

**BETTER COMMUNITIES TODAY. A BETTER CLIMATE TOMORROW**

CLEAN AND SAFE ENERGY • CITIZEN INVOLVEMENT  
TRANSPORTATION CHOICE • HEALTHY RIVERS • SMART GROWTH  
SUSTAINABLE AGRICULTURE • LAND CONSERVATION



# Va. Conservation

## BRIEFING BOOK 08



# VIRGINIA CONSERVATION PRIORITIES

## A COMMON AGENDA FOR CONSERVATION

Virginia's conservationists support an ambitious,  
**CLEAN AND SAFE ENERGY** program.  
A responsible program should *begin with energy efficiency* and conservation to benefit  
working Virginians.

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Virginia should *empower communities* to fight  
climate change and protect their quality of life  
through the improved coordination of **LAND USE**  
and transportation planning.

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Virginia should make it practical and cost-effective for  
Virginians to **PROTECT THEIR LAND** and  
to *practice sustainable agriculture and forestry*  
in order to minimize pollution, enhance habitat,  
and **PROTECT WATERSHEDS**.

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Virginia's conservationists support *democracy* and  
**CITIZEN INVOLVEMENT** in  
decisions that impact our *shared natural resources*.



# VIRGINIA CONSERVATION BRIEFING BOOK 2008

BETTER COMMUNITIES TODAY, A BETTER CLIMATE TOMORROW

## VIRGINIA CONSERVATION NETWORK

### *The voice of conservation*

Representing over 110 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 monitors state legislation relevant to the environment, keeping members and citizen activists 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.

## 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, the network's five workgroups—air and 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 citizens 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 reach hundreds of concerned citizens and public officials with clear information on conservation priorities.

## 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/valcvef/m/m/signup/>.

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# GLOBAL WARMING

## MOVING VIRGINIA TOWARD A SUSTAINABLE FUTURE

### STATEMENT OF THE ISSUE

The world is warming, and human activities are primarily responsible. The Virginia Conservation Briefing Book examines a range of related issues—from transportation, to forestry, to renewable energy—and provides detailed prescriptions for action. In order to meet the challenge of climate change, the Commonwealth must act on multiple fronts and, most ultimately, end its reliance on fossil fuels.

### BACKGROUND

#### *Scientific consensus on global warming*

As detailed in the February 2007 report of the U.N.'s International Panel on Climate Change (IPCC), the scientific consensus on global warming is overwhelming.

Eleven of the past twelve years rank among the twelve warmest on record (since 1850).

The IPCC warns that unchecked higher temperatures will lead to sea level rise between 7 and 23 inches; more frequent droughts, floods and heat waves; and more intense typhoons and hurricanes.

Moreover, we are already seeing the effects of global warming. Flows of ice from melting 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 summer 2050.

#### *How global warming will impact Virginia*

For Virginia and the Chesapeake Bay, the impacts of global warming will be substantial. Oyster populations, already decimated, will be further stressed. Rising sea levels will threaten, wildlife-rich wetlands and historic islands will be lost, ending a way of life for Chesapeake watermen. Further inland, the red spruce forests of Shenandoah National Park—famous for their fall foliage—are predicted to disappear.

A recent study by Penn State researchers examining the vulnerability of the Hampton Roads area found that “future sea level rise, population growth, and poorly planned development will result in significantly greater risk of storm-surge flooding to people in this area.”\*

#### *The role of the Commonwealth*

Virginia is a serious contributor to global warming, and unfortunately, the picture could get worse. Dominion Virginia Power, the state's largest electric

utility, has put forth two proposals – one to build a coal-fired power plant in Southwest Virginia and another to construct a 500kV transmission line across Virginia's Piedmont – both of which could mean far more soot, smog, and global warming pollution.

Dominion falsely claims that its Southwest Virginia power plant would be “carbon capture compatible.” Yet Dominion stated

in papers filed with the State Corporation Commission that there is no “commercially viable or available technology” to capture and store carbon dioxide from the type of coal-fired power plant that the company proposes to build.

Of course, electricity generation is only one part of the problem. Sprawling development also exacerbates our contribution to global warming. Poor transportation planning destroys farmland and open space—and is one reason why we rank eighth in the nation for increase in carbon dioxide emissions attributable to cars and trucks (a 30% increase between 1990 and 2004).

#### *Recent developments in global warming policy*

In 2007, the Virginia General Assembly approved an ill-conceived overhaul of Virginia's electricity regu-

\* Kleinosky, *et al.*, “Vulnerability of Hampton Roads, Va. to Storm-Surge Flooding and Sea-Level Rise,” *Natural Hazards*, Vol. 40, No.1 (Jan. 2007).



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*The effects of global warming on Virginia and the Chesapeake Bay will be especially acute ... However, Virginia's policy makers don't have to wait for another report to move Virginia in the right direction*


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lation system. The newly enacted re-regulation law unfairly guarantees generous returns on utility investments in coal-fired power plants and other polluting technologies but does far too little to promote renewable energy, conservation, and energy efficiency.

Thankfully, other recent developments are helping to promote more progressive alternatives.

On April 2, 2007, the U.S. Supreme Court handed down two important rulings. In *Massachusetts v. EPA*, the Court told the Environmental Protection Agency that it had the authority to regulate greenhouse gases immediately. In *Environmental Defense v. Duke Energy*, the Court closed a loophole in the Clean Air Act that power plant companies had exploited as a way to dodge installing pollution controls. Together, these cases signal the death knell for the old ways of doing business, and encourage industries to take the lead in developing climate-friendly alternatives.

BETTER COMMUNITIES TODAY	
	America must trim CO <sub>2</sub> emissions by just 2% annually for the next 50 years to avert the worst effects of global warming—including mass extinction, famine, and geopolitical unrest.
A BETTER CLIMATE TOMORROW	

Also in April 2007, Gov. Tim Kaine issued an executive order promoting energy efficiency in state government. Then in May, Kaine committed Virginia to participate in The Climate Registry, a multi-state

collaboration designed to collect greenhouse gas emissions data, an important first step toward a serious emissions-reduction regime.

In September, Gov. Kaine took another step when he unveiled the first-ever Virginia Energy Plan. Significantly, the plan commits Virginia to economy-wide reductions in global warming emissions. Unfortunately, the target—a return to year 2000 levels by 2025—is less than ambitious. By contrast, a plan announced by Gov. Charlie Crist of Florida will require power plants to reduce greenhouse gas emissions to 2000 levels by 2017 and to 1990 levels by 2025. Florida will also adopt California's strict motor vehicle emission standards.

## RECOMMENDATIONS

Virginia should adopt a greenhouse gas reduction program that sets forth specific benchmarks to be met within a defined timeframe. The program must also set in place the tools to meet these firm requirements. The Commission on Climate Change called for in the State Energy Plan could be instrumental in developing that program, but it must be given sound scientific data and a sufficiently broad mandate.

However, Virginia's policy makers don't have to wait for another report to move Virginia in the right direction by:

- Opposing proposals that support coal-fired electricity generation and other non-sustainable energy practices;
- Increasing energy efficiency while also promoting responsible low- or no-carbon renewable energy sources; and
- Reforming Virginia's land use, land conservation, and transportation planning practices.

As Virginians, we should continue to look for opportunities to craft solutions that protect the commonwealth and avert the gathering crisis.

### For Further Information Contact:

Cale Jaffe, Staff Attorney  
Southern Environmental Law Center  
434-977-4090; [cjaffe@selcva.org](mailto:cjaffe@selcva.org)

# A RENEWABLE PORTFOLIO STANDARD

## ENERGY CHOICES FOR VIRGINIA

### STATEMENT OF THE ISSUE

The electric utility re-regulation bill passed during the 2007 General Assembly session will ensure that Virginia continues to get its electricity from three major sources of energy: coal, nuclear, and natural gas. Extracting coal and natural gas lead to significant environmental degradation, burning these fossil fuels significantly increases global warming gasses in the atmosphere, and coal is a significant contributor to air pollution and quality of life problems in Virginia. Nuclear energy is neither a safe nor clean energy alternative. Nuclear energy is expensive, even with generous federal subsidies. Security and safety concerns remain, and problems associated with the transport and storage of nuclear waste have not been resolved. The prospect of uranium mining in Virginia—ostensibly to fuel in-state reactors—only magnifies these concerns.

Virginia needs more diverse sources of energy in order to meet our future energy needs without causing environmental harm and health problems for our citizens. In order to promote clean sustainable sources of energy, twenty-four states have enacted Renewable Portfolio Standards (RPS). Analysis of existing RPS programs suggests that mandated portfolios most effectively stimulate renewable markets.

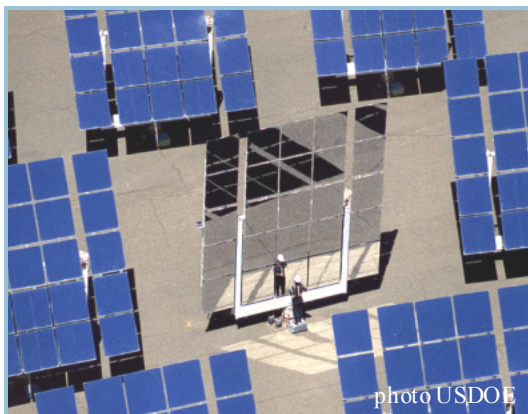
### BACKGROUND

A mandated renewable portfolio standard (RPS) requires providers of electricity to obtain a minimum percentage of the electric energy they sell from renewable energy sources or from savings from energy efficiency programs. Providers may also purchase credits from other parties, including individual electric customers, who generate renewable power or achieve energy savings. The objective of an RPS is to stimulate investment in new renewable energy power

plants and increase the proportion of our electricity supply from these technologies because of their environmental, long-term economic, and energy security benefits. A properly constructed RPS helps the renewable generation industry become more competitive with conventional energy sources.

