of an RPS.
- Wind projects must continue to be subject to local approval through applicable zoning and land use processes. The state should develop guidance for local governments and encourage planning for possible wind projects in comprehensive plans and applicable ordinances.

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# TRANSMISSION CORRIDORS

## FEDERAL EMINENT DOMAIN FOR A 500-KILOVOLT POWER LINE?

### STATEMENT OF THE ISSUE

Allegheny Power and Dominion Virginia Power have announced plans for a 240-mile, 500-kilovolt transmission circuit that would begin in Southern Pennsylvania, cross through West Virginia, and terminate in southeastern Loudoun County, Virginia. The proposed power line may undermine Virginia's energy plan effort and poses a direct threat to one of the most highly conserved regions of the Commonwealth, an area rich in cultural, historic, and environmental resources. The proposed line has been submitted by Allegheny and PJM Interconnection to the U.S. Department of Energy for early designation as a National Interest Electric Transmission Corridor (NIET corridor), which ultimately would enable Dominion to invoke federal eminent domain even if the State Corporation Commission determines that the proposed line is not in Virginia's interests.



### BACKGROUND

On March 6, 2006 Allegheny and PJM Interconnection filed for early NIET corridor designation for a line leading into D.C.–Baltimore Metropolitan region. NIET corridor status is a new designation created by the federal Energy Policy Act of 2005, and was designed to speed up siting of interstate transmission lines. Designation of an NIET corridor would give the electric utilities access to federal condemnation authority (through the Federal Energy Regulatory Commission) should state siting processes prove unsatisfactory or take longer than one year.

On October 10, 2006, PJM Interconnection submitted a request to the Department of Energy for three more large NIET corridors, which together cover most of the Mid-Atlantic region. Thirteen counties and seven cities in Virginia, including parts of the Virginia eastern shore, are within their “Allegheny Mountain Corridor” and “Mid-Atlantic Corridor.”

### *Undermining existing policies*

NIET corridor designation would undermine previously enacted federal, state and local policy decisions

designed to maintain and protect public values—the National Environmental Policy Act, the American Farm and Ranch Protection Act, the Open Space Land Act, and the Chesapeake Bay Preservation Act—to name a few. Of particular concern is the lack of National Environmental Policy Act (NEPA) review prior to corridor designation by the Department of Energy. NEPA requires an environmental impact statement prior to any “major federal action significantly affecting the human environment,” but has not yet been incorporated into the Department of Energy's procedure dictating where to designate NIET corridors.

### *Policy impact to Virginia*

NIET corridor designation could also have a profound effect on the way in which Virginia generates and distributes power. The August 8, 2006 National Electric Transmission Congestion Study released by the Department of Energy (per the Energy Policy Act of 2005), was to be created “in consultation with affected states”. Virginia was not con-

sulted. To make matters worse, the federal corridor process has not been coordinated with Virginia's ongoing development of a state energy plan. Virginia will announce a new state energy plan in July of 2007. Development of the state energy policy could allow for

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*This line would threaten our environment by encouraging the dirtiest forms of generation to locate in Virginia. The power would be sent to far away markets leaving us to deal with the air pollution burden.*

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continued discussion on deregulation and the development of procedures that may aid in balancing public necessity with the impacts on affected communities. NIET corridor designation would undermine those efforts and

**BETTER COMMUNITIES TODAY**



**Decisions about new energy infrastructure and investment in Virginia should rest with Virginians, especially when protected land is at risk.**

**A BETTER CLIMATE TOMORROW**

ignores other considerations (new technologies, distributed generation, demand response, and conservation) that may solve congestion issues.

### ***Environmental impacts***

The National Electric Transmission Congestion Study cited transmission congestion “from Metropolitan New York southward through Northern Virginia.” While this congestion has had little effect on our ability to meet local demand, it does limit transmission of energy to northeastern markets. If the proposed transmission line is built, Virginia could become a conduit for the transmittal of power to these markets. This desire is evident in numerous power projects currently being discussed and pursued. One example involves the Texas-based utility TXU. TXU is seeking locations in Pennsylvania and Virginia for 3–5 gigawatts of new conventional coal-fired generation (6–7 new power plants). According to TXU, PJM is seeking cheap, reliable coal power as the preferred generation to meet demand growth in the Northeast. This line would threaten our environment by encouraging the dirtiest forms of generation to locate in Virginia. The power would be sent to far away markets leaving us to deal with the air pollution burden.

The Alleghany line itself would also have a profound effect on natural, scenic and cultural resources. The proposed study area suggests the proposed line could travel through Frederick, Warren, Clarke, Fauquier, Prince William, and Loudoun counties. The proposed towers would stand up to 155 feet tall and require a 150–200 foot wide right-of-way through private land, publicly held open space, prime agricultural soils, historic sites, historic districts, magnificent viewsheds, and a high concentration of conservation easements. In the study area for the last 40-miles of this 240-mile long line, there are: over 80,000 acres in conservation easement, four national landmarks, 67 historic sites or districts, 6 Civil War battlefields, Sky Meadows State Park, and the Appalachian Trail.

## **RECOMMENDATIONS**

In order to ensure responsible state and national energy policy, as well as protect our environment and a beautiful and unique swath of land, it is important for citizens to oppose this specific Allegheny/Dominion proposal *and* the request for NIET corridor designations.

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# HEALTHY AIR FOR VIRGINIA

## POWER PLANT POLLUTION HARMS PEOPLE, PARKS AND THE CHESAPEAKE

### STATEMENT OF THE ISSUE

Virginia is home to 13 major coal-fired power plants, the oldest of which have remained largely unchanged for half a century. Many more new coal-fired plants have been proposed—to generate up to 5,000 megawatts—along with hundreds of miles of transmission lines. A clean air agenda that will protect our health, our valuable natural resources, and our long-term economic vitality is long overdue. Unlike our neighboring states of Maryland and North Carolina, Virginia has failed to protect residents from the most dangerous power plant pollutants.

### BACKGROUND

#### *Mercury threatens public health*

Mercury damages the human nervous and kidney systems, and threatens the brain development of children. According to EPA, every year as many as 600,000 infants are born after being exposed to unhealthy levels of mercury in utero.

Coal-fired power plants are the largest uncontrolled source of mercury. Nationwide, 41% of the mercury released into the air comes from power plants. That airborne mercury has the greatest impact closest to its source. The latest peer-reviewed research from EPA finds that 70% of mercury contamination comes from local sources. This is especially troubling in Virginia, where 1.25 million children live within 30 miles of a power plant. Despite these facts, EPA has failed to regulate mercury as a “hazardous air pollutant” under the Clean Air Act. Lawsuits challenging this weakening of federal clean air laws have been filed by several states’ attorneys general and citizens’ groups, including the American Academy of Pediatrics.

Unfortunately, in 2006 the General Assembly mandated that DEQ develop regulations to allow Virginia’s big power companies to participate in a flawed EPA trading program. However, the legislation left DEQ the discretion strengthen Virginia’s mercury rule. DEQ should take advantage of all available options under

state and federal law to tighten mercury controls and better protect Virginia’s families.

#### *Smog and soot remain serious concerns*

Power plant pollution in Virginia causes approximately 1,000 deaths, 23,700 asthma attacks, and 140,600 lost workdays every year. Many of Virginia’s cities and counties have been designated by EPA as having unhealthy levels of particle pollution, ozone, or both. These “nonattainment areas” stretch from Shenandoah National Park to the Chesapeake Bay, and from Washington, D.C. to North Carolina.

Power plant pollution has transformed Shenandoah National Park, one of the state’s foremost tourist destinations, into the nation’s third most polluted national park. *Frommer’s Virginia* (7<sup>th</sup> ed., 2004) warns tourists that “high ozone levels frequently create obscuring smog during the summer.” The Chesapeake Bay also suffers because of nitrogen pollution that contributes to algal blooms and widespread “dead zones.” Up to one-third of the nitrogen entering the bay falls from the air, with power plants the largest source.




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***Power plant pollution in Virginia causes approximately 1,000 deaths, 23,700 asthma attacks, and 140,600 lost workdays every year ... To protect the health of all Virginians, DEQ must adopt regulations to require Virginia’s older, dirty coal-fired power plants to meet modern pollution control standards.***

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## Global warming looms

EPA recognizes that the Earth is warming, primarily due to the “burning of fossil fuels and other human activities.” The effects of global warming on Virginia and the Chesapeake Bay will be especially acute. An EPA report concludes, “If present trends continue, the ‘many isles’ described in [Captain John Smith’s] writings will have vanished, along with most of the marshes and beaches.”

BETTER COMMUNITIES TODAY	
	<b>Mercury also threatens Virginia’s iconic wildlife. Coupled with habitat loss to global warming, it could push some species toward extinction.</b>
A BETTER CLIMATE TOMORROW	

The best available technologies can control carbon dioxide—the most significant greenhouse gas pollutant emitted by power plants. Before any new coal-fired power plants are approved, therefore, power companies must commit to using these technologies to significantly reduce or eliminate their emissions of greenhouse gases.

