

## **HAMPTON ROADS PLANNING DISTRICT COMMISSION 2012 LEGISLATIVE AGENDA**

In preparation for the 2012 Session of the Virginia General Assembly, the staff of the Hampton Roads Planning District Commission has developed this 2012 Legislative Agenda. It outlines, based on ongoing HRPDC projects, prior HRPDC legislative positions and work of the region's localities, a series of issues that warrant regional attention during the upcoming legislative sessions. It also provides a recommendation or recommendations addressing each of the issues for consideration by the HRPDC.

### **Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (S.A.F.E Act)**

HRPDC supports legislation, proposed by the Virginia Housing Coalition, providing an exception to the definition of "mortgage loan originator" allowing local government entities and regional agencies, such as HRPDC, to assist homebuyers, through the provision of downpayment and closing cost assistance without meeting the same criteria as mortgage loan originators.

### **Virginia Housing Trust Fund**

Housing trust funds are distinct funds established by city, county, or state governments that receive ongoing dedicated sources of public funding to support the preservation and production of affordable housing opportunities for families and individuals to access decent affordable housing. Several local and state organizations are advocating for the creation of a state housing trust fund. Governor McDonnell recently announced support of the Housing Trust Fund as a resource to decrease homelessness by fifteen percent by 2013. The HRPDC supports the establishment of the Virginia Housing Trust Fund.

### **Stormwater Management Program Consolidation**

The Department of Conservation and Recreation proposes to integrate implementation of the Erosion and Sediment Control Act, Chesapeake Bay Preservation Act, Virginia Stormwater Management Act and expand the requirement to administer a qualified local program to all localities within the Commonwealth. HRPDC supports this proposed amendment.

Based on the work of the Governor's Commission on Government Reform and Restructuring, the Governor has proposed moving the Municipal Separate Storm Sewer System (MS4) Permit Program from the Department of Conservation and Recreation to the Department of Environmental Quality. This proposal follows the recent efforts by the Department of Conservation and Recreation to reorganize and better integrate the stormwater programs. The impact of this proposal on the region's localities is not clear and requires further evaluation. The HRPDC will monitor and evaluate this proposal.

## **Water Quality Funding**

Virginia's local governments face mounting costs for water quality improvements for sewage treatment plants, urban stormwater, combined sewer overflows (CSOs), and sanitary sewer overflows (SSOs). In response to federal and state legislation, regulation and policies, the federal government and the Commonwealth should provide adequate funding for these water quality improvements.

The HRPDC urges the General Assembly to maintain its commitment to water quality through dedicated and adequate state appropriations to the Water Quality Improvement Fund and to make full and timely payments under point source upgrade contracts with local governments. The HRPDC supports the issuance of \$300 million in bonds to allow the Commonwealth to meet its obligations for its share of wastewater treatment projects. Concurrently, the General Assembly should address costs associated with the permit requirements of Municipal Separate Storm Sewer Systems (MS4) Permits, associated new EPA regulations and the Chesapeake Bay TMDL and Virginia Watershed Implementation Plan.

## **Proposed Nutrient Credit Expansion**

The General Assembly is expected to consider a proposal to expand nutrient credits during its 2012 Session. The HRPDC supports the expansion of the Nutrient Credit program to include all sectors addressed by the Chesapeake Bay TMDL. The program should allow credit trading between sectors such as urban stormwater and wastewater treatment plants. It should include enabling authority allowing localities to establish local nutrient credit programs and banks to allow them to set priorities to improve and protect local water quality. The program should also provide a framework for localities to include BMPs on private property as part of their Municipal Separate Storm Sewer System (MS4) Permit compliance if they provide funding or incentives to private property owners to build or maintain BMPs.

## **Uranium Mining**

The HRPDC requests the General Assembly maintain the moratorium on uranium mining or the consideration of such, until at least the 2013 General Assembly session. Furthermore, the General Assembly is requested to direct the Department of Mines, Minerals, and Energy to not pursue development of regulations for uranium mining until after completion of and full consideration of the studies, which are presently underway.