The current renewable goals that are part of the so-called “RPS” provision within the recently passed re-regulation legislation DO NOT require any new investment in renewable generating facilities before 2015, and possibly longer. The goals set up by this legislation require no effort or investment because they are below the current level of renewable energy generation in the Commonwealth. Furthermore, the goals of the RPS are misleading because they are tied to 2007 as a base year. The 12% goal in 2022 actually amounts to only 8.2% of the projected electricity consumption in that year.

The net result of the law is to reward utilities with millions of dollars in bonuses for using *existing* renewable sources, like hydropower. This transfer of wealth rewards the status quo,



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and results in no public benefit to the consumer or the environment.



## RECOMMENDATIONS

As we consider the peer reviewed research indicating catastrophic sea level rise on the horizon, Virginia must act responsibly to stimulate investments in renewable energy markets and begin to move away from coal and fossil fuel based resources.

A properly constructed RPS would stimulate renewable energy investment, which in turn would jump start economic activity by renewable energy suppliers, installers, developers, and consumers. That would lead to the creation of a robust infrastructure of energy businesses and a broad awareness by electricity users of what is possible.

- **Create a mandatory requirement**—Legislation should create a mandatory RPS, measured by the State Corporation Commission and enforced via the establishment of a compliance fee. The balance of an established compliance fee fund should be directly applied to encourage the growth of renewable markets and energy efficiency/conservation programs.
- **Adjust RPS goals**—Legislation should reassign the renewable goals and explicitly tie those mandatory goals to the implementation of new, rather than existing, renewable energy generation.

### For Further Information Contact:

Josh Tulkin, Deputy Director  
Chesapeake Climate Action Network,  
301-891-6726; [josh@chesapeakeclimate.org](mailto:josh@chesapeakeclimate.org)

Michael Town, Executive Director  
Virginia Chapter Sierra Club  
804-225-9113; [michael.town@sierraclub.org](mailto:michael.town@sierraclub.org)

# ENERGY EFFICIENCY

## THE FIRST STEP TOWARD A CLEAN ENERGY ECONOMY

### STATEMENT OF THE ISSUE

Virginia is at a watershed point in energy policy. As electricity demand continues to increase and natural gas prices rise, there is a tremendous push to build new coal-fired power plants. These new proposed coal-fired power plants are designed to last decades, spewing carbon dioxide (CO<sub>2</sub>) and frustrating efforts to control greenhouse gas emissions. Fossil-fuel power plants are the largest sources of pollution 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 workdays in Virginia. If new coal-fired power plants and their surrounding transmission infrastructure are built, the battle to reduce carbon dioxide emissions, mitigate climate change, and protect the citizens of Virginia will be lost.

Balancing energy supply and demand while solving environmental problems is difficult with current technologies and moving toward a clean energy future will require a multi-faceted approach. The first key component should be to reduce energy demand through efficiency and conservation measures.

### BACKGROUND

#### *Danger of the Trends*

The prices of natural gas, petroleum fuels and even coal have risen dramatically, resulting in economic hardship for many consumers and additional operating costs for commerce and industry that affects economic viability. Fuel supplies have increasingly come from imports, creating concerns about the security of supply. Additionally, utility attempts to make major investments in interstate transmission lines will provide ensured markets for some of the nation's dirtiest coal fired power plants—plants built before the 1972 Clean Air Act. As carbon dioxide controls

are adopted all coal plants will become economic white elephants, a tremendous waste of capital and materials, and an economic burden

#### *Increasing Energy Efficiency and Conservation*

Energy economists point to energy efficiency measures as the lowest-cost solutions that reduce energy needs and pollution. Many efficiency measures actually save consumers money, repaying the upfront costs through energy savings within a few years.

Utilities ought to make significant investments in efficiency and conservation for customers to help reduce individual bills and carbon dioxide emissions, but need strong incentives to change. In spite of the potential savings, businesses and consumers also need stronger incentives to cause them to take action. Consumers and small businesses are not always aware of the potential savings and do not have the technical knowledge or capital to identify and implement energy saving measures. Electric and gas utilities in other states have instituted their own programs of education, assistance and incentives. However, major utilities in Virginia have done little in that regard. To encourage this shift, pricing structures should encourage utility investments in efficiency and conservation.

Cities and counties in Virginia are undertaking programs to reduce their own governmental energy use. However, if efficiency and conservation are to work more broadly Virginia needs substantial state-wide initiatives to encourage and assist consumers and utilities alike.

Cities and counties in Virginia are undertaking programs to reduce their own governmental energy use. However, if efficiency and conservation are to work more broadly Virginia needs substantial state-wide initiatives to encourage and assist consumers and utilities alike.

In the transportation sector, automotive and truck use continues to increase while there has been little effort to implement effective transportation programs that reduce energy consumption and greenhouse gas emissions. By reducing the vehicle miles traveled (VMT's), Virginia can significantly reduce carbon






dioxide emissions from transportation. Effective reductions will require changes; shifting truck freight to railroads, commuters to mass transit, and land-use patterns to reduce the need for transportation.

In some parts of the US 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: in a 2007 American Council for an Energy Efficient Economy report, Virginia ranked 38<sup>th</sup> in the nation for efficiency and conservation program participation.

## RECOMMENDATIONS

### *Energy Efficiency & Conservation Initiatives*

The third enactment clause of the 2007 Re-regulation bill, SB 1416 states “that it is in the public interest, and is consistent with the energy policy goals in §67-102 of the Code of Virginia, to promote cost-effective conservation of energy through fair and effective demand side management, conservation, energy efficiency, and load management programs, including consumer education.” The Virginia State Corporation Commission was tasked with conducting “...a proceeding to (i) determine whether the ten percent electric energy consumption reduction goal can be achieved cost-effectively through the operation of such programs, and if not, determine the appropriate goal for the year 2022 relative to base year of 2006...”

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	Energy efficiency is one of the fastest and most effective ways to reduce CO <sub>2</sub> emissions, save Virginians money, and reduce our use of fossil fuels.
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The SCC formed workgroup to determine the feasibility of that goal, and what measures can be taken to meet or exceed a 10% goal. The SCC Commissioners will report to the General Assembly on December 15, 2007, with recommendations that could significantly impact the efficiency and conservation legislative priorities of the 2008 session.\* These recommendations should include some of the following recommended actions.

*\*Note: For updates on the report please visit [www.vcnva.org](http://www.vcnva.org)*

### *Building Standards.*

Virginia has adopted and updated progressive energy codes for new buildings and updated as of November 2005. However, enforcement of these codes continues to be sporadic, and there is still great room for improvement. While some of the code requirements can only be enforced at the permitting stage, others require onsite inspection to see that the prescriptive measures and design features have been implemented in an effective manner. Local governments typically have insufficient building certification and inspection programs and inadequate time or training to monitor compliance with energy codes. While Virginia offers training on codes, it could help in several additional ways, making efforts to:

1. establish state requirements for inspections and review of permit applications,
2. provide financial assistance for local inspection programs, and
3. provide incentives for builders to comply with or exceed higher energy performance standard, and require certification of energy efficiency in homes (i.e. ductwork inspections).

Additionally, public buildings such as schools and other government owned buildings should be upgraded to increase energy efficiency in order to save energy costs to local governments.

### *Appliance Efficiency*

Some states have set minimum efficiency standards for appliances that exceed federal regulations. Several approaches could be considered for encouraging better appliance efficiency in Virginia, including:

1. Expanding a sales tax holiday for certified (e.g., EnergyStar) energy-efficient appliances,
2. Establishing minimum appliance efficiency standards that exceed federal requirements, and
3. implementing 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.

### *Transportation Energy Efficiency*

The most economically effective tools for reducing fossil energy consumption in the transportation sector involve incentives that directly discourage fuel use and that put the burden on the user—the “user pays” principle. Virginia should consider better long-term

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*In a 2007 American Council for an Energy Efficient Economy report, Virginia ranked 38<sup>th</sup> in the nation for efficiency and conservation program participation.*

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policies in order to initiate public education and political dialogue in such a direction. However, tolls or fuel taxes face political reticence and environmentalists are wary of funding mechanisms that might increase highway construction rather than fund better transportation solutions. Partial solutions to transportation may be more politically acceptable now, and should be supported in the immediate future. Such policies include:

1. A revenue-neutral adjustment (“feebate”) of the state’s new vehicle sales tax to reward high mileage vehicles and penalize low mileage vehicles.
2. Provisions that any passenger-type vehicles purchased or leased by the Commonwealth should be of the highest fuel economy and emit the low-

est pollutants available for the vehicle’s intended purpose.