## RECOMMENDATIONS

To protect the health of all Virginians, DEQ must adopt regulations to require Virginia’s older, dirty coal-fired power plants to meet modern pollution control standards.

At a minimum, DEQ should first create a significant public health set-aside for mercury—a percentage of mer-

cury allowances not given to any source. The Commonwealth would retain and retire these allowances for the benefit of public health, guaranteeing that the toxic mercury credits “set aside” *are never released* into the environment. A public health set-aside is the single most effective way—within EPA’s ill-conceived trading program—to improve air quality.

Second, DEQ should act promptly to carry out the detailed study of mercury deposition in Virginia required by the General Assembly in 2006. DEQ was tasked to provide recommendations for further action “as soon as practicable, but no later than October 15, 2008.” DEQ should not wait to complete the study. Two years is too long to wait for a solution to this public health and environmental problem.

Finally, no new coal-fired power plants should be constructed if they exacerbate Virginia’s contribution to global warming. The technology exists today to capture greenhouse gas emissions, and to nearly eliminate emissions of smog, soot, and toxic mercury. Every adult, child, and elder in Virginia deserves—and needs—to breathe healthy air.

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# CLEANER SCHOOL BUSES

## VIRGINIA CAN BETTER PROTECT CHILDREN FROM DIESEL EMISSIONS

### STATEMENT OF THE ISSUE

#### *Diesel school buses need to be replaced or retrofitted*

Nearly 90% of school buses are powered by diesel fuel. Exhaust from these buses has been linked to serious health consequences in children. Diesel exhaust contains significant levels of small particles that can pass through the natural defense mechanisms in our noses and throats to lodge deep in our lungs.

Diesel pollution can cause lung damage, aggravate asthma or bronchitis, and even cause premature death. Some chemicals in diesel exhaust are also known endocrine disruptors and may play a role in developmental disorders.

Children are more susceptible to air pollution than healthy adults because their respiratory systems are still developing and they have a faster breathing rate.

On average students spend an hour and a half each weekday in a school bus. Studies show that particle pollution levels can be four times higher inside a school bus than in a car driving in front of the bus.

Children experience the greatest exposure to diesel exhaust when they are on or near an idling bus. Diesel exhaust can reach dangerous levels around and inside buses when idling while waiting to pick up students. Exhaust can also travel into school buildings if idling buses are near doorways, windows, or the air intake for a school's ventilation system.

### BACKGROUND

#### *The current status of Virginia's school bus fleet*

The following Virginia school districts have cleaned up their school bus fleets: Fairfax, Frederick, Harrisonburg, Henrico, Hopewell, Loudoun, Norfolk, Richmond, Roanoke, Rockingham, and Winchester. These school districts have used EPA grants and State Environmental Project (SEP) funds from enforcement actions to clean up their fleets. While the continued use of grant funding and SEPs is desirable, Virginia needs to dedicate funds to support faster school bus cleanups. These new funds can be used to create incentives for

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*On average students spend an hour and a half each weekday in a school bus. Studies show that particle pollution levels can be four times higher inside a school bus than in a car driving in front of the bus.*

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local governments and/or directly fund school bus retrofits as well as the purchase of clean buses that can run on compressed natural gas (CNG) or use hybrid motor technology.

Experts suggest that a school bus fleet cleanup should target at least one-third of the fleet for retrofits to reduce air emissions. Using the least expensive retrofit technology available to replace one third of Virginia's school bus fleet would cost the Common-

wealth approximately \$12.5 million. This amount includes staff support for three years to direct statewide implementation. An additional \$15.3 million can support the purchase of CNG or hybrid school buses to provide additional emission reductions.

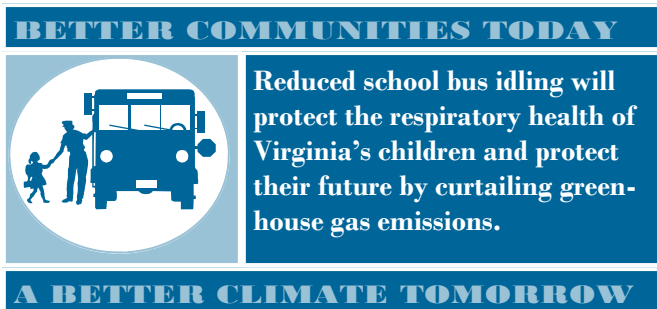
Local school districts should also adopt anti-idling policies to reduce air pollution. A sample policy has been developed by the American Lung Association of Virginia for dissemination to elected officials, state administration officials, local school districts, school boards, and other interested stakeholders.

### RECOMMENDATIONS

#### *Solutions for our children*

Every school day, more than 24 million children across the U.S. board a school bus. While the Virginia Conservation Network encourages students to walk or bike to school when safely possible—both to be healthy and to reduce emissions—VCN also supports the following actions to reduce school bus pollution:

- Encourage policies and practices at Virginia schools to eliminate unnecessary school bus idling
- Upgrade buses that will remain in a school's fleet with better emissions control technologies; and
- Replace Virginia's oldest school buses with newer, less polluting buses.



### *Available technology*

Pollution control devices and technologies that capture or reduce diesel pollution are available and affordable:

**Diesel Oxidation Catalysts** use a chemical process to break down pollutants in the exhaust stream into less harmful components. Diesel oxidation catalysts can reduce emissions of particle pollution by 20%, hydrocarbons by 50%, and carbon monoxide by 40%. Oxidation

catalysts cost about \$600 to \$2000 and can be installed on any new or used bus in about 1–3 hours.

**Diesel Particulate Matter (PM) Filters** are ceramic devices that collect particulate matter in the exhaust stream. The high temperature of the exhaust heats the ceramic structure and allows the particles inside to break down into less harmful components. They can be installed on new and used buses, but must be used in conjunction with ultra-low sulfur diesel (see below). The combination of PM filters and cleaner fuel can reduce emissions of particle matter, hydrocarbons, and carbon monoxide by 60–90%.

PM filters come in a kit that includes mounting brackets and an electronic monitoring device. The cost of the kit can range from \$5,000 to \$10,000. PM filters work best on engines built after 1995. Installation of a filter takes about 6–9 hours.

**Ultra-Low Sulfur Diesel (USLD)** was introduced to markets nationwide in October 2006. The primary purpose of this improved diesel blend is to enable or improve the performance of after-treatment technologies such as a PM filter.

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# SMART GROWTH

## INVESTING IN COMMUNITIES AND QUALITY OF LIFE

### STATEMENT OF THE ISSUE

More than 20 years ago, the bi-partisan Governor's Commission on the Future of Virginia used then-current trends to make a prediction about what the Commonwealth of Virginia would look like in the year 2000. The report predicted rapid spread out growth, concluding that "the magnitude of these and other problems will place unprecedented stress on local governments."

Current trends did in fact continue, and Virginia is now suffering the consequences predicted. Like many other parts of the nation, Virginia is grappling with sprawl—land use that spreads new development farther and farther from existing communities and consumes more land than ever before. This type of development is costly to taxpayers and is leading to rapid loss of rural lands, loss of natural, historic, and cultural resources, and a deteriorating quality of life for many Virginians.

### BACKGROUND

The Commonwealth of Virginia spends millions of dollars every year in economic development grants to attract and retain job-creating businesses in the state. However, these economic incentive programs do not take into consideration their effects on patterns of growth. In practice, some of these investments generate sprawl by subsidizing land acquisition, requiring public expenditure on additional infrastructure, and establishing business sites without regard to existing communities, transit resources, farmland, and open space.



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*Smart growth consumes 45% less land, costs 25% less for roads, 15% less for utilities, 5% less for housing, and 2% less for other related impacts than does the current trend of sprawl development.*

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Sprawling development rarely brings about the economic benefits anticipated and can cost taxpayers money. The cost to Virginia of providing infrastructure and services to newly developed areas potentially outstrips the revenue generated. But, Virginia doesn't have to choose between courting growth and curbing sprawl. A summary of 40 years of fiscal impact studies showed that smart growth consumes 45% less land, costs 25% less for roads, 15% less for utilities, 5% less for housing, and costs 2% less for other related impacts than does the current trend of sprawl development. By not tying economic incentive programs to smart growth policies, Virginia is missing an opportunity to save taxpayers money.

Simply spending more money won't solve the problem. It is more expensive to provide infrastructure for spread-out development than for more compact and traditional towns and cities. As population and jobs shift from already developed areas, the existing public infrastructure such as water, sewers, schools and roads is neglected or abandoned. Simultaneously, the expenses for new infrastructure

increase exponentially as these public utilities have to be extended further and further out into the former countryside. A Brookings Institution survey of national studies found an average 11% savings on infrastructure costs with smart growth development.

