

**ITEMS FOR CONSIDERATION**

**IN PREPARATION OF THE FAIRFAX COUNTY LEGISLATIVE PROGRAM  
2018 VIRGINIA GENERAL ASSEMBLY**

**September 19, 2017**

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**ENVIRONMENT—TIDAL WETLANDS PROJECTS ON STATE AND LOCAL  
GOVERNMENT PROPERTIES SPONSORED BY STATE AND LOCAL  
GOVERNMENTS**

PROPOSAL:

Initiate legislation to require state and local government authorities to consult with, and request comments from, the wetlands board of the jurisdiction of the project or projects conducted by state and local governments in tidal wetlands on state and local property.

SOURCE:

Fairfax County Wetlands Board  
August 3, 2017

BACKGROUND:

As authorized by state law, Fairfax County has adopted a Wetlands Zoning Ordinance, which regulates the use and development of tidal wetlands in Fairfax County. Tidal wetlands are limited in location to tidal shorelines and are valuable natural resources, which help to prevent flooding, improve water quality, and provide habitat.

The Fairfax County Wetlands Board is tasked with preserving and preventing the despoliation and destruction of tidal wetlands within its jurisdiction while accommodating necessary economic development in a manner consistent with tidal wetlands preservation. When private entities or the federal government wish to use or develop tidal wetlands in Fairfax County, and if the desired use is not already authorized, they are required to obtain a permit from the Wetlands Board. Such permits authorize shoreline disturbances along the water's edge which may impact vegetated or non-vegetated wetlands, such as the construction of bulkheads, the placement of rip rap or dredging. When reviewing applications, the Wetlands Board considers, among other things, testimony on the permit application, the impact of the proposed development on public health, safety, and welfare, and the proposed development's conformance with standards for use and development of tidal wetlands pursuant to state code and guidelines promulgated by the Virginia Marine Resources Commission. The approval of permits requires a public hearing before the local wetlands board and can be conditioned upon mitigation and/or compensation of unavoidable tidal wetlands impacts or losses.

In accordance with state law, state or local government activity conducted in tidal wetlands owned or leased by the state or locality is considered an authorized use that does not require a permit from the local wetlands board (Va. Code § 28.2-1302(3)(10)). Such projects are, however, subject to numerous federal, state, and local requirements and permits. These include, for example, a Clean Water Act Section 404 permit with review by the U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, Virginia Marine Resource Commission, and/or the Virginia Department of Environmental Quality. Projects may also go through Fairfax

County's 2232 review process, which determines the compatibility of proposed public facilities with the County's Comprehensive Plan and includes a public hearing before the County's Planning Commission.

Fairfax County's Environmental Quality Advisory Council (EQAC) discussed this potential legislative issue and some members articulated reservations about seeking state legislation without additional information on the proposal. EQAC did not take a position on the issue, though additional discussion at a future meeting is possible.

RECOMMENDATION:

The Fairfax County Wetlands Board's review of private sector and federal government applications has been helpful in balancing development with the preservation of tidal wetlands, and the Wetlands Board's input on future Fairfax County projects on or within County-owned tidal wetlands could be beneficial as well. However, state legislation would affect localities throughout the state, some of which may not have wetlands boards. Additionally, increased consultation between Fairfax County staff and the Wetlands Board could occur without a legislative requirement. Direct staff to convene a work group (including the Environmental Coordinator and staff representing the Department of Public Works and Environmental Services, Land Development Services, and the Department of Planning and Zoning) to examine this issue, in consultation with the Fairfax County Wetlands Board, and report back to the Board's Environmental Committee.

**HOUSING—ADDING PROTECTED CLASSES TO THE VIRGINIA FAIR HOUSING LAW — SOURCE OF INCOME**

PROPOSAL:

Initiate legislation to amend the Virginia Fair Housing Law to add source of income as a class protected from discrimination in real estate-related transactions.

SOURCE:

Fairfax County Human Rights Commission  
July 21, 2017

Fairfax Area Disability Services Board  
August 1, 2017

Fairfax Community Long Term Care Coordinating Council  
August 3, 2017

BACKGROUND:

In fall 2016, the Fairfax County Board of Supervisors' Legislative Committee considered a very similar recommendation from the Fairfax County Human Rights Commission. The Virginia Fair Housing Law prohibits discriminatory housing practices. Virginia Code § 36-96.4 (A) provides that it is unlawful for any person or entity (including lenders) to discriminate against a person in a protected class in real estate-related transactions, including making or purchasing loans and selling, brokering, insuring, or appraising residential property. Currently, the protected classes are "race, color, religion, national origin, sex, elderliness, familial status, or handicap."

The Fairfax County Human Rights Commission recommends that the County initiate a bill to add a protected class to Va. Code § 36-96.4 (A), seeking to make it unlawful to discriminate against a person in a real-estate transaction based on a person's source of income (i.e., housing vouchers). The Fairfax Area Disability Services Board and Fairfax Community Long Term Care Coordinating Council also expressed support for this proposal. Families using rental assistance programs may face discrimination when searching for housing because owners or landlords may not want to rent housing units to families who plan to use housing vouchers, or other forms of public rental assistance, to pay some or all of the rent. Bills introduced in the 2013 and 2014 General Assembly sessions sought to add "lawful source of income" as a protected class in the Virginia Fair Housing Law declaration of policy (Va. Code § 36-96.1). All such bills have been unsuccessful in the General Assembly. Additionally, the Virginia Housing Commission studied the issue in recent years and elected not to support legislation.