3. Adoption of an enhanced tailpipe emission standard for vehicles that includes requirements for reductions in CO<sub>2</sub> emissions, as adopted by California and ten other states.
4. Revision of the state’s Transportation Plan and other policies to increase funding for mass transit systems and walking and bicycle paths.
5. Advancement of smart growth policies to reduce transportation demand.

**For Further Information Contact:**

Michael Town, Executive Director  
Virginia Chapter Sierra Club  
804-225-9113; michael.town@sierraclub.org

Liese Dart, Energy and Transmission Issues Liaison  
Piedmont Environmental Council  
202-857-7982; ldart@pecva.org

Richard Ball, Energy Issues Chair  
Virginia Chapter Sierra Club  
703-256-9309; AceRicardo@mindspring.com

# URANIUM MINING

## KEEP VIRGINIA'S MORATORIUM ON URANIUM MINING

### STATEMENT OF THE ISSUE

Virtually all uranium mining in the U.S. has occurred in sparsely populated regions of the arid West. Virginia currently has a moratorium on uranium mining, put in place in 1982 by then Governor Charles S. Robb. Lifting the Virginia moratorium – and mining in more densely populated, higher-precipitation regions – would in essence be an experiment for state and federal regulators. Extensive study must be required to determine the level of risk posed by uranium mining on water quality (including aquifers and surface water), air quality, local communities, and mine and mill employees and whether that level of risk is acceptable to the people of Virginia. This study must consider the locality in which such mining might occur as well as all downstream communities that may be potentially harmed by uranium mining wastes.

### BACKGROUND

#### *History of the Moratorium on Uranium Mining in Virginia*

In 1982, because of uranium exploration occurring throughout the state, the Virginia General Assembly began studying the potential impacts of uranium mining. Governor Charles S. Robb declared a moratorium on uranium mining in 1982 pending completion of the legislature's studies. In 1985, the legislative Uranium Advisory Group recommended that the moratorium be lifted and that the state develop regulations to allow mining of uranium. Two members dissented, arguing that the Group's studies had not demonstrated that uranium mining could be done safely in Virginia.

Meanwhile, the price of uranium began dropping and the industry lost interest in mining uranium in Virginia. The legislature never took final action, so the moratorium on mining remains in place today, although exploration is still allowed.

In recent years, however, the price of uranium has skyrocketed, reinvigorating the industry's push to mine uranium. In July 2007, Governor Tim Kaine's draft of a 10-year Virginia Energy Plan noted the possibility of mining as much as 2 million tons of uranium each year from a site known as the "Coles Hill deposit" in Pittsylvania County. The plan notes that before allowing uranium mining and milling in Virginia, the state would have to develop operational and reclamation requirements to regulate mining.

#### *Methods for Mining Uranium*

No specific proposal to mine the Coles Hill site has been put forth, and little is known about the type of mining that would be used. There are three types of uranium mining in the U.S.: above-ground (open pit), underground, and in situ leaching (ISL). The degree of risk to air quality, water quality, local populations, and worker safety varies depending on the type of mining.

The two types of conventional mining, above-ground and underground mining, involve removing the uranium-bearing ore from the ground, grinding it to an even, sandy consistency, and leaching uranium from the ore using chemical solutions. Because the ratio of usable uranium to mined rock can be as low as 1/2 pound per ton, conventional mining creates vast amounts of waste containing low levels of radiation, heavy metals, and other pollutants. The waste is called "tailings" and is typically piled in enormous mounds, while the liquid waste is impounded in massive slurry ponds. These slurry ponds can leak contaminants into surface and underground waters and pose the risk of catastrophic failure. The tailings piled into sandy mounds must be covered to prevent wind-blown spread of radioactive materials.

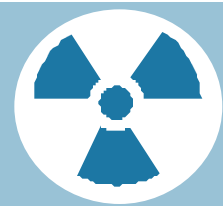
ISL is a newer process that enables production of less rich uranium deposits. A chemical solution is



photo EnergyStar



## BETTER COMMUNITIES TODAY



No where else in the world is uranium mined in a climate as wet as Virginia's, where seepage or flooding could contaminate drinking water for thousands.

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injected underground to leach the uranium from the rock. The resulting mixture is then pumped out to extract the uranium. After the ISL operation is complete, the aquifer is flushed to remove or dilute pollution. This type of reclamation is never completely successful though, so ISL operations pose a significant risk of ongoing ground and surface water contamination. An additional risk is posed by the large amounts of liquid ISL waste, which are impounded, posing risks of water pollution and impoundment failure similar to those with conventional operations.

## RECOMMENDATIONS

The industry and the scientific understanding of the impacts of uranium mining and milling have changed significantly since the 1980s, so the previous studies by the Uranium Advisory Group cannot be relied upon. Moreover, the degree of risk cannot be determined without significant, detailed, scientific studies on the impacts of different types of uranium mining in a wet climate with greater potential for human exposure. Accordingly, Virginia Conservation Network opposes lifting the moratorium because it has not yet been demonstrated that uranium mining can be done safely in Virginia.

### For Further Information Contact:

Rick Parrish, Senior Attorney  
Southern Environmental Law Center  
434-977-4090; rparrish@selcva.org

Mary Cromer, Associate Attorney  
Southern Environmental Law Center  
434-977-4090; mcromer@selcva.org

# ELECTRICITY TRANSMISSION CORRIDORS

## FEDERAL PROPOSAL WOULD BE A GIVEAWAY TO POLLUTERS

### STATEMENT OF THE ISSUE

Dominion Virginia Power and TrAILCo, an Allegheny Subsidiary, have filed applications for a 240-mile, 500-kilovolt transmission line that would begin in Southern Pennsylvania, cross through West Virginia, and terminate in southeastern Loudoun County, Virginia. The proposed transmission line has the potential to undermine Virginia's energy plan 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 route falls within a National Interest Electric Transmission Corridor (NIETC), a new Department of Energy designation, which could ultimately allow Dominion and TrAILCo to use federal eminent domain authority, even if the Virginia State Corporation Commission determines that the proposed line is not in Virginia's interests. This NIETC constitutes a multi-billion dollar life-line to the nation's oldest and dirtiest coal plants, responsible for over 100,000,000 tons of CO<sub>2</sub> emissions.



### BACKGROUND

NIETC 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 NIETC 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. Even if the State Corporation Commission determines on the merits that a new transmission line is not necessary, FERC could ultimately site that line through Virginia.

On April 26, 2007, Department of Energy (DOE) released two draft mid-Atlantic NIETCs which cover 210 counties in 11 states, including 15

counties in Virginia. On October 2, 2007, the DOE finalized national corridors, rejecting the advice of many governors, state attorneys general, legislators, local officials and hundreds of citizens.

### *Undermining Existing Policies*

NIETC designation would undermine previously enacted federal, state and local policy decisions designed to maintain and protect public values: the National Environmental Policy Act (NEPA), 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 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 NIETCs. The Department claims that this designation, which reverses decades of state control over utility siting decisions, is "not an undertaking that has the potential to cause effects on historic properties."

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***If the proposed transmission line is built, Virginia would become a conduit for the transmittal of power to Northeastern markets. The power would be sent to far away markets leaving us to deal with the air pollution burden.***

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### *Policy Impact to Virginia*

NIETC designation could also have a profound effect on the way in which Virginia generates and distrib-

## BETTER COMMUNITIES TODAY



The proposed Mid-Atlantic corridor is a billion dollar lifeline the nation's oldest and dirtiest power plants, responsible for more than a billion tons of CO<sub>2</sub>.

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utes 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 consulted. To make matters worse, the federal corridor process has not been coordinated with Virginia's ongoing development of a state energy plan. NIETC designation would undermine those efforts and 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 because of "Midwest coal-based" electricity generation that could serve markets "from Metropolitan New York southward through Northern Virginia." PJM, the company that manages the Mid-Atlantic electricity grid has referenced "increasingly strict environmental controls" in Maryland, Pennsylvania, and New Jersey as an explanation for why electricity from dirty coal plants in the Midwest, routed through Virginia, would be needed to supply electricity for New York. In other words, the power line would be built and the power would be sent to far away markets leaving us to deal with the air pollution burden.

The proposed Dominion/TrAILCo line itself would also have a profound effect on natural, scenic and cultural resources. The proposed routes for the line could travel through Frederick, Warren, Rappahannock, Culpeper, Fauquier, Prince William, and Loudoun counties. The proposed towers would stand up to 165 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 vicinity of the last 40 miles of this 240-mile long line, there are: over 100,000 acres in conservation easement, 37 historic sites or districts, 21,725 acres of 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 Dominion/TrAILCo proposal and to urge Virginia to go to court to challenge the Department of Energy's designation of NIETCs.

### **For Further Information Contact:**

Dan Holmes, Orange County Field Officer  
Piedmont Environmental Council  
540-672-0141; [dholmes@pecva.org](mailto:dholmes@pecva.org)

Cale Jaffe, Staff Attorney  
Southern Environmental Law Center  
434-977-4090; [cjaffe@selcva.org](mailto:cjaffe@selcva.org)



# SMART GROWTH

## INVESTING IN COMMUNITIES AND QUALITY OF LIFE

### STATEMENT OF THE ISSUE

Virginia is grappling with rapid, sprawling development that spreads farther and farther from existing communities, consuming 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, harmful pollution, and a deteriorating quality of life for many Virginians. Moreover, this unchecked, uncoordinated development has caused a spike in global warming pollution. As oil prices escalate and America grapples with the clear need to reduce greenhouse gas emissions, the need for smarter growth is a public policy imperative.