What Virginia needs is a new partnership between state and local governments to better manage and direct growth. The General Assembly has refused requests from local governments for more authority to manage growth and has instead reduced the authority of local governments at least a dozen times in the past 12 years. At the same time, the state itself contributes to the problem through economic development subsidies to companies locating outside towns and cities, through an overwhelming focus on highways that generate more sprawl, and through failure to invest in existing communities.

### RECOMMENDATIONS

In order to facilitate sound development and provide citizens with a higher quality of life, Virginia should:

**Oppose actions that would further erode local governments' existing land use authority.** The 2007 General Assembly session may see another effort to take away authority as a reaction against local government efforts to develop comprehensive plans and zoning ordinances that reduce infrastructure costs, protect more open space, and create more compact, walkable communities. Possibilities include reducing localities' ability to change their comprehensive plan or zoning designations. There may be an attempt to take away or unduly restrict proffer authority, which provides for some financial payment by developers for public costs created by new development. Any efforts to weaken local control over the placement of telecommunications and energy facilities should also be opposed; such control enables local governments to lessen the negative impact of these structures on communities.

BETTER COMMUNITIES TODAY	
	<p>Smarter growth means shorter commutes, giving families more time together and saving them money. Fewer traffic jams also means reduced CO<sub>2</sub> emissions.</p>
A BETTER CLIMATE TOMORROW	

**Support state actions to direct state investment to towns, cities, and areas of contiguous development where public infrastructure is already in place.** Funding for state programs such as brownfields redevelopment, the Governor's Opportunity Fund, the Enterprise Zone Program, and the Main Street Program should be increased and directed to towns, cities, and areas of contiguous development where public infra-

structure is in place. Transit, bike, and pedestrian projects should receive a larger share of transportation funding. School funding should fairly support the repair, maintenance, and expansion of existing schools.

**Support efforts to improve local and state partnerships in planning.** The state should analyze long term development trends, including total land planned and zoned for development, to better assess taxpayer costs. State funding and technical assistance should be provided to improve local planning and support studies such as build-out analyses (for localities or transportation corridors) and water supply assessments.

**Support state action that allows cities and towns to revitalize urban or older suburban areas.** Under current law, cities and towns must have the same tax rate on both land and buildings. In recent years, other states have allowed their municipalities to use a lower tax rate on buildings. This lower tax rate has stimulated real estate investment and development because it reduces the property owner's tax liability on the improvements. By removing tax disincentives, it encourages investment where towns and cities already have infrastructure, rather than having investment leave for the countryside. In Virginia, only Fairfax City has this authority.

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# TRANSPORTATION FUNDING

## MAKING WISE INVESTMENTS FOR ALL VIRGINIANS

### STATEMENT OF THE ISSUE

Elected officials increasingly acknowledge the need to reform VDOT and to better link land use and transportation to reduce the rising costs of transportation and to provide more transportation options. Yet, VDOT continues to pursue an outdated approach that focuses on road construction as the solution to virtually every transportation problem and has not changed its planning to account for land use impacts and alternatives. This approach is costly to taxpayers, increases energy dependence, destroys natural and rural areas, spurs sprawl, increases air and water pollution, contributes to climate change, and limits transportation choices, all while doing little to relieve congestion in the long run.

### BACKGROUND

Transportation was a leading issue in 2006, with no agreement on funding issues but widespread recognition of the need for fundamental reform. Many legislators acknowledge that local land use decisions increase transportation demands and costs, but developers have blocked nearly all reforms. Virginia faces key challenges, including long-term rising fuel prices, worsening gridlock, air pollution, deteriorating roads and bridges, and transportation and land use decisions that are rarely coordinated.

VDOT's massive spending—about \$4 billion in fiscal year 2006—continues to focus overwhelmingly on roads. A national study identified more wasteful and destructive highway proposals in Virginia than in any other state. Evidence indicates that new and wider highways generate significant new traffic without providing long-term congestion relief because they cause development to spread out and the amount of driving to increase. Despite major congestion within the metropolitan areas of the state, VDOT is advancing major rural highways and bypasses that divert scarce resources, increase sprawl, and fail to target areas of greatest need. In addition, VDOT's focus on privatizing highways and tolls is undermining public input and environmental review, lacks adequate oversight of toll rates, undermines transit, and is leading to unneeded projects and speculative development.

Governor Kaine, Speaker Howell, and General Assembly members of both parties have recognized the need to reform VDOT and to improve our transportation policies. Some positive steps have been taken, such as developing a more realistic six-year transportation plan, requiring traffic impact studies, and considering adoption of performance standards. There are many positive alternatives, and practical solutions to Virginia's transportation crisis.

### RECOMMENDATIONS

#### *System-wide priorities*

**Support a more balanced transportation system.** Any legislation or budget provision that provides or relates to transportation funding should advance four key goals:

- First, use our resources more efficiently by focusing on repairing our existing transportation system before spending billions of dollars on new roads. Although VDOT's current budget increases spending on maintenance, the agency has underestimated the serious backlog of maintenance on highways and bridges in the past, as the Joint Legislative Audit and Review Commission found.
- Second, shift funding to alternatives such as public transit, freight rail, transit-oriented development, walking, and bicycling to move Virginia toward a more balanced transportation program by reducing the current overemphasis on road construction. At least 50% of any new funding should go to these alternatives, which can reduce congestion and are cheaper and less destructive; moreover, several provide better services for elderly, disabled, and low-income citizens.
- Third, tie state transportation funding to measurable performance criteria, such as reduced air pollution from vehicles and reduced per capita vehicle miles traveled.
- Fourth, transportation funding allocation formulas need to be changed from a single state-



wide formula in order to give regions flexibility to determine the funding levels for various transportation modes—above certain minimum levels—that best meet their needs.



**Support transportation process reform.** There have been numerous efforts in recent General Assembly sessions to reform various aspects of state transportation planning. Any action that will reduce the environmental impacts of transportation projects, enhance public involvement in planning, improve the Public Private Transportation Act, or seriously reform VDOT planning and public input to the Commonwealth Transportation Board should be supported.

**Support improved linkage between transportation and land use policies and incentives for smarter growth.** Potential measures include requiring an assessment of the land use impacts of major transportation projects, targeting transportation spending to existing communities, tying transportation funding to land use changes that reduce travel demand, targeting economic development assistance to existing communities and locations with adequate pre-existing transportation infrastructure, working with localities to conduct build-out analyses of their land use plans, and providing technical assistance to localities to promote transit-oriented development.

### *Specific Priorities*

**Performance standards for transportation planning:** Require VDOT to develop, measure, and meet performance standards that include reduction in per capita vehicle miles traveled and increased mode share for transit, carpooling, walking, bicycling, and telecommuting.

**Transparency in reporting transportation funding allocations:** Require reporting transportation funding allocations in a format that both the public and legislators can understand, tracking regional shares, allocation to federal funding categories, and the percentages going to transit, walking, bicycling, and local roads.

**Buildout and transportation needs analysis:** Require local governments to report build-out numbers under their comprehensive plans and zoning every five years and to calculate the resulting transportation and other infrastructure needs. Tie additional funding for transportation to completion of this analysis.

**Priority funding for key rail corridors:** Make freight and passenger rail investments in the I-95, I-81, and I-64 corridors a top priority for Virginia.

**Transportation funding tied to existing communities and compact development:** Tie transportation funding to existing communities and areas of congestion, and areas of new development only if they are in defined development districts adjacent to existing development and ensure compact development with interconnected street networks.

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# PUBLIC PRIVATE TRANSPORTATION ACT

## STATEMENT OF THE ISSUE

There has been a dramatic increase in the number of projects proposed under the Virginia Public-Private Transportation Act of 1995 (PPTA), which allows private entities to enter into agreements with VDOT to construct, improve, maintain, and operate transportation facilities. Experience with PPTA projects and proposals thus far indicates that the statute may be seriously flawed and raises serious doubts about how effectively it serves the public interest.

## BACKGROUND

The PPTA is designed to facilitate private investment in public infrastructure and transportation facilities. It allows both solicited and unsolicited proposals, and is viewed by its supporters as a way to make needed improvements and additions to the state transportation system sooner, more cheaply, and more efficiently than with public funds alone. Projects undertaken so far under the PPTA or its predecessor include the Dulles Greenway and Route 28 interchanges in Northern Virginia, the Pocahontas Parkway (Route 895) in Richmond; and Route 288 in Richmond. There are numerous additional PPTA proposals currently under consideration by VDOT.

The track record of PPTA projects thus far calls into question the claims made on behalf of the statute. Taxpayers in a special district pay a tax surcharge to service the debt incurred for Route 28 interchanges; if the forecasted revenue does not materialize, then Fairfax and Loudoun County taxpayers must ultimately cover the debt since bond rating agencies gave such a poor rating to the bonds without this guarantee. In addition, in the past, the bonds for the Pocahontas Parkway were downgraded and placed on a watch list by credit agencies because traffic and toll revenues were lower than expected.