## **Federal Facilities**

The Hampton Roads region relies significantly on the defense industry. Two proposals are moving forward from Hampton Roads localities to enhance state support for the industry and for protection of existing facilities. To assist its member localities to ensure the continued viability of the defense industry in Hampton Roads, the HRPDC supports proposals to:

- Create the Virginia Federal Facilities and Defense Industry Caucus.
- Maintain state funding for the land acquisition program supporting mitigation of encroachment around NAS Oceana.
- Provide state funding for the land acquisition program supporting mitigation of encroachment around Langley Air Force Base (now Joint Base Langley-Fort Eustis).

## Recycling Requirements

Each locality in the Commonwealth, individually or through a regional collaboration, is required to achieve a 25% recycling rate. A key constraint to local ability to achieve or exceed this recycling rate has been the lack of markets for the materials as well as access to industries that recycle or reuse the material. Recycling is an economic development tool as well as an environmental tool.

Despite increased public awareness of the benefits of recycling, beverage container recycling has been declining in recent years, while the amount of beverage containers that are being sold and consumed has increased over time.

The HRPDC supports legislation that would:

- Grant localities the authority to require certain businesses to recycle glass.
- Prioritize incentives to businesses that recycle materials, such as glass, paper and electronics, while concurrently providing new employment opportunities.

## Eminent Domain

The General Assembly will consider a proposed constitutional amendment addressing eminent domain. Legislation enacted in 2011 requires the General Assembly to again consider and pass the proposed amendment in 2012, prior to it being presented to the voters. The amendment language is shown below.

*That the General Assembly shall pass no law whereby private property, the right to which is fundamental, shall be damaged or taken except for public use. **No private property shall be damaged or taken for public use without just compensation to the owner thereof.** No more private property may be taken than necessary to achieve the stated public use. **Just compensation shall be no less than the value of the property taken, lost profits and lost access, and damages to the residue caused by the taking.** The terms "lost profits" and "lost access" are to be defined by the General Assembly. A public service company, public service corporation, or railroad exercises the power of eminent domain for public use when such exercise is for the authorized provision of utility, common carrier, or railroad services. In all other cases, a taking or damaging of private property is not for public use if the primary*

*use is for private gain, private benefit, private enterprise, **increasing jobs, increasing tax revenue, or economic development**, except for the elimination of a public nuisance existing on the property. The condemnor bears the burden of proving that the use is public, without a presumption that it is.*

The HRPDC is very concerned about the serious and permanent consequences of this proposal, including creation of new property rights in terms of awards for lost access and lost profits. These are concepts that have not been supported in prior Court decisions as speculative and are likely to lead to additional litigation and increased delay and costs for public infrastructure projects. The HRPDC does not support passage of this legislation in its current form.

### **Septic Tanks**

The Chesapeake Bay TMDL establishes limits on the amount of nitrogen, phosphorus, and sediment that can enter the Bay. As part of the effort to meet the nitrogen limits set forth in the TMDL, reductions in the nitrogen load from the onsite sewage system sector must be achieved. Monitoring of septic tank pumpout (once per 5 years), as required by the Chesapeake Bay Preservation Act, should be conducted by the Virginia Department of Health not by localities. The HRPDC supports the following recommendations:

- Seek legislative changes necessary to establish state tax credits for upgrade/replacement of existing conventional systems with nitrogen reducing systems, or connection to existing sewer.
- Look into steps for gaining General Assembly approval to grant all counties the authority to require hook-ups to existing sewer lines when appropriate.
- Develop, in cooperation with state agencies, a legislative proposal to establish a cost share program, similar to what is done with the Agricultural BMP Cost Share Program, to assist with the cost of required upgrades or replacements and incentivize non-failing septic system owners to upgrade to a denitrifying system.
- Amend the Chesapeake Bay Preservation Act to require that regulation and enforcement of septic tank pumpout requirements be conducted by the Virginia Department of Health. Localities would continue to maintain an inventory and tracking system for septic tank locations.