### BACKGROUND

More than twenty years ago, a bi-partisan Governor's Commission on the Future of Virginia used then-current trends to predict what the Commonwealth 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.

Sprawling development rarely brings about the economic benefits anticipated and can cost taxpayers money. The cost to the Commonwealth and to localities of providing infrastructure and services to newly developed areas in many cases outstrips the revenue generated. But we don't have to choose between courting growth and curbing sprawl. A summary of 40 years of fiscal impact studies showed that smart growth typically consumes 45% less land, costs 25% less for roads, 15% less for utilities, 5% less for housing, and costs 2% less for other fiscal impacts than does sprawling development. The bottom line is that it is more expensive and damaging to provide infrastructure for spread-out development than for more compact and traditional cities, towns, and neighbor-

hoods. By not tying state programs to smart growth policies, Virginia is missing important opportunities to save taxpayers money, strengthen our communities, save energy, reduce traffic congestion, and protect our farmland, health, and environment.

Virginia needs a new partnership between state and local governments to better manage and direct growth in Virginia. The General Assembly has refused requests from local governments for a number of tools to manage growth and has instead reduced the authority of local governments at least a dozen times in recent 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. During the 2007 session, however, the General Assembly did adopt a number of provisions that could better link transportation and land use planning (if properly implemented), and that

give localities some additional tools to control growth, including expanded authority to impose impact fees to provide for some financial payment by developers for the public costs created by new development.

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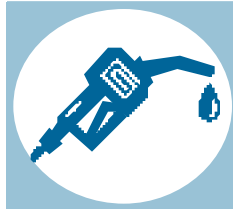
### RECOMMENDATIONS

**Oppose actions that would weaken local governments' existing land use authority.** The 2008 General Assembly session may see efforts to roll back the modest improvements in local authority adopted last year, as well as other efforts 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 charge impact fees, to change their comprehensive plan or zoning designations, and to take away or



photo PBIC

## BETTER COMMUNITIES TODAY



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.

## A BETTER CLIMATE TOMORROW

unduly restrict proffer authority that can help ensure that new development pays for services it requires. Any efforts to weaken local control over the placement of telecommunications facilities should also be opposed; such control enables local governments to lessen the negative impact of these structures on communities.

### **Support 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, Governor's Opportunity Fund, Enterprise Zone Program, and the Main Street Program should be increased and directed to towns, cities, and areas of contiguous development where public infrastructure 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

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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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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.

**Require that comprehensive plans estimate CO<sub>2</sub> emissions and energy consumption from buildings and transportation, and take steps to reduce emissions.** The Virginia Energy Plan shows need for green buildings and changes in land use and transportation to reduce energy use from buildings and transportation, which account for about 80% of total energy use and CO<sub>2</sub> emissions. The Urban Land Institute/Smart Growth America report "Growing Cooler" (<http://www.smartgrowthamerica.org/gcindex.html>), documents how key changes in land development patterns could help cut vehicle greenhouse gas emissions. Without these reforms, the emissions reductions that scientists agree are needed—a return to 1990 levels by 2025—may be unattainable.

### **For Further Information Contact:**

Stewart Schwartz, Executive Director  
Coalition for Smarter Growth  
202-244-4408; [stewart@smartergrowth.net](mailto:stewart@smartergrowth.net)

Trip Pollard, Senior Attorney,  
Southern Environmental Law Center,  
434-977-4090; [tpollard@selcva.org](mailto:tpollard@selcva.org)

# TRANSPORTATION FUNDING AND VDOT REFORM

## STATEMENT OF THE ISSUE

Many elected officials acknowledge the need to reform the Virginia Department of Transportation (VDOT) in order to better link transportation and land use planning. A more integrated approach will help reduce the rising costs of transportation and to provide more transportation choices to Virginians. 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 oil dependence, destroys natural and rural areas, increases air and water pollution, contributes to global climate change, and limits transportation choices—all while doing little to relieve congestion in the long run.



## BACKGROUND

Transportation has been a leading issue in the past several General Assembly sessions, and in 2007 the General Assembly adopted a package to increase transportation funding with provisions intended to better link transportation and land use planning. However, more needs to be done to meet growing transportation challenges. Gas prices are rising, gridlock and air pollution are getting worse, many existing roads and bridges are in poor condition, and state transportation decision and local land use decisions are still rarely coordinated.

Virginia's massive transportation budget—\$4.8 billion this fiscal year—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 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 tolling is limiting input by the public and by public officials, undermining environmental review, slighting transit, and leading to unneeded projects and speculative development.

Gov. Tim Kaine 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 increased funding for transit and rail, requiring traffic impact studies of major land use proposals, and requiring improved access management policies. But these are relatively minor steps in light of the magnitude of the problems we face, and any benefits they produce will be more than outweighed by proposed new highway projects.

## 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 Committee 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 percent 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 statewide 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.

**BETTER COMMUNITIES TODAY**



**Bike lanes, sidewalks, and sound land use decisions provide citizens with real choices in transportation, enabling them to live healthier, less-polluting lives.**

**A BETTER CLIMATE TOMORROW**

**Support transportation process reform.** There have been numerous efforts in years 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,<sup>2</sup> or seriously reform VDOT planning and CTB oversight should be supported. Implementation of a robust Context Sensitive Solutions planning process, for example, would engage more members of affected communities and weigh a broader range of transportation solutions.

**Support improved linkage between transportation and land use policies and providing 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:** Strengthen requirements for the development of performance standards and require VDOT to meet measures that include reduction in per capita vehicle miles traveled and increased mode share for transit, carpooling, walking, bicycling and telecommuting.

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

**Tie transportation funding to existing communities and compact development:** Tie transportation funding to existing communities and areas of congestion, to only those areas of new development in defined development districts adjacent to existing communities; and to compact development with interconnected street networks.

### **For Further Information Contact:**

Stewart Schwartz, Executive Director  
Coalition for Smarter Growth  
202-244-4408; [stewart@smartergrowth.net](mailto:stewart@smartergrowth.net)

Trip Pollard, Senior Attorney  
Southern Environmental Law Center  
434-977-4090; [tpollard@selcva.org](mailto:tpollard@selcva.org)

# 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. Experiences with PPTA projects and proposals thus far indicate that the statute is seriously flawed and raise 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 getting transportation projects funded and built,

*PPTA undermines sound transportation planning by advancing projects that are not high priorities for the public . . . Most PPTA projects built or proposed thus far have been highway construction that will subsidize sprawl and increase pollution.*



there are many apparent problems with the Act, including concerns that:

- PPTA undermines sound transportation planning by advancing projects that are not high priorities for the public, moving proposed projects to the head of the list of projects under consideration 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, among other things 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.
- PPTA 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 highway

construction that will subsidize sprawl and increase motor vehicle 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 greater 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 and to projects with complete environmental studies, 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.

### BETTER COMMUNITIES TODAY



While the PPTA shows a bias toward sprawl-inducing highways, transit investment is a proven way to ease both traffic and global warming pollution.

### A BETTER CLIMATE TOMORROW

**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.

#### For Further Information Contact:

Trip Pollard, Senior Attorney,  
Southern Environmental Law Center  
434-977-4090; [tpollard@selcva.org](mailto:tpollard@selcva.org)



# I-81: TOLLS VS. RAIL FREIGHT

## MULTI-MODAL OPTIONS WILL SAVE LIVES AND MONEY

### STATEMENT OF THE ISSUE

There is now a clear choice regarding the future of I-81. Norfolk Southern has announced a \$2 billion multi-state I-81 Crescent Corridor plan to upgrade rail over the next seven years, which could divert one million trucks off I-81 by 2012.

Yet, the Virginia Department of Transportation (VDOT) plans for Virginians to pay more than \$11 billion to widen I-81, expanding 69 percent of the corridor to eight lanes. Such a costly, unnecessary and unpopular expansion depends on tolls on both cars and trucks, at the expense of businesses and residents along the entire corridor. Tolls along I-81 would impose an unfair and disproportionate burden on the citizens and economy of Southwest Virginia and the Shenandoah Valley, because other interstates in Virginia are not subject to tolls.

### BACKGROUND

#### *VDOT Retains Authority to Toll I-81*

VDOT now has an application for tolls on cars and trucks on I-81 pending before the Federal Highway Administration (FHWA). If approved, this application would enable VDOT to impose tolls under a law passed by the General Assembly in 2007.

The bill, HB2314 (sponsored by Del. Lingamfelter), authorized tolls on any interstate in Virginia, subject to federal approval. While this bill contained a prohibition on tolls for PPTA projects, there is an exception for federal toll pilot projects, such as VDOT's application now before the FHWA.

The 2006 state legislative budget amendment that prohibited the tolling of cars and light trucks on I-81 contained a similar exemption, allowing tolling if I-81 were approved for a federal toll pilot project. VDOT's I-81 Final Environmental Impact Study (FEIS), approved by the FHWA in June 2007, and a 2006 resolution of the Commonwealth Transportation Board also authorize VDOT to pursue a federal toll pilot project for the highway.