Although the PPTA could be an innovative tool for funding and building transportation projects, there are many apparent problems with the act:

- It undermines sound transportation planning by advancing projects that are not high priorities for the public, moving proposed projects to the head of the regional list of projects and making a claim on state revenues at the expense of other projects.
- Opportunities for public input into the PPTA process are limited.
- The PPTA process could circumvent or undermine environmental review of proposals, due to the time tables for decisions under the PPTA and the selection of a proposal before it has been studied or alternatives evaluated.
- Applicants have failed to disclose all necessary information about costs and design.
- There has been a lack of information about potential costs to taxpayers and potential risk to the state's bond rating.
- It creates incentives for sprawl and environmental damage. For example, the previous owner of the Pocahontas Parkway supported a massive new development and an additional interchange that would increase the amount of traffic (and revenue) on the highway. Most PPTA projects built or proposed thus far have been for highway construction to subsidize sprawl and increase automobile dependence, destroying open space and increasing air and water pollution.

## RECOMMENDATIONS

**Support PPTA reform.** Legislation to improve the PPTA should be supported. Potential measures include requiring public input into each proposal (such as traditional public hearings at an early stage of review), requiring approval of PPTA proposals by the Commonwealth Transportation Board (CTB), limiting proposals under the PPTA to projects contained in state transportation plans, requiring full disclosure of project costs, requiring full disclosure of all public costs and potential liability (including any costs to operate and maintain the new facility), giving priority to proposals that include real private sector equity contributions, and requiring evaluation of the impacts of any proposed project on land development patterns.

**Oppose additional taxpayer funding until the PPTA is reformed.** The General Assembly created the Transportation Partnership Opportunity Fund to support PPTA projects. No additional money should be placed into this fund until the PPTA is reformed.

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# CONTEXT SENSITIVE SOLUTIONS

## BETTER DESIGN FOR VIRGINIA'S TRAVELERS AND COMMUNITIES

### STATEMENT OF THE ISSUE

In order to maintain and foster Virginia's strong economic climate, we must provide for future mobility needs while conserving our historic and natural resources.

The opportunity exists to link land use planning and transportation while balancing the need for safety and capacity improvements. A planning process called Context Sensitive Solutions, or CSS, allows for the preservation of the cultural, aesthetic, scenic and other resources of a community. By adopting this planning process, which considers the entire context of each transportation project, VDOT can successfully deliver its projects on time and on budget, with fewer delays, and with greater management of local resources.

Along with pastoral settings, history, and incredible scenic vistas Virginia also boasts a \$16.5 billion dollar tourism industry. *Forbes* recently named Virginia the nation's best state for business, thanks largely to our quality of life, which helps employers attract and retain workers. Virginia can continue to lead the nation with a transportation planning process that preserves the historic and natural qualities that attract people to the Commonwealth and will ensure that Virginia remains the best possible place for not only its citizens but also for business and tourism.

### BACKGROUND

The Federal Highway Administration recommends that state departments of transportation adopt CSS in designing new roads or upgrading existing ones:

Context Sensitive Solutions is a collaborative, interdisciplinary approach that involves all stakeholders to develop a transportation facility that fits its physical setting and preserves scenic, aesthetic, historic and environmental resources, while maintaining safety and mobility.

*Context Sensitive Solutions is a collaborative, interdisciplinary approach that involves all stakeholders to develop a transportation facility that fits its physical setting and preserves scenic, aesthetic, historic and environmental resources, while maintaining safety and mobility.*

—Federal Highway Administration



photo PBIC

Most states, including Maryland, Kentucky, Tennessee, Pennsylvania and the District of Columbia, have developed and implemented the principals of CSS.

CSS uses a collaborative, team approach that puts all road improvement and design options on the table, with full public participation, early in the planning process. The public is encouraged to study the options and help craft a project that will provide maximum benefits to the community as a whole, not just road users. As a result of this proactive public involvement, transportation projects move ahead more smoothly. Critical resources are preserved in a manner that gives communities a sense of ownership and pride in the transportation projects.

The use of CSS principles by VDOT in planning for safety and congestion improvements to roads is the only way to ensure that Virginia's unparalleled historic and natural sites are considered early in the planning process. Preserving these sites is critical to the region's heritage tourism, which generates billions in state and local tax revenue.

#### *The keys to CSS excellence:*

- Seek to understand the landscape, the community, and valued resources before beginning engineering design.
- Involve a full range of stakeholders with transportation officials in the scoping phase. Clearly

define the purposes of the project and forge consensus on the scope before proceeding.

- Tailor the highway development process to the circumstances. Employ a process that examines multiple alternatives and that will result in consensus on approaches.
- Secure commitment to the process from top agency officials and local leaders.
- Communicate with all stakeholders in an open and honest fashion, both at the outset and continuously during the project.

BETTER COMMUNITIES TODAY	
	<b>Bad development is an assault on Virginia's idyllic countryside, hampering tourism today and making global warming more severe tomorrow.</b>
A BETTER CLIMATE TOMORROW	

- Establish a multi-disciplinary team early with disciplines based on the needs of the specific project, and include the public.
- Tailor the public involvement process to the project. Include informal meetings.
- Use a full range of tools for communication about project alternatives (e.g. visualization).

#### **RECOMMENDATIONS**

The governor's office and the secretary of transportation should adopt a stronger and more definitive CSS policy than that proposed in August 2006. CSS should be a required policy at all levels of transportation planning.

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# WETLANDS PROTECTION

## STATE ASSUMPTION OF THE SECTION 404 WETLANDS PERMIT PROCESS

### STATEMENT OF THE ISSUE

At present, Virginia state officials are considering seeking authorization from the EPA to administer Section 404 of the Federal Clean Water Act (CWA) in most areas of the Commonwealth. Through this process, known as “404 assumption”, DEQ would become the sole regulatory entity responsible for the review and issuance of certain wetland and stream impact permits. Section 404 of the CWA regulates the placement of fill material in waters of the United States, including wetlands. Currently in Virginia, permits must be obtained from both the Army Corps of Engineers and DEQ for dredge and fill activities that result in the placement or redistribution of material in wetlands and other waters.

Proponents of 404 assumption believe they can create “one stop shopping” by removing the Corps’ review of 404 permits and thereby improve the efficiency, consistency, and timeliness of wetlands permit decisions in Virginia. However, Section 404(g) of the CWA only allows a state to administer its own 404 permit program in waters traditionally unutilized to transport interstate or foreign commerce (i.e. non-navigable waters). Consequently, a fully assumed program would still require both federal and state permits in almost all tidal waters and many Virginia streams and rivers. Meanwhile, 404 assumption could jeopardize essential environmental protections and increase the Commonwealth’s funding requirements, staffing needs, and workload.

### BACKGROUND

In the 30 year history of the Clean Water Act, only two states, New Jersey and Michigan, have assumed the Section 404 program. Many states have investigated the possibility of a state-administered 404 permit program. Yet, those states ultimately refused to take control of the Section 404 program for many reasons, including lack of state funding, inability to assume control in all waters, loss of environmental protections and public involvement, issues with stringent federal requirements and EPA oversight,

increased state exposure to liability, and the availability of alternative mechanisms for state wetlands protection.

Here in Virginia, the Commonwealth has previously considered the possibility of 404 assumption on three different occasions. In 1979, 1982, and then again in 1988, various agencies within the state conducted 404 assumption studies. Each of the three previous studies concluded that the disadvantages of 404 assumption outweighed the potential advantages for the Commonwealth. Specifically, these studies found that assumption of 404 authority would amount to significant increases in state expenditure, responsibility, staffing, and workload with only minimal gains in control over the wetlands permitting process.

#### *Wetlands assumption may sacrifice environmental protections and public participation*

Whenever states assume the 404 permit program, certain federal protections are removed as a consequence. Permit issuances that were once final federal actions subject to several significant federal statutes now become state actions which may fail to trigger federal statutes. As a result, state-administered 404 permits may lose the environmental protections con-

tained in the federal Endangered Species Act and the Fish and Wildlife Coordination Act. Additionally, applications for state 404 permits may fail to trigger the development of environmental impact statements and certain public participation guarantees contained in the National Environmental Policy Act (NEPA).

#### *Wetlands assumption will not create “one stop shopping”*

Section 404(g) of the CWA provides states the option of assuming administration of the federal 404 permit program. However under 404(g), a state may only assume administration over permits in waters deemed to be non-navigable U.S. waters. Accordingly, if a state-administered 404 program is approved in Virginia, the Corps would suspend the processing of federal 404 permits in some, but not all, state waters. The Corps would retain jurisdiction over traditionally navigable waters, connecting channels, and other waters where naviga-



tional conditions are maintained. The Corps also retains Section 404 jurisdiction in tidal and nontidal wetlands directly adjacent to navigable waters. Thus, under a state-administered 404 program, both federal and state permits will still be required for much of Virginia's wetlands.