### **Sea Level Rise and Coastal Flooding**

The HRPDC has identified the issue of sea level rise as a critical issue facing Hampton Roads. HRPDC staff studies to date have focused on the magnitude of the problem and its potential implications to the region. Ongoing work is addressing options for adaptation. The City of Norfolk has requested that the Commonwealth conduct a one-year study to examine the overall effectiveness of current adaptation efforts to address relative sea level rise and coastal flooding in Virginia's shoreline and coastal communities. The HRPDC supports the proposed study as an initiative that will provide critical information for the entire region's efforts.

## **Environmental Education**

The HRPDC continues to support passage of federal legislation known as the No Child Left Inside Act of 2009 and companion legislation that may be considered at the state level. This legislation would require each state to develop an environmental literacy plan to include environmental education standards and teacher training, as well as funding to support program development. This legislation would address one of the key findings of the research conducted in Hampton Roads over the past year by HR GREEN. The legislative proposal was endorsed by the HRPDC in November 2010.

## **Agriculture Programs**

HRPDC supports a well-financed and fully staffed state program to address the problem of non-point source runoff from agricultural operations. The program continues to include cost-share assistance to agriculture and should effectively encourage and incentivize implementation of priority best management practices such as nutrient management planning, use of cover crops, continuous no-till farming, development of forested riparian buffers, livestock stream exclusion and other practices essential to meeting agriculture's share of the Chesapeake Bay TMDL and Virginia Watershed Implementation Plan.

## **Expand Authority for Tree Canopy Requirements**

HRPDC supports the amendment of Virginia Code Section 15.2-961.1 that would enable all Virginia localities to adopt an ordinance containing a set of tree canopy preservation requirements based on development density. Section 15.2-961.1 was adopted during the 2008 General Assembly session and is currently applicable only to the localities within Planning District Eight. Increasing the urban tree canopy is an inexpensive method to reduce nutrient loading through runoff reduction and will allow localities to reduce the cost of achieving nutrient reductions for urban stormwater.

## **Restoration of Funding to PDCs**

In FY 2001, HRPDC received \$366,628 or \$0.24 per capita in basic funding from the Commonwealth's budget through the Department of Housing and Community Development. The legislative agenda of the Virginia Association of Counties supports overall funding of Virginia's Planning District Commissions at a level of \$0.35 per capita or a minimum of \$100,000 per commission, whichever is greater. The Department of Conservation and Recreation (DCR) is relying on PDCs to facilitate the development of locality specific nutrient reductions in Phase II of the State's Watershed Implementation Plan.

HRPDC supports restoration of funding to Virginia's Planning District Commissions at the FY 2001 level of \$0.24 per capita.

## **State Fees on Local Government Services (water, sewer, solid waste)**

HRPDC strongly opposes the imposition of a state fee, tax or surcharge on water, sewer, solid waste or any service provided by a local government or authority to finance the nutrient reductions imposed by the Chesapeake Bay TMDL.

## **Unfunded Mandates**

HRPDC opposes unfunded mandates by the Commonwealth. When funding for a mandated program is altered, the mandate should be suspended until full funding is restored. When legislation with a cost to localities is passed by the General Assembly, the cost should be borne by the state, and the legislation should contain a sunset clause providing that the mandate is not binding on localities until funding by the Commonwealth is provided. Furthermore, HRPDC opposes the shifting of fiscal responsibility from the state to localities for existing programs. Any unfunded mandate or shifting of responsibility, such as maintenance of state transportation facilities or litter control, should be accompanied by a full fiscal and program analysis to determine the relative costs to the state and to the locality and to assure the state is meeting its full funding responsibility before taking effect.