VDOT's use of "Segments of Independent Utility" in the FEIS plan appears to facilitate tolling segment by segment on I-81. Segments include: Maryland border to I-66; I-66 to Route 33 in Harrisonburg; and Route 33 to I-64. All are potential toll plaza sites. VDOT is also negotiating with the STAR consortium to widen segments of the interstate that closely parallel potential toll locations.

#### *The Rail Option Avoids Tolls, Is Less Expensive and Ultimately More Effective*

Tolling along I-81 would not be necessary if VDOT were to pursue freight rail upgrades rather than wholesale widening of the interstate. These rail lines would achieve similar results—diverting thousands of trucks off the road—at far less costs.

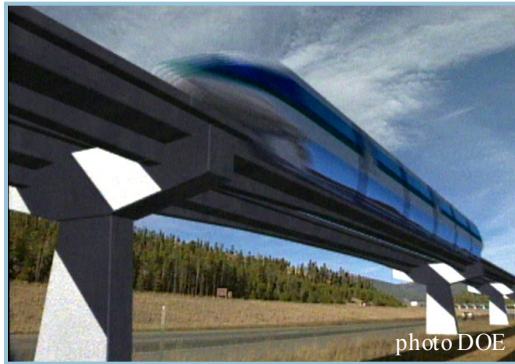
The \$2 billion cost of the I-81 Crescent Corridor rail upgrade amounts to \$833,333 per mile, a stark contrast with the \$11 billion estimate to widen I-81 in Virginia, a rate of \$33 million per mile. Norfolk Southern estimates that the upgraded corridor will divert one million trucks a year from highways to rail, including 750,000 trucks diverted from Virginia's highways by 2012.

The energy and environmental savings of diverting freight from road to rail are significant. A train can haul one ton of freight up to five times further than a truck on the same amount of fuel and produces three times less carbon dioxide emissions.

Recognizing Norfolk Southern has begun work on a \$52 million upgrade in Virginia to increase capacity between Manassas and Front Royal. The state provided \$40 million, with a thirty percent match, or \$12 million, from the railroad.

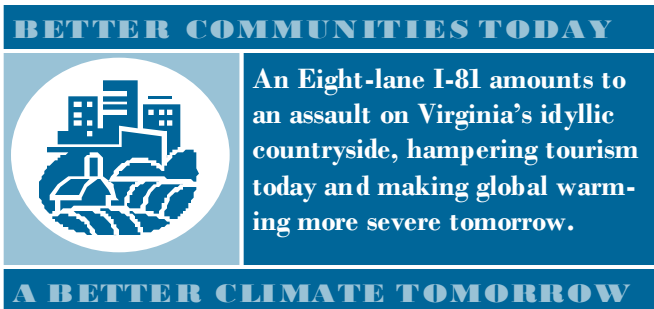
#### *VDOT Foreclosing on Rail, Forcing Tolls on I-81:*

VDOT continues to insist it will study the rail option later in the I-81 EIS process, but the plan approved by the FHWA shuts out rail as an alternative. Rail



cannot be considered a legal alternative to tolling in the next stage of planning. VDOT and FHWA "determined that it was not reasonable for this Tier 1 EIS to evaluate multi-state rail improvements (page ES-xvi). However, as stated in the FEIS, "FHWA does not propose to advance rail concepts in Tier 2 of this NEPA study," (pages ES-xvi).

By proposing to study only shorter "Segments of Independent Utility" in the Tier 2 EIS, VDOT shuts out rail freight because rail is not effective at shorter distances. Yet half of all trucks on I-81 are through-traffic. This approach suggests a bias against rail.



Further evidencing that bias, VDOT sought FHWA approval for its I-81 plans before a rail freight diversion study, was complete. Norfolk Southern is coordinating the study, which was mandated by the legislature, with state officials. It is expected in spring of 2008. Finally, VDOT has been unwilling to reopen the Final Environmental Impact Statement, to reconsider the rail freight option in light of Norfolk Southern's plans for the Crescent Corridor rail upgrade on I-81.

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***VDOT plans for Virginians to pay more than \$11 billion to widen I-81, expanding 69% of the corridor to eight lanes. Such a costly, unnecessary and unpopular expansion depends on tolls on both cars and trucks, at the expense of businesses and residents along the entire corridor.***

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## RECOMMENDATIONS

- Pass new state legislation to ban tolls on automobiles and light trucks on I-81.
- Pass a new state budget amendment to ban these tolls on I-81 and limit spending to specific highway safety improvements, not corridor widening, while requiring the reopening of the Environmental Impact Study.

### **For Further Information Contact:**

Megan Gallagher, Director  
Shenandoah Valley Network,  
540-253-5162;  
[megan@shenandoahvalleynetwork.org](mailto:megan@shenandoahvalleynetwork.org)

Stewart Schwartz, Executive Director  
Coalition for Smarter Growth  
202-244-4408; [stewart@smartergrowth.net](mailto:stewart@smartergrowth.net)

# CONTEXT SENSITIVE SOLUTIONS

## BETTER DESIGN FOR VIRGINIA'S TRAVELERS AND COMMUNITIES

### STATEMENT OF THE ISSUE

In order to maintain and foster Virginia's strong economy while protecting our communities, health, and environment, we must provide for transportation needs without sacrificing historic and natural resources.

An important opportunity exists to better link land use and transportation planning 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 employing this planning process—which considers the entire context of each transportation project and a full range of alternatives—VDOT can successfully deliver its projects on time and on budget, with fewer delays, with greater management of local resources, and with greater public support.

### BACKGROUND

Along with pastoral settings, history, and incredible vistas, Virginia boasts a \$16.5 billion dollar tourism industry. *Forbes* has twice 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 by developing a transportation planning process that preserves the historic and natural qualities that attract people to the Commonwealth.

The Federal Highway Administration (FHWA) recommends that state departments of transportation adopt Context Sensitive Solutions in designing new roads or upgrading existing ones. FHWA defines CSS as “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.”

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 key components to CSS excellence include:

- Seeking to understand the landscape, community, and valued resources before engineering begins.
- Involving a full range of stakeholders in the scoping phase. Forging consensus on the purposes of the project before proceeding.
- Tailoring the highway development process to the circumstances. Employing a process that examines multiple alternatives and that will result in consensus.
- Communicating with all stakeholders in an open and honest fashion, both at the outset and during the project. Using a full range of tools to communicate about project alternatives.
- Establishing a multidisciplinary team early, with disciplines based on the needs of the project and concerns of the public.
- Tailoring the public involvement process to the project, and including informal meetings.

Most states, including Tennessee, Kentucky, Maryland, and Pennsylvania, have developed and implemented the principles of CSS. In Virginia, some portions of some projects have used CSS. In August 2006, VDOT adopted its first CSS policy, although it is rather weak and has not been fully implemented.

### RECOMMENDATIONS

- The Secretary of Transportation and VDOT should strengthen and implement VDOT's CSS policy.
- The Commonwealth Transportation Board should adopt require CSS at all levels of transportation planning.



### For Further Information Contact:

Jennifer Keck, Executive Director  
Scenic 340 Project  
540-622-6340; scenic340@earthlink.net



# WETLANDS PROTECTION

## STATE ASSUMPTION OF THE SECTION 404 WETLANDS PERMIT PROCESS

### STATEMENT OF THE ISSUE

In 2006, Virginia state officials announced that the Commonwealth was considering assumption of the U.S Army Corps of Engineers' Federal Clean Water Act wetlands protection program. Through this process, known as "404 assumption", the Virginia Department of Environmental Quality (DEQ) hopes to become the sole regulatory entity responsible for the review and issuance of wetland and stream impact permits. Proponents of 404 assumption believe this regulatory change will create "one stop shopping" and strengthen the regulatory power of the DEQ by removing the Army Corps from review of 404 permits. However, federal law never wholly removes the Army Corps removed from 404 permit review. Instead, the level of federal funding, environmental review and protection, and public participation currently provided by the Corps would decrease for some permits while greatly increasing the Commonwealth's funding, staffing, and workload burden.



of 404 assumption significantly outweighed any potential gains for the Commonwealth. Specifically, these studies found that assumption of 404 authority would amount to significant increases in the state budget expenditures, staffing, and workload with only minimal gains in control over the wetlands permitting process.

### *Wetlands assumption will not create "one stop shopping"*

Under 404 Assumption, the Army Corps would lose the ability to automatically review those permits outside navigable and tidal waters. The EPA, however, would retain oversight and veto power over those permits. In certain cases, the EPA may even send permits to the Army Corps for review and possible veto. Furthermore, under the Clean Water Act, states cannot assume 404 authority for permits inside or adjacent to navigable or tidal U.S. waters. Accordingly, under 404 assumption the Army Corps would still review all permits in traditionally navigable waters, as well as all tidal and nontidal wetlands directly adjacent

to navigable waters. Despite the declaration of its supporters, 404 assumption cannot remove federal government review of wetlands permit application and, thus, fails to create "one stop shopping."