### ***Wetlands assumption increases Virginia's financial and staffing burdens***

While federal funding is possible under federal statutes, during the entire history of the CWA such funding has never been made available to a state-administered 404 program. In order to create a successful and meaningful 404 program, states must find their own long-term, continuous, and stable funding. At this time, Virginia officials estimate that an assumed wetlands program will require an additional 35 employees and an additional annual operations budget of approximately \$2 million. However, these figures appear to be unrealistic in light of the estimated increase in workload under an assumed program.



Rough estimates indicate that Virginia will inherit approximately 1,600 new permit applications each year under 404 assumption. This amounts to a 150% increase in DEQ's current workload. In 2005, the cost to process the Commonwealth's 665 approved Virginia Water Protection Permits totaled over \$2 million. Thus, it would seem likely that an approximate 150% increase in workload would correspond to almost a \$3 million annual increase in state funding. However, even this figure does not include the additional staff and financial resources needed to replace the Corps' wetland jurisdictional determinations and the Corps' enforcement and compliance actions.

Likewise, in 2005, DEQ employed 31 full time employees who handled a total workload of 665 permits. On average, DEQ approved 21.45 permits for every one employee. Based on this average permit-to-employee ratio, DEQ could need almost 75 full-time employees to handle the increased workload of an assumed 404 program.

### ***Alternatives could protect wetlands while improving programmatic efficiency***

The consideration of 404 assumption in Virginia is premature at this time. In its 2006 report entitled, "Improving

Permitting and Compliance Processes for DEQ and Permittees in Virginia," DEQ and stakeholder peer review teams identified eight action items to improve the Virginia Water Protection Permit Program. Only recently has DEQ incorporated these recommendations into a new Permit Efficiency Implementation Plan.

Additionally, 404 assumption is not the only regulatory option available to the Commonwealth. There are additional mechanisms and solutions available that deserve further study before a concerted effort is made to assume the 404 program. Until such measures and improvements are fully implemented and all regulatory options are studied, any attempt to further change the current wetlands permitting program in Virginia is unwarranted and unnecessary.

## **RECOMMENDATIONS**

### ***Support a study of wetlands permitting but forego legislation at this time***

The conservation community supports the study and audit of all wetlands permitting programs in the Commonwealth, including but not limited to the tidal and nontidal wetlands programs operated by the Commonwealth and the 404 permit program operated by the Corps. Such a study should also include an evaluation of the Corps' and DEQ's track records in protecting wetlands under the current programs in place. At a minimum, all state and federal wetland programs should undergo an in-depth audit of permit decisions and wetland acreage lost to ensure that adequate environmental protections exist in the current programs.

Additionally, the Commonwealth should establish a statewide task force to study all wetland permit program options, including 404 assumption. Such a task force should be comprised of stakeholders from across the Commonwealth, including the regulated community, the conservation community, private business, and both federal and state government agencies. At a minimum, this task force should identify and quantify any problems in the current wetlands permitting programs, evaluate alternative solutions, and develop consensus recommendations. All meetings and deliberations of this task force should be open to the public and provide opportunity for public comment.

The Commonwealth must oppose any legislation or budget provisions that propose additional authority or additional finances to assume the federal 404 program until all necessary studies and evaluations are complete.

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# LAND CONSERVATION

## VIRGINIA'S LAND CONSERVATION TOOL BOX

### STATEMENT OF THE ISSUE

In order to best preserve important resources, Virginia needs to take a balanced approach to conservation that supports the top three tools in its land conservation toolbox. These tools should include state funding for local purchase of development rights (PDR) programs, the Virginia Land Conservation Foundation, and tax incentives for private voluntary land conservation. Without **significant and reliable funding** for these programs, Virginia cannot:

- meet its commitment to restore the Chesapeake Bay,
- maintain the quality of life that attracts businesses and tourists to the Commonwealth,
- access available federal conservation dollars that require matching funds,
- save important lands when opportunities arise,
- ensure that future generations can enjoy the beautiful, diverse Virginia that we know today.

If current trends continue, over the next 40 years Virginia will develop an area equal to that developed in the 400 years since the Commonwealth was settled by Europeans. The rate at which rural land is being lost is accelerating, and it is now more than two times faster than our population growth. Vitrally important prime farmland is being lost at the greatest rate, with forestland loss close behind. In addition, critical wildlife habitat, important historic sites, and economically valuable scenic resources are being threatened on a regular basis.

### BACKGROUND

Virginians have said repeatedly in surveys, polls, and at the ballot box that they are willing to invest in the protection of open space. Unfortunately, the Commonwealth has failed to provide adequate and reliable funding to protect our resource lands for future generations.

In 2000, under the leadership of Governor Gilmore, Virginia formally agreed to permanently protect 20% of

its land within the Chesapeake Bay watershed. Pennsylvania and Maryland have already met their goals under this important multi-state agreement, but Virginia still has 350,000 acres to go. Furthermore, since some of Virginia's most ecologically important lands lie within the watersheds of the southern rivers, the 20% goal should rightly apply statewide. In early 2006, Governor Kaine acknowledged this when he set a goal of preserving 400,000 acres statewide prior to 2010.

Virginia will simply not be able to reach these goals, not its obligations to future generations, without adequate and reliable funding for local PDR programs and the Virginia Land Conservation Foundation and stable tax incentives for private voluntary land conservation.

#### ***Local purchase of development rights programs***

The Open Space Lands Act authorizes Virginia localities to adopt programs to protect their rural land base by purchasing development rights from willing landowners. Many localities\* in Virginia have active PDR programs or have adopted PDR legislation and many others are examining ways to save their rural areas. Only two of these programs

have dedicated funding, three are unfunded, and the others rely on annual local general fund appropriations.

Virginia's Agricultural Vitality Program recently adopted a model ordinance to help localities develop programs to protect the land base that is needed for healthy rural economies that rely on agriculture and forestry. Nationally, states provide an average of 60% of the funding for local PDR programs, recognizing that many localities do not have the ability to raise local revenues for this purpose.

#### ***Virginia Land Conservation Foundation***

The Virginia Land Conservation Foundation (VLCF) provides matching grants to nonprofit land trusts and local governments. These grants leverage private, local and federal investment by paying for 50% of the cost of worthy land conservation projects. These projects are thoroughly evaluated by state agency staff and the



VLCF Board of Trustees through a competitive process, according to rigorous standards established by the General Assembly.

The VLCF is also authorized to fund the acquisition of public lands. Although occasional funding has been made available through general obligation bonds, Virginia has never provided an adequate revenue stream for natural resources agencies to meet an increasing population's needs for recreational opportunities. When willing landowners decide to sell land that is ideal for a wildlife management area, state forest, state park, or natural area preserve, the Commonwealth often finds itself in a position of being unable to take advantage of the opportunity.



Grant applications to the VLCF program have consistently far exceeded available funds. Calendar year 2005 saw an unprecedented level of activity, thanks to the General Assembly taking the first step towards substantial funding. One grant round was completed in June (\$3 million) with another round of grants announced in December (\$10 million). Governor Warner allocated \$5 million in his outgoing biennial budget, taking VLCF's 2006 appropriation back to the 2004 funding level.

#### **Land Preservation Tax Credit**

Virginia has one of the most innovative conservation tax credit programs in the nation. This program encourages private voluntary land conservation by allowing taxpayers who make gifts of land or conservation easements to reduce their state income tax liability with tax credits equal to 40% of the value of their donated interest (starting January 1, 2007). Landowners who protect their property may also transfer unused but allowable credits to other taxpayers. In order to qualify for tax credits, a conservation easement donation must comply with the real estate valuation practices and conservation purpose requirements set forth in state and federal regulations, and starting on January 1, 2007 land preservation that generates more than \$1 million in credits will undergo additional review and will have to meet specific criteria as outlined by the Virginia Department of Conservation and Recreation.

The Land Preservation Tax Credit is a market-based incentive program that encourages conservation and helps landowners keep their family land by providing a

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***Sustained funding will spur local governments to invest in developing PDR programs and encourage local parks departments, land trusts, and others to commit the necessary resources to receive a VLCF matching grant.***

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financially attractive alternative to selling the land for development. For "land-rich/cash-poor" landowners the transferability of the credit can make staying on the land a financially feasible alternative. Eligible lands must serve agricultural or forestal use, open space, natural resource, watershed protection, or historic preservation purposes and must be protected in perpetuity.

One indication of the success of the program is that since inception of the Land Preservation Tax Credit Program, conservation easement donations to the Virginia Outdoors Foundation have more than doubled. Continued availability of a strong and innovative tax credit incentive is vital to Virginia's ability to pursue its land conservation goals.

#### **RECOMMENDATIONS**

Virginia should make a substantial financial commitment to land conservation by funding both local PDR programs and VLCF. Investments on the order of tens of millions should be the norm, with \$100 million a reasonable goal. A state commitment of sustained funding will spur local governments to invest in developing PDR programs and encourage local parks departments, land trusts, and others to commit the necessary resources to receive a VLCF matching grant. Finally, the General Assembly should forego the temptation to further alter the Land Preservation Tax Credit. Consistency in the law helps landowners to better make informed decisions about the future of their property.