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

While 404 assumption will do little to increase DEQ's ultimate permitting authority, 404 assumption will increase Virginia's financial, staffing, and workload burdens. For those permits that fall outside navigable or tidal areas, DEQ will need to provide an equivalent federal review. In order to handle the increase in workload, Virginia officials estimate that 404 assumption will require at a minimum 35 additional employees and a budget increase of approximately \$2 million. Currently, the Army Corps estimates that it provides its 35 years of permit review

### 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. The Commonwealth has previously considered the possibility of 404 assumption on three different occasions. In 1979, 1982, and 1988, various state agencies conducted 404 assumption studies. Each of these three studies concluded that the disadvantages



expertise and services through \$5.6 million a year in federal funding without the need for any increase in state funds. While federal funding for 404 assumption is theoretically possible, during the entire history of the Clean Water Act, the federal government has never made such funding available to a state-administered 404 program. In order to create a successful and meaningful 404 program, Virginia must find its own long-term, continuous, and stable source of funding to meet the increased workload demands.

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*In the 30-year history of the Clean Water Act, only two states have assumed responsibility for Section 404 permits . . . The Commonwealth has previously considered the possibility on three different occasions. Each of these three studies concluded that the disadvantages significantly outweighed any potential gains.*

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#### **404 assumption lowers public participation protections**

Past studies in Virginia, as well as in other states, conclude that 404 assumption lowers environmental and public participation protections. If a state assumes the Army Corps' permit program, wetland permits no longer trigger all portions of the National Environmental Protection Act (NEPA), the Endangered Species Act (ESA), and the Fish and Wildlife Coordination Act. States voluntarily may choose to develop equivalent regulatory programs, however new programs will come at an additional price. The states are just as free to forego the creation of equivalent programs. Thus, under 404 assumption, a state may dispense with the environmental impact reviews, habitat studies, and public participation guarantees currently afforded to the Commonwealth when the Army Corps automatically reviews wetland permits.

#### **BETTER COMMUNITIES TODAY**



Global warming threatens Virginia with more powerful hurricanes. Our wetlands provide vital protection against flooding and storm surges.

#### **A BETTER CLIMATE TOMORROW**

#### ***Recent programmatic changes need sufficient and reasonable time to work***

In June of 2007, the Commonwealth and the Army Corps agreed to make certain changes to the current wetlands permitting program. Both agencies agreed that these changes to the current program had the potential to improve the timeliness, efficiency, and consistency of wetlands permitting in Virginia. The Commonwealth must ensure that these changes, less than 6 months old, are given an appropriate amount of time to work. Until such time as these changes are implemented, monitored, and sufficiently evaluated, the consideration of 404 assumption legislation in Virginia is premature.

#### **RECOMMENDATIONS**

The Commonwealth should support the June 2007 changes to the current wetland permitting program agreed to by both the Virginia Department of Environmental Quality and the Army Corps of Engineers. The changes must have a minimum implementation period of at least one year followed by an in-depth evaluation of the June 2007 changes to the wetlands permitting programs before conducting any further consideration of 404 assumption. Until such time, any legislative or budget proposals supporting the authorization or funding of 404 assumption must be strictly opposed.

#### **For Further Information Contact:**

Joe Tannery, Virginia Staff Attorney  
Chesapeake Bay Foundation  
804-780-1392; jtannery@cbf.org

Skip Stiles, Executive Director  
Wetlands Watch  
757-623-4835; skip@wetlandswatch.org

# AGRICULTURAL BMP FUNDING

## HEALTHY FARMS, HEALTHY RIVERS

### STATEMENT OF THE ISSUE

As part of the regional Chesapeake 2000 Agreement, Virginia committed to reduce nutrient pollution going into the Chesapeake Bay to remove the Bay and its tidal tributaries from the federal list of impaired waters by 2010. To achieve this goal, Virginia must reduce the amount of excess nitrogen going into the Bay watershed by 27 million pounds annually from “point sources” (municipal and industrial wastewater treatment facilities) and nonpoint sources (runoff from land).

Farm runoff contributes nearly a third of the excess nitrogen and phosphorus pollution to Virginia rivers and the Bay. Fortunately, proven conservation techniques, also called best management practices (BMPs), can prevent this runoff from leaving farm fields and entering surface and ground waters. The state has identified five priority practices that could achieve nearly 60% of the needed runoff reductions at approximately 4% of restoration costs.

Though many Virginia farmers use BMPs, the sometimes substantial cost of implementing them is a major barrier to widespread use. State and federal cost-share programs exist to help farmers pay for conservation practices, but historically such programs have been significantly under-funded. Every year, many Virginia farmers who apply to participate in state cost-share programs are turned away because of a shortage of funds.

### BACKGROUND

Virginia in recent years has made great strides toward reducing point source nutrient pollution by developing regulatory programs and providing more than \$500 million to upgrade local wastewater treatment plants. These actions should reduce nitrogen pollution by 7 million pounds annually. However, to achieve the 2010 water quality goals and remove the

Bay from the impaired waters list, great effort also is needed to reduce nonpoint sources of excess nitrogen, especially runoff from farmland.

Agricultural runoff accounts for much of the nutrient excess entering Virginia’s rivers and the Chesapeake Bay (approximately 31% of the nitrogen and 36% of Virginia’s phosphorus load). Farm best management practices, or BMPs, can prevent nitrogen and phosphorus from reaching surface and ground waters. The Virginia Department of Conservation and Recreation has identified five priority



practices that, if used on farms throughout Virginia’s part of the Bay watershed, could achieve nearly 60% of the needed runoff reductions at only approximately 4% of the costs. These priority BMPs are nutrient management plans, forest and grass riparian buffers, stream bank fencing to block livestock access, cover crops, and continuous no-till.

Across the Commonwealth, farmers actively seek to adopt these best management practices, and many have already done so. However, installation and technical assistance costs are major barriers. Unlike other regions of the

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*State and federal cost-share programs exist to help farmers pay for conservation practices, but historically such programs have been significantly under-funded. Every year, many Virginia farmers who apply are turned away because of a shortage of funds.*

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country dominated by large agricultural production operations, the average Virginia farm size is 181 acres, and the average annual farm income is about

\$49,000 per year. Given the inherent risks associated with farming (weather, commodity prices, etc.), farmers do not always have a predictable income, and farm profits one year often need to cover future years when the farm operates at a loss.

State and federal cost-share programs that help farmers pay for conservation practices have been significantly under-funded. For example, one of every three Virginia farmers applying for the federal Conservation Reserve Enhancement Programs (CREP), one of the most popular conservation programs, was turned away last year because of a lack of funds. Widespread awareness of this significant state funding shortfall discourages many farmers from applying for cost-share assistance.

Currently state cost-share programs are funded only when there is a state budget surplus. But farmers are expected to protect water quality in good budget years as well as bad, and Virginians need clean water every day. Therefore, state cost-share programs, which generally repay a portion of a farmers' out-of-pocket expenses for conservation BMPs, should be consistently and adequately funded from year to year.

## RECOMMENDATIONS

The Commonwealth should make a strong financial commitment to the state's water quality goals and to the farming community: an annual installment of \$100 million per year over the next ten years, deposited into the Water Quality Improvement Fund, for best management practices and technical assistance. Distributed 60 percent to the Chesapeake Bay water-

### BETTER COMMUNITIES TODAY



Agricultural BMPs like buffers and no-till farming provide a range of public benefits—filtering water, sheltering wildlife, and sequestering CO<sub>2</sub>.

### A BETTER CLIMATE TOMORROW

shed and 40 percent to the remainder of the state's watersheds, this investment will achieve significant improvements in water quality for Virginia's local streams and creeks, the Chesapeake Bay, and Virginia's Southern Rivers. Dedication of an annual installment of 1/10th of 1 cent of the state sales tax over the next ten years to fund this commitment is an example of how this revenue could be raised.

The future of agriculture in this region and the future of Virginia and the Chesapeake Bay are inextricably linked. We cannot afford to continue to turn away or discourage farmers from being good stewards of their land and the Commonwealth's waters. If we provide this much needed help, farmers can help us all restore our rivers, streams, and estuaries.

### For Further Information Contact:

Emily Francis, Outreach and Advocacy Manager  
Chesapeake Bay Foundation  
804-780-1392; [efrancis@cbf.org](mailto:efrancis@cbf.org)

# 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. Vitaly 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 sufficient land 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 and exceeded their goals under this important multi-state agreement, but Virginia still has 239,000 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, nor its obligation to future generations, without adequate and reliable funding for local PDR programs, 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. To date 20 localities in Virginia have established Purchase of Development Rights (PDR) programs. For the 2007-2008 fiscal year the Virginia Office of Farmland Preservation was allocated \$4.25 million to assist localities with farmland protection projects on a cost share basis. In response to this funding source the office received requests for funds totaling more than \$45 million. It is evident that there is a significant demand to help local governments protect locally important agricultural resources.

The \$4.25 million allocated in FY 2008 is a great start to establishing a state and local partnership aimed at conserving working farm and forest land. However, reliable and robust funding will be needed to maximize the potential of this conservation part-



photo DCR



nership. The VDACS Farmland Preservation Task Force, an advisory committee created by the department's commissioner, recommended in 2005 that the Commonwealth make at least \$1 million per year in matching funds available for conservation easement acquisitions to each locality with an eligible PDR program. The task force also recommended that the Commonwealth foster the creation of local PDR programs, with an objective of having at least 30 localities with PDR programs by 2010.

Virginia is well on the way to meeting that goal, as the number of local PDR programs has grown by more than one-third since state funding was announced. But, to take full advantage of localities willing to devote acquisition funding and staff time to conserving working farms and forests, the Commonwealth should make the financial commitment recommended by the VDACS Farmland Preservation Task Force. This calls on the Commonwealth to commit \$30 million per year to PDR programs, which will leverage at least an additional \$30 million for land conservation from localities and other non-state funding sources.

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

The Virginia Land Conservation Foundation (VLCF) provides state matching grants for the preservation of various categories of special lands in the Commonwealth. These grants are awarded on a competitive basis for the protection of open spaces and parks, natural areas, historic areas, and farmland and forest preservation.

This highly effective program leverages local and federal investment for natural resource conservation by paying for 50% of the cost of worthy 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.

Grant applications to the VLCF program have consistently far exceeded available funds. Since FY 2000 over \$82 million of grants have been requested of the program while only \$28 million have been available. This represents a lost opportunity for the Commonwealth to capture more than \$50 million in federal, local, and private matching dollars for land conservation.

In order to meet program demand and best preserve Virginia's incomparable natural resources the VLCF program should be allocated at least \$30 million a year.

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***While many alternatives exist for funding PDR programs and VLCF, one option is to authorize the issuance of new bonds . . . Funding for land conservation represents a long lasting public investment that benefits current and future residents. These benefits include clean water and air, scenic roads and rivers, healthy wildlife populations, and the basis of a strong agricultural economy.***

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

Virginia has one of the most effective 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. Landowners with lower incomes who are unable to use all of their tax credits may transfer unused but allowable credits to other taxpayers. Before the implementation of the tax credit, just 19 counties had more than 1,000 acres of land protected by conservation easements. Seven years later, that number has rocketed to 52 counties. The program has made land conservation accessible and appropriate for more middle and lower income landowners throughout the Commonwealth who want to protect the special places in their communities.

All evidence shows that conservation easements and the LPTC program are an effective and efficient tool for protecting the very lands that are most important to the Commonwealth. For example, an analysis of the more than 400,000 acres of conservation easements held by the Virginia Outdoors Foundation (the largest easement holder in the Commonwealth) shows that 360,000 acres (90%) are within or partially within areas identified by the Department of Conservation and Recreation as ecological core habitat, 160,000 acres (40%) are protecting prime agricultural soils, 112,000 acres (28%) are protecting visual corridors along state designated Scenic Roads, and more than 70,000 acres of these protected lands are

within state and nationally designated historic districts.

In order to qualify for tax credits, a conservation easement donation must comply with real estate valuation practices and conservation purpose requirements as set forth in state and federal regulations. Further, land preservation contributions that generate more than \$1 million in credits must undergo additional review and meet conservation criteria as outlined by the Virginia Department of Conservation and Recreation. Finally, the future impact of the program on the treasury is limited by an annual fiscal cap of \$100 million.



## RECOMMENDATIONS

Virginia should make a substantial financial commitment to land conservation by:

- Continuing the Land Preservation Tax Credit Program in its current form.
- Funding local PDR programs through an allocation of \$30 million per year to the Virginia Office of Farmland Preservation.
- Funding the VLCF program with an allocation of \$30 million per year.

While many alternatives exist for funding PDR programs and VLCF, one option is to authorize the issuance of new bonds to support these programs. Funding for land conservation represents a long lasting public investment that benefits current and future residents. These benefits include clean water and air, scenic roads and rivers, healthy wildlife populations, and the basis of a strong agricultural economy. Bonding ensures that current and future residents share the cost of providing those benefits. A series of bonds over a ten year period would provide reliable funding and demonstrate the Commonwealth's commitment to maximizing potential partnerships with localities and other conservation organizations.

According to the Trust for Public Land, 23 statewide bond referendums have passed in the U.S. over the past ten years authorizing the use of over \$13 billion for land conservation. In Virginia, more than two-thirds of voters approved the *Commonwealth of Virginia Parks and Natural Areas Bond Act of 2002*, which included \$36.5 million for acquiring additional land for parks and natural areas and \$82.5 million for park upgrades and rehabilitation.

### For Further Information Contact:

Rex Linville, Albemarle and Greene County Land Conservation Officer

Piedmont Environmental Council  
434-977-2033, ext. 23; [rlinville@pecva.org](mailto:rlinville@pecva.org)

David Phemister, Director of Government Relations  
The Nature Conservancy  
804-644-5800 ext. 21; [dphemister@tnc.org](mailto:dphemister@tnc.org)

# 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.



*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.*

The first paragraph of that law states a significant finding: "Forestry, when practiced in accordance with accepted silvicultural best management prac-

tices (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.

BETTER COMMUNITIES TODAY	
	<b>When properly managed, private timber land benefits all Virginians. Forests filter runoff, shelter wildlife, and absorb the CO<sub>2</sub> that causes global warming.</b>
A BETTER CLIMATE TOMORROW	

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.

### For Further Information Contact:

Gerald Gray, President  
Virginia Forest Watch  
276-926-4607; [ggray@dcwin.org](mailto:ggray@dcwin.org)



# 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.



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*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 and green building programs promote the use of both locally produced and certified lumber.*

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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.

### **For Further Information Contact:**

Gerald Gray, President  
Virginia Forest Watch  
276-926-4607; [ggray@dcwin.org](mailto:ggray@dcwin.org)

# CITIZEN BOARDS

## “NO POLLUTION WITHOUT REPRESENTATION”

### STATEMENT OF THE ISSUE

The three boards charged with safeguarding the Commonwealth’s environment—the Water Control Board, the Air Pollution Control Board, and the Waste Management Board—represent the citizen’s of Virginia. The individuals who serve on these boards stand in every Virginian’s shoes when making significant decisions that manage the state’s natural resources.

During the 2007 General Assembly session, the Virginia Chamber of Commerce promoted legislation to abolish these important citizen boards. The conservation community was successful in defeating those efforts, but expects the attempts in 2008 to reduce the important protections provided by each of the environmental boards.

This is a critical time. Virginia Conservation Network will remain involved in these ongoing debates that could result in fundamental and dangerous revisions to the very procedures by which all environmental regulations and permitting decisions in Virginia are made.



Other industry organizations opposed the legislation, voicing concerns about placing all permitting authority in the sole control of a DEQ Director. Because of its impact on public participation, VCN vigorously opposed both bills.

Collective efforts were made to amend these bad bills with a “re-enactment clause.” The re-enactment clause kept the board-elimination bills from becoming law, and required that the 2008 General Assembly session reconsider the legislation.

The House and Senate Agriculture Committee Chairs also asked the Department of Environmental Quality to conduct a series of stakeholders’ meetings to see if compromise legislation could be developed. The stakeholder meetings took place during the fall in 2007.

VCN groups participated in the DEQ process, maintaining the commitment to oppose legislation that deprives citizens of their voice in environmental permitting and regulatory decision-making. Both sides were willing to negotiate, but no consensus was reached on a solution.

### BACKGROUND

#### *Legislative and Stakeholder Actions in 2007*

Two bills introduced during the 2007 General Assembly session would have eliminated the three citizen boards, created one consolidated board, and stripped that new board of any authority to issue or deny permits. Such a consolidated board could become a rubber stamp for industry – allowing significant permits to pass without intelligent and thorough review by citizen experts. The bills would have dismantled an important forum for citizens to voice concerns to decision makers.

Lobbyists representing the Virginia Chamber of Commerce and specific industry members, along with Governor Kaine, supported this legislation.

#### *Fundamental Benefits of Virginia’s Citizen Boards*

As we look to the 2008 session, VCN members oppose efforts to dismantle the citizen board, holding the following statements to be true:

**1. Permitting decisions are best made in full public view.** Citizen boards meet in public, deliberate in public, and cast their up-or-down votes in public. Abolishing the existing citizen boards would result in decisions on significant permits negotiated between the applicant and DEQ behind closed doors. The public would be limited to submitting comments to DEQ without knowing whether or how those comments were considered in the permitting decision.

Less than one-percent of permits are heard by the board and most permit applications proceed without controversy within DEQ. The permits that are heard

and deliberated on by the citizen boards represent some of the broadest impacts to the natural resources of Virginia. The citizen boards must be preserved as part of Virginia's longstanding commitment to open government. The boards encourage direct, public participation of individuals and communities on the most significant permitting issues affecting the Commonwealth.

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*In 2007, conservation groups participated in a stakeholder process, maintaining the commitment to oppose legislation that deprives citizens of their voice in environmental permitting and regulatory decision-making. Both sides were willing to negotiate, but no consensus was reached.*

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**2. Environmental laws are complex.** Environmental decisions are increasingly complex ranging from the procedures for handling medical waste, to the feasibility of emissions controls on power plants, to the total maximum daily loads of a pollutant into Virginia's waterways. It is impractical to expect one consolidated board to tackle such a broad range of topics. A consolidated board would likely overlook enforcement of regulations they do not fully understand.

Maintaining three separate boards—focusing on air, waste, and water—allows board members to delve into the details of the questions before them and render an informed and fair decision.

**3. The current boards ensure that all of Virginia is represented in permitting and regulatory decisions.** Our citizen boards include members from throughout the Commonwealth—Southwest, Southside, and Hampton Roads. Taking permitting decisions away from the boards would result in decisions

that are made bureaucratically, far away from the communities most acutely affected.