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# VIRGINIA'S WINERIES

## PROVISIONS FOR AGRICULTURAL VITALITY

### STATEMENT OF THE ISSUE

Virginia continues to lose thousands of acres of rural land each year. The Commonwealth estimates that over two-thirds of this land will change hands in the next decade and lead to a further erosion of the rural landscape and rural economy.

One thriving component of Virginia's rural economy is its wineries. The largest Virginia winery today produces 80,000 case per year; the smallest, approximately 200 cases. The median-sized Virginia farm winery produces 2,500 cases per year.

### BACKGROUND

On July 1, 2006, Virginia's farm wineries were dealt a painful blow as a new state law eliminated the ability of wineries to "self distribute"—to market and sell wine directly to local shops and restaurants without using a licensed wine wholesaler/distributor. This low-impact industry brings plentiful tourism dollars to the Commonwealth in the form of sales and excise taxes and should be supported, not stifled.

Self distribution had been permitted since 1980, when the Virginia General Assembly created farm wineries and exempted them from the "three tier" system of alcohol distribution. Under that system, a winery could sell its wine only to a licensed wholesaler, who can then sell only to a licensed retailer, who can then sell wine to consumers. The law encouraged investment in Virginia farm wineries by allowing them to serve as their own wholesaler without mandatory use of an independent middle man.



### BETTER COMMUNITIES TODAY



When Virginians purchase local wine and produce, they support rural economies. In addition, bringing products to market locally requires far less fuel.

### A BETTER CLIMATE TOMORROW

Without self distribution, the growth of new farm wineries will stall and those small ones already in business will have to revisit their business plans. Fewer wineries mean fewer vineyards, less open space, and a decline in an agricultural sector that has been one of Virginia's strongest. Virginia's rural economy will suffer as tourism, sales, and excise tax dollars are lost. According to the Virginia Tourism Corporation, one of every three out-of-state visitors to Virginia visits a Virginia winery. The impact on these farm wineries from the loss of self-distribution has been significant and immediate, with estimated lost sales of 30–40% annually.

### RECOMMENDATIONS

Adopt a constitutionally sound method of allowing both in-state and out-of-state wineries to self-distribute their products.

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# JURISDICTIONAL CONFLICTS IN FORESTRY

## BALANCED LOCAL GOVERNMENT OVERSIGHT

### STATEMENT OF THE ISSUE

Virginia's Department of Forestry (DOF) and local governments have conflicting interests and rules regarding land-disturbing forestry practices. The Board of Forestry (BOF) has concluded that some local ordinances unduly restrict forestry practices and opportunities to harvest timber. Local governments, on the other hand, want to minimize the negative impacts of irresponsible forestry on water quality, flooding, aesthetics, tourism, erosion, climate, and property values. The conflict regarding which entity has jurisdiction for oversight forestry and enforcement of minimum standards can be resolved to the benefit of both forest owners and their communities.

### BACKGROUND

The General Assembly addressed the issue of local ordinances affecting forestry activities in the so-called "Right to Practice Forestry Law," Virginia Code §10.1-1126.1, enacted in 1997.

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***There are no implementing regulations in place to enforce the use of BMPs in forestry activity. The law also limits local government regulation ... on land under development until after a change in zoning or land use occurs—a loophole exploited by unscrupulous developers.***

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The first paragraph of that law states a significant finding: "Forestry, when practiced in accordance with accepted silvicultural best management practices (BMPs) as determined by the state forester pursuant to

§ 10.1-1105, constitutes a beneficial and desirable use of the Commonwealth's forest resources."

In Section B, a local government's authority to regulate silvicultural activity (on land taxed as "devoted to forest use" or in a "forestal district") is limited if the activity is conducted in accordance with the "silvicultural best management practices developed and enforced by the state forester pursuant to § 10.1-1105." The state forester has developed BMPs, but there are no implementing regulations in place to enforce the use of BMPs in forestry activity. The law also limits local government regulation of forest management practices on land under

development until after the change in zoning or land use occurs—a loophole exploited by unscrupulous developers.

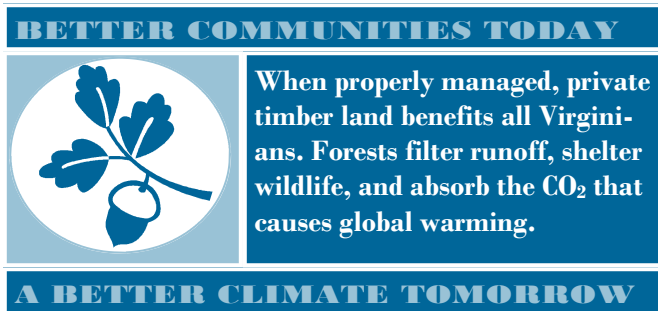
House Bill 14, as introduced during the 2006 General Assembly session, sought to resolve the jurisdictional conflict surrounding forestry oversight. The bill was withdrawn, however, with the patron's understanding that DOF would meet with interested parties and

attempt to resolve the conflict. Specifically, HB 14 was intended to close a loophole used by a developer in Stafford County to avoid local forestry regulations on land being logged for subsequent development. The statutory loophole was reinforced by a Stafford County Circuit Court opinion in 2005. HB 14 sought to subject land clearing activity for development purposes to local storm water management regulations once an application for development is submitted to the local government rather than after the land use status changes.

The facts underlying the debate over HB 14 are significant to a broader conflict that DOF carried into the 2006 session. Fulfilling a legislative directive to study "incentives to private landowners to hold and preserve their forest land," the agency issued a report titled "A Continuing Study on the Provision of Incentives to Preserve Private Forest Land in the Commonwealth of Virginia," in December 2005 (<http://www.dof.virginia.gov/resources/sjr-367-report-final.pdf>). According to the report, the BOF found:



There has been an increasing frequency on the part of localities to control/monitor land use activities, which has led to a mixture of local ordinances that differ from locality to locality. This regulatory hodgepodge has left many landowners surprised and confused on the local-level requirements. Landowners need regulatory certainty to invest in forest conservation.



Based on this finding, the BOF adopted the following recommendation to the General Assembly in December 2005:

In collaboration with local government and other stakeholders, examine the Right to Practice Forestry Act (10.1-1126.1) to more effectively contribute to non-industrial private forest landowners' management. The Department of Forestry, in conjunction with the forest stakeholder community, will

lead this collaborative effort to examine and recommend any appropriate legislative changes to the Act and other forestry laws as it pertains to the preservation of private forest lands.

Despite that reference, no truly "collaborative effort" has yet commenced to examine the jurisdictional conflict or to recommend a more uniform, enforceable set of minimum standards for the practice of forestry across localities.

## RECOMMENDATIONS

There is a genuine dispute over which laws should apply to land-disturbing activity that takes place on forest land. The dispute needs to be resolved by the affected parties and stakeholders. DOF, Virginia Department of Conservation and Recreation, Virginia Department of Agriculture and Community Services, Virginia Association of Counties, and representatives from the forestry community and conservation community should participate in the discussion. Absent such a process, the authority of local governments should not be eroded.

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# SUSTAINABLE FORESTRY CERTIFICATION

## A MARKET INCENTIVE FOR SOUND FOREST MANAGEMENT

### STATEMENT OF THE ISSUE

Product labels such as fat free, USDA Organic, and Energy Star help us purchase products that match our values. Labels on lumber and paper can tell us whether forest products were produced locally, whether recycled materials were used, and whether they came from forests that were managed sustainably.

It is the latter—sustainable forest management—that Virginia should encourage by fostering the certification of Virginia forestland and encouraging the consumption of certified forest products.

### BACKGROUND

Certification proves that forest products come from sustainably managed forests. Owners, managers, and harvesters of certified forests promise to use the best possible management practices to protect biodiversity, minimize soil erosion, ensure forest regeneration, maximize worker safety, and respect community values. Importantly, inspections by third-party auditors ensure that these promises are met. Working, functioning, healthy forests are the desired outcomes.

Several certification systems exist; among the most common in the Virginia are (in alphabetical order) American Tree Farm System, Forestry Stewardship Council, Green Tag, Programme for the Endorsement of Forest Certification, and Sustainable Forestry Initiative. Consumers may choose among them because the systems differ from one another in important ways—some, for example, allow large clearcuts and tree plantations—but all satisfy minimal standards that protect the Commonwealth's forests, and the water, wildlife, and ecosystem services these forests provide. VCN holds that any of the verified certification systems is better than no certification. Therefore, Virginia should actively promote certification of public and private forests.

Certification systems have proven to have dramatic effects on management practices. Famous examples include dolphin safe tuna and humanely slaughtered beef. Practices quickly changed when major purchasers of tuna and beef—such as tuna canneries and restaurants—demanded improvements by their suppliers. Those suppliers best equipped to meet the demands benefited economically.

Already, an increasing number of companies are

committed to the certified sourcing of forest products. Major retailers like Home Depot and Lowe's carry certified products. Green building programs such as LEED (Leadership in Environment and Energy Design) promote the use of both locally produced and certified lumber.

Other Southern states are currently working to promote and facilitate certification for private forestlands. Many states in the Mid-Atlantic and Northeast have led by example, certifying public lands—often under multiple systems—as a vehicle for building capacity and expertise.

Similarly, to help affect changes in production systems and to nurture a more sustainable economy, the United Nations and the EPA strategically buy a variety of green-certified products. Virginia's state and local governments should have similar programs, including those focused on Virginia-grown forest products, which have the additional benefit of supporting local communities.

Forest products are used in everything from food to medicine to clothing, not just paper and lumber. Forest owners and managers will respond when bulk purchasers of forest products demand third-party certified wood. The ripple effect will be enormous.

Landowners will benefit from the assurance that forestry practices on their property are sustainable. Their communities will benefit from the healthy wildlife populations, clean air, and clean water that result from sustainable forestry. The economy will benefit from a consistent supply of high quality resources.

### RECOMMENDATIONS

Virginia should encourage sustainable forest management by:

1. Asking landowners, forestry professionals, and state agencies to adopt and endorse sustainable forest certification, and
2. Asking state purchasing programs, commercial businesses, and consumers to purchase certified sustainable forest products.

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# CITIZEN BOARDS

## ENSURING PUBLIC PARTICIPATION

### STATEMENT OF THE ISSUE

Virginia's natural resources are publicly owned and equally available to all citizens. Article XI of the Constitution of the Virginia protects our atmosphere, lands, and waters from pollution, impairment, or destruction, for the benefit, enjoyment, and general welfare of the people of the Commonwealth. Citizen boards ensure that the general public has a representative voice in upholding the rights and protections of the Constitution in all permitting and regulatory decisions.

Public participation in government decision-making is essential to the success of any democracy. Most government environmental decisions involve delineating rights and responsibilities between users of common natural resources. Therefore, the best environmental laws require substantial public participation in all decision-making processes in order to improve the quality of government decisions and provide necessary checks and balances on government.

### BACKGROUND

Since 1946, citizen regulatory boards, such as the State Water Control Board, have involved citizens in government processes in a meaningful way. Citizen regulatory boards strengthen the legitimacy of government actions and help generate support for government decisions. Regulatory, permitting, and enforcement decisions made by citizen boards also develop support for projects and reduce citizen alienation by allowing members of the Commonwealth to take an active role in their government.

#### *Citizen boards ensure protection of the public trust and encourage civic participation*

The people of Virginia want and should be able to decide what is best for their state. Including the public in decision-making through the use of citizen boards demonstrates the Commonwealth's commitment to participatory government. Citizen boards also create more transparent and accountable self-government. When

citizens are involved, government decisions have greater legitimacy.

Removing or hampering citizen involvement in government decision-making can discourage, even deny, civic participation in government. Many individuals in the Commonwealth already feel that they have little voice in their government and that private citizens' concerns often fall on deaf agency ears. Legislative attempts to alter citizen boards will further alienate people from their government and foster deeper voter distrust of political leadership.

#### *Citizen boards improve decision-making*

Citizen boards bring new points of view, new ideas, and a community perspective directly into the decision-making process. Each member brings experiences, perspectives, and technical expertise that may differ from those of other board members or agency staff. This diversity of decision makers affords a healthy exchange of ideas and a thorough consideration of the

issues. While their backgrounds vary, board members share a commitment to their fellow Virginians and the Commonwealth's environment. The use of citizen boards in regulatory decisions allows members of the public to decide whether a rule or project proposal makes sense to the people most affected by the decision, their neighbors, and the entire Commonwealth.

### RECOMMENDATIONS

The Commonwealth of Virginia should uphold the authority and autonomy of its citizen boards to ensure public participation in government and adequate protection of natural resources.



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# SLAPP SUITS

## PROTECTING FREE SPEECH AND PUBLIC PARTICIPATION

### STATEMENT OF THE ISSUE

The need for public participation in the planning and development process is more important now than ever. The way Virginia's communities look, work, and grow is changing rapidly and can significantly affect our quality of life. Unfortunately, citizens who try to get involved and express their opinions can face expensive, malicious lawsuits.

These suits, known as Strategic Lawsuits Against Public Participation, or SLAPP suits, allow irresponsible corporations, real estate developers, land owners, or government entities to intimidate citizens and discourage public involvement in local decision making. Worse, SLAPP suits seek large monetary damages and punish average citizens for exercising their First Amendment rights when they participate in a democratic process.

Most SLAPP suits have no legal merit, but they do accomplish their objective—to stymie public participation. Typically, plaintiffs seek millions of dollars in damages, and cases can take an average of three years to litigate, exhausting citizens' resources and draining their energy.

### BACKGROUND

Because SLAPP suits are an abuse of the legal system, they are not constitutionally protected. However, Virginia statutes do not adequately protect citizens who petition their government or exercise their right to free speech. Suits may be brought against them on any number of grounds, including interference with business interests, defamation, conspiracy, or nuisance. Regardless of whether the citizen prevails in the matter that prompted them to speak out before a government body, a plaintiff may sue for alleged monetary losses associated with the comments that were made in a public forum.

What defendants in SLAPP suits need most is prompt dismissal of the abusive lawsuits and a chance for restitution. Twenty-three other states have enacted anti-SLAPP legislation over the past twenty years.

These laws can do two important things: require a judge to rule on the merits of the case before proceeding, which prevents large legal fees from accruing unnecessarily, and allow defendants to seek attorneys' fees from plaintiffs, removing any immunity a plaintiff may feel when he files a SLAPP suit.

### RECOMMENDATIONS

The Virginia General Assembly has not considered anti-SLAPP legislation since 1993. Recent SLAPP suits targeting Virginia's civic organizations, which seek millions in damages from average citizens, indicate a need for citizen protection.

Virginia should continue its tradition of inclusive government and protect citizens who participate in the decision-making process by:

1. Prohibiting SLAPP suits from proceeding without a prior determination of the merits of the case;
2. Ensuring citizens' First Amendment rights and opportunities to participate in governmental decision making are protected, and
3. Providing citizens with an opportunity to collect attorneys' fees when a SLAPP suit is dismissed.