**4. Citizen Boards provide consistency in permitting decisions.** Members of the citizen boards are nominated by the Governor and confirmed by the General Assembly for four-year terms. Appointments on the boards are staggered, such that no single Governor can replace all of the members of a given board. Rather, it takes at least two terms for membership on a board to turn over. This provides consistency in decision-making, and helps insulate the boards from political pressures.

**5. The current system works.** In 2004, the Air Board scrutinized a proposal by Competitive Power Ventures, Inc. to construct a power plant within five miles of Shenandoah National Park. Board meetings presented a forum where all sides were able to engage in meaningful dialogue. The Board considered improvements to the permit supported by both the public and the company, but not recommended by DEQ staff. The Board approved the power company's permit, also making it one of the most protective of air quality in the nation.

## RECOMMENDATIONS

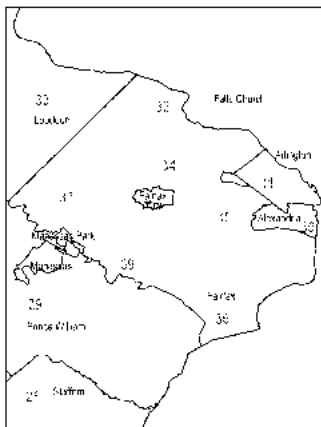
For decades, Virginians have benefited from the tradition of citizen representation on the air, waste, and water boards. Virginia should remain committed to preserving the right for meaningful board review for permits of significant interest and strongly oppose efforts to abolish the existing citizen boards.

### For Further Information Contact:

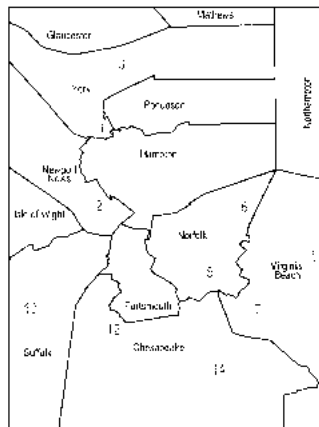
Cale Jaffe, Staff Attorney  
Southern Environmental Law Center  
434-977-4090; [cjaffe@selcva.org](mailto:cjaffe@selcva.org)

Joe Tannery, Virginia Staff Attorney  
Chesapeake Bay Foundation  
804-780-1392; [jtannery@cbf.org](mailto:jtannery@cbf.org)





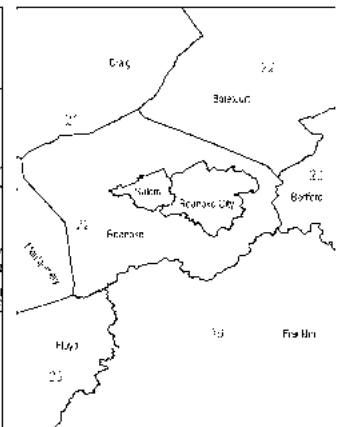
Northern Virginia



Tidewater Area



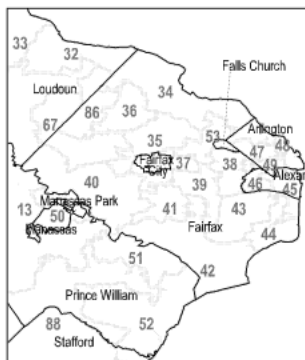
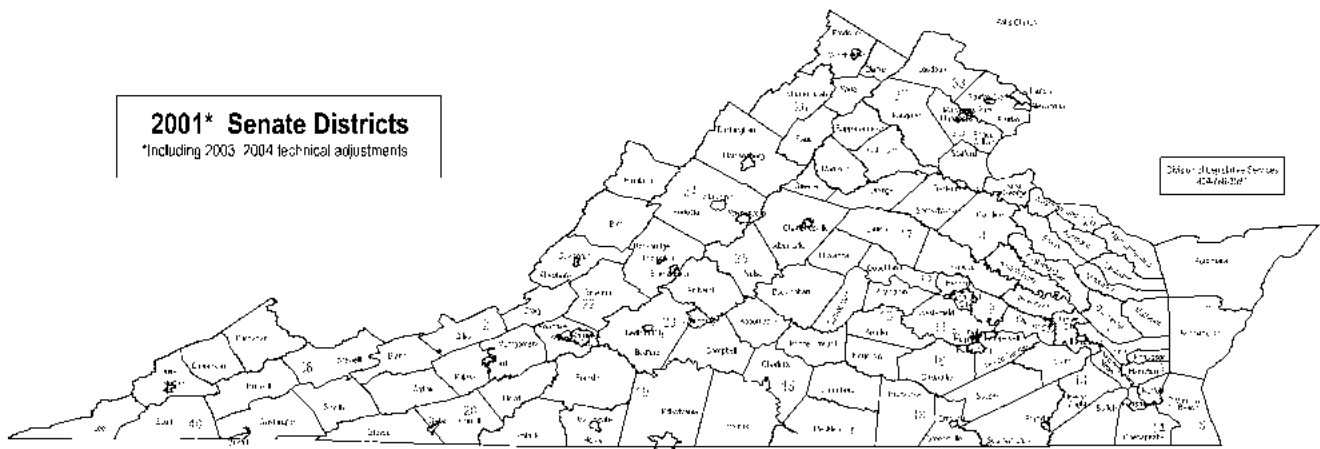
Central Virginia



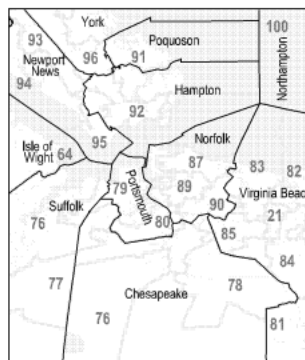
Roanoke Area

### 2001\* Senate Districts

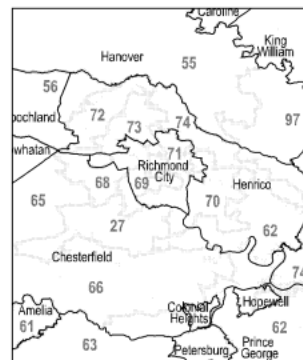
\*Including 2003-2004 technical adjustments



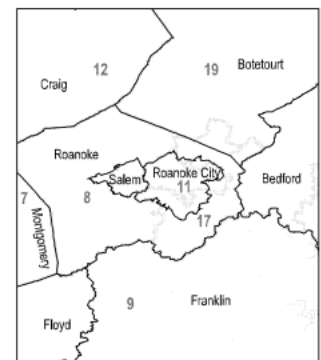
Northern Virginia



Tidewater Area



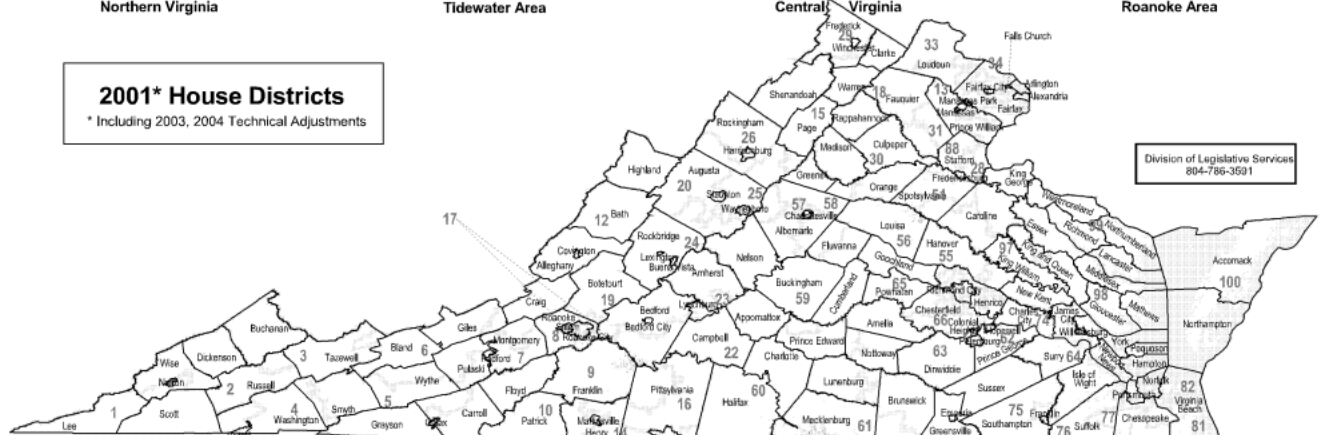
Central Virginia



Roanoke Area

### 2001\* House Districts

\* Including 2003, 2004 Technical Adjustments



## **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.



**Virginia Conservation Network**

422 East Franklin Street, Suite 303  
Richmond, VA 23219  
(804) 644-0283; [vcn@vcnva.org](mailto:vcn@vcnva.org)  
[www.vcnva.org](http://www.vcnva.org)

Nathan Lott, Executive Director  
Suzanne Ankrum, Program Coordinator



VIRGINIA LEAGUE OF  
CONSERVATION VOTERS  
EDUCATION FUND

530 East Main Street, Suite 410  
Richmond, VA 23219  
(804) 225-1902; [valcvef@aol.com](mailto:valcvef@aol.com)  
[www.valcvef.org](http://www.valcvef.org)

Lisa Guthrie, Executive Director  
Mike Kaestner, Program Coordinator