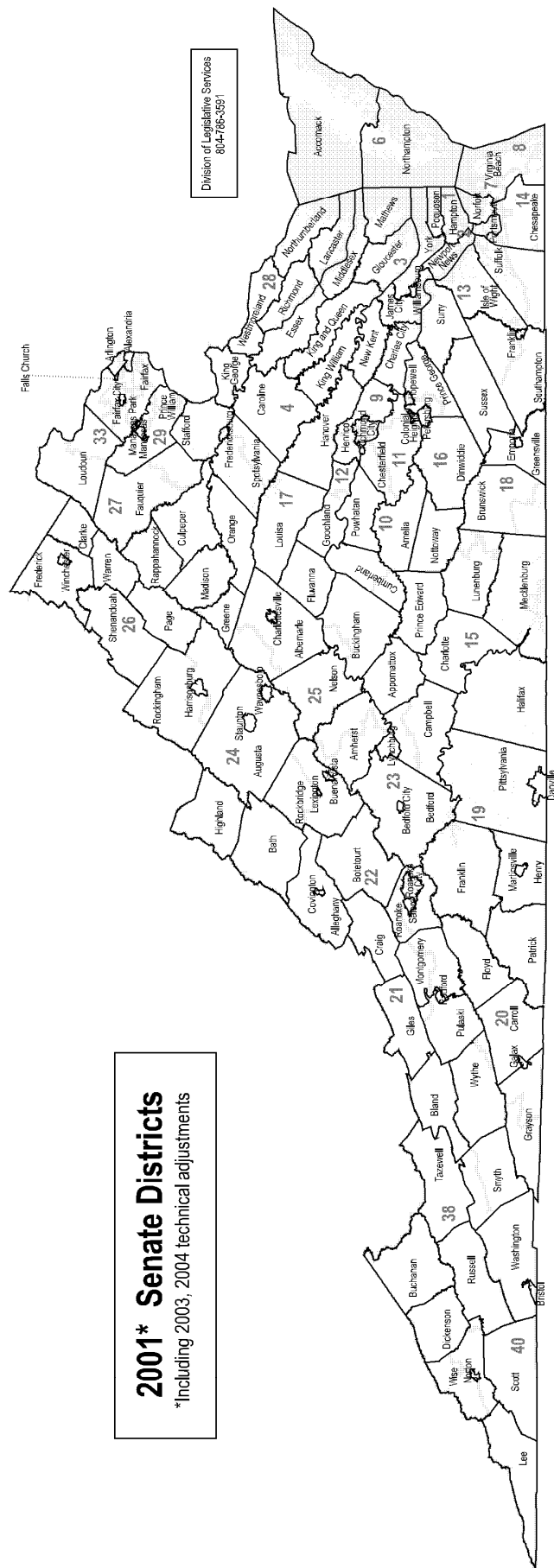
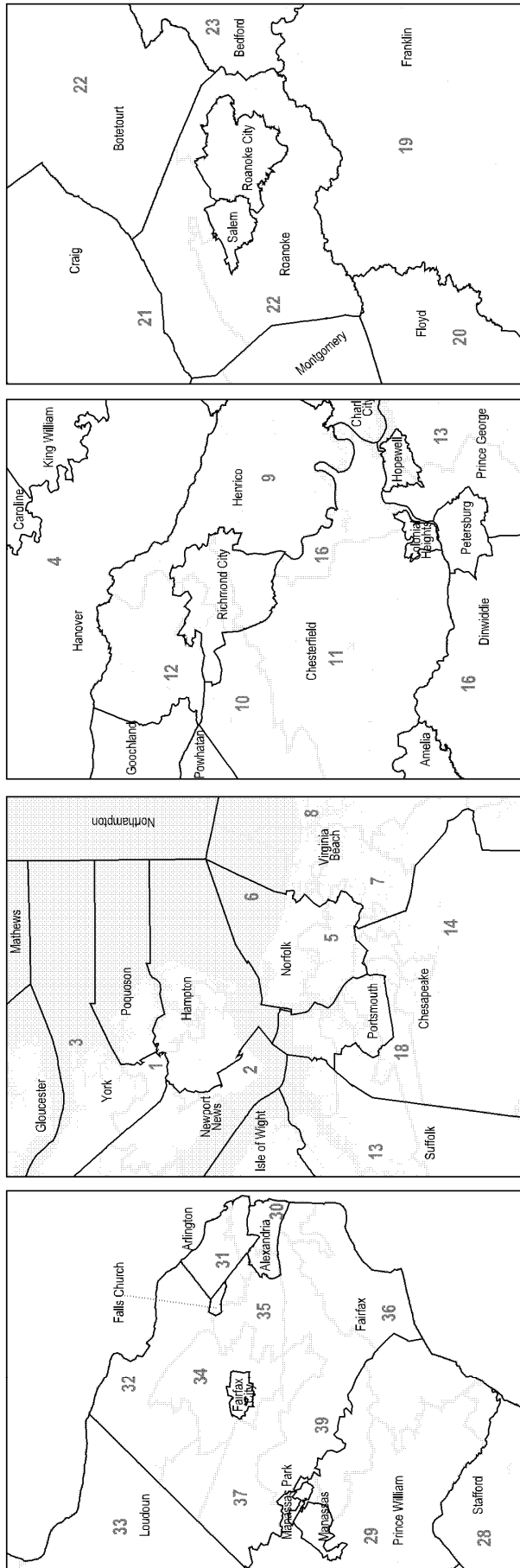
For more information, visit the California Anti-SLAPP Project website at [www.casp.net](http://www.casp.net) and the First Amendment Project website at [www.thefirstamendment.org/antislappresourcecenter.html](http://www.thefirstamendment.org/antislappresourcecenter.html).

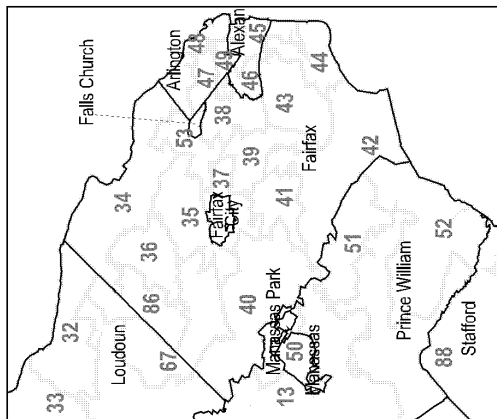
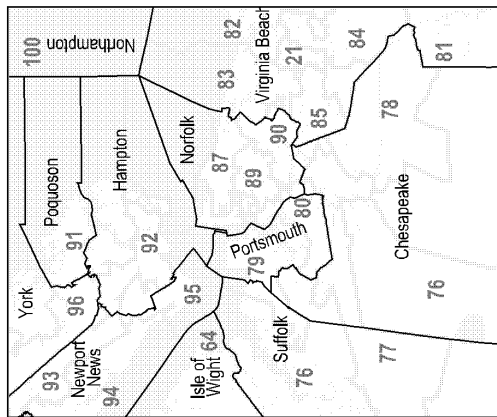
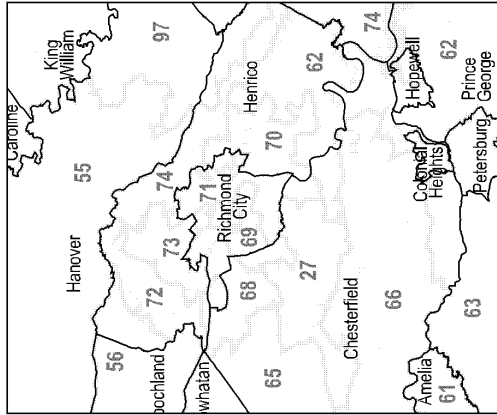
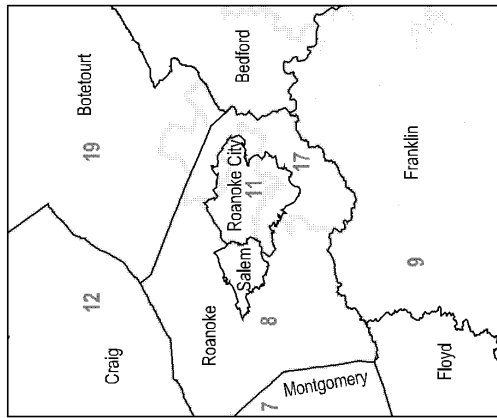


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**Northern Virginia**

**Tidewater Area**

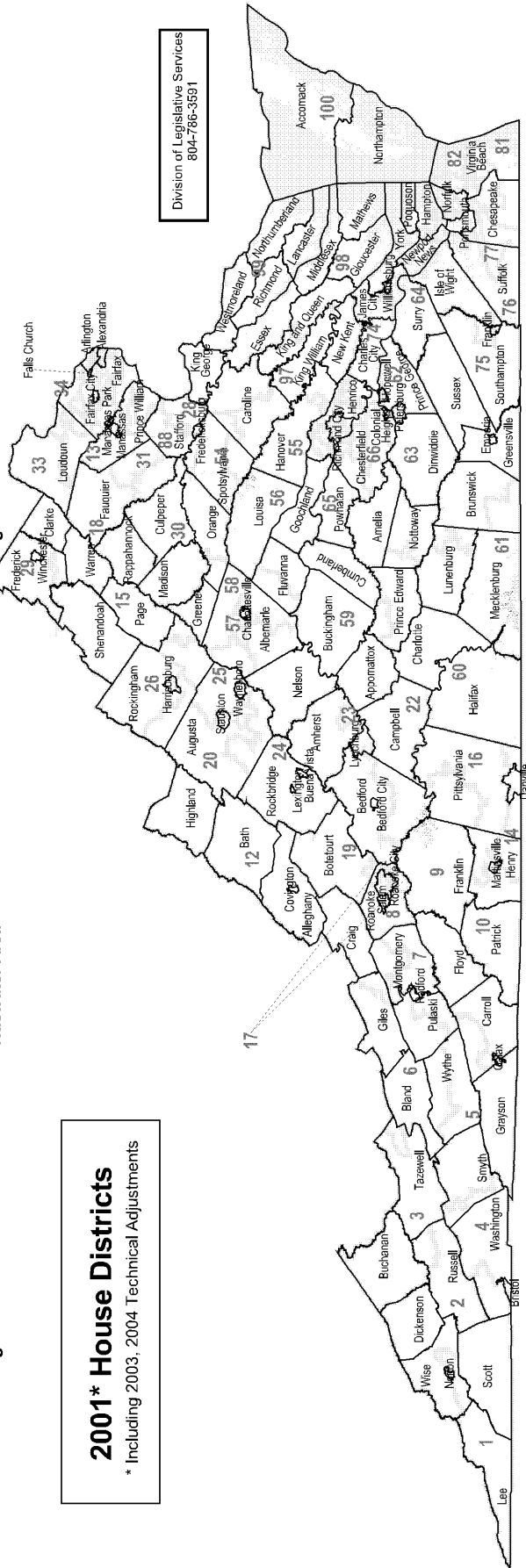
**Central Virginia**

**Roanoke Area**

## 2001\* House Districts

\* Including 2003, 2004 Technical Adjustments

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## **ARTICLE XI OF THE VIRGINIA CONSTITUTION**

To the end that the people have clean air, pure water, and the use and enjoyment for recreation of adequate public lands, waters, and other natural resources, it shall be the policy of the Commonwealth to conserve, develop, and utilize its natural resources, its public lands, and its historical sites and buildings.

Further, it shall be the Commonwealth's policy to protect its atmosphere, lands, and waters from pollution, impairment, or destruction for the benefit, enjoyment, and general welfare of the people of the Commonwealth.



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