RECOMMENDATION:

Recommend monitoring for introduction of legislation in order to bring related bills to Legislative Committee for consideration by the Board of Supervisors.

**HOUSING—ADDING PROTECTED CLASSES TO THE VIRGINIA FAIR HOUSING  
LAW— SEXUAL ORIENTATION AND GENDER IDENTITY**

PROPOSAL:

Initiate legislation to amend the Virginia Fair Housing Law to add sexual orientation and gender identity as classes protected from discrimination in real estate-related transactions.

SOURCE:

Fairfax County Human Rights Commission  
July 21, 2017

BACKGROUND:

The Virginia Fair Housing Law prohibits discriminatory housing practices. Virginia Code § 36-96.4 (A) provides that it is unlawful for any person or entity (including lenders) to discriminate against a person in a protected class in real estate-related transactions, including making or purchasing loans and selling, brokering, insuring, or appraising residential property. Currently, the protected classes are “race, color, religion, national origin, sex, elderliness, familial status, or handicap.”

The Fairfax County Human Rights Commission recommends that the County initiate a bill to add a protected class to Va. Code § 36-96.4 (A), seeking to make it unlawful for a person to be discriminated against in a real estate-related transaction because of his or her sexual orientation or gender identity. Since 2001, when the County first sponsored an initiative in response to a report from the Human Rights Commission on the need to add sexual orientation protections to the Fairfax County Human Rights Ordinance, the County’s legislative program has included support for authority to prohibit discrimination in housing and real estate transactions on the basis of sexual orientation. The County initiatives in the 2001 through 2009 General Assembly (GA) sessions unsuccessfully sought authority for Fairfax County to prohibit discrimination in housing, real estate transactions, employment, public accommodations, credit, and education on the basis of sexual orientation. In addition to these County initiatives, the County has supported numerous bills which sought to make discrimination based on sexual orientation illegal. All such bills have been unsuccessful in the GA, as was legislation considered in the 2016 and 2017 GA sessions which would have amended the Virginia Fair Housing Law to include sexual orientation as a protected class.

On June 20, 2017, the Board passed a resolution re-affirming the County’s commitment to promoting a culture of openness, inclusiveness, and acceptance for all persons in Fairfax County, and opposing discrimination based on sexual orientation or gender identity.

RECOMMENDATION:

Recommend retaining position in the legislative program which supports the addition of sexual orientation as a protected class, including protection from housing discrimination, and update position to also include gender identity. Also recommend monitoring for introduction of legislation in order to bring related bills to Legislative Committee for consideration by the Board of Supervisors.

**ENVIRONMENT — INITIATIVE TO ENCOURAGE THE REDUCTION OF INVASIVE PLANT MATERIAL IN VIRGINIA**

PROPOSAL:

To encourage that any retailer or wholesaler of plants, shrubs, trees, etc. in the Commonwealth, or anyone who sells to a resident of the Commonwealth, identify the plant product they are selling as an invasive species, as defined by the Virginia Department of Conservation and Recreation, for that part of the Commonwealth so that the individual understands the impact of the plant product.

SOURCE:

Fairfax County Park Authority  
July 31, 2017

BACKGROUND:

In fall 2015, the Fairfax County Board of Supervisors' Legislative Committee considered a very similar recommendation from the Fairfax County Park Authority. As Board members may recall, Virginia Code § 2.2-220.2 defines "invasive species" as a species that is not native to an ecosystem and "whose introduction causes or is likely to cause economic or environmental harm or harm to human health." Invasive species are harmful because they often pose a threat to the survival of native species, and may damage crops, trees, and pasture, among other concerns. A 2005 study estimates the annual economic losses due to invasive species in the United States at \$120 billion, and estimates losses in Virginia at more than \$1 billion annually. Based on a 2009 study for the Fairfax County Park Authority, the cost to address the Park Authority's invasive species problem would be about \$61.6 million (adjusted to 2015 dollars). Examples of invasive plant species in Virginia include kudzu, English ivy, bamboo, and hydrilla.

Virginia Code requires the Secretary of Natural Resources and the Secretary of Agriculture and Forestry to coordinate the Commonwealth's response to invasive species, including "invasive species prevention, early detection and rapid response, control and management, research and risk assessment, and education and outreach." The Secretary of Natural Resources is required to establish an advisory group (the Virginia Invasive Species Advisory Committee) to develop an invasive species management plan, and to coordinate implementation of the plan. Virginia's plan catalogs a number of efforts being undertaken by state and federal agencies, including a planned public outreach campaign involving classroom visits and collaboration with garden clubs, botanical gardens, and landscape architects' associations. The plan is scheduled to be updated in 2017, and a Fairfax County Park Authority staff member has accepted an invitation to serve on the Advisory Committee.

A number of public awareness efforts are currently underway, including the work of the Virginia Native Plants Society, which encourages gardeners to ask retailers about the origin of their stock and promotes sales of native plants throughout the state. The Virginia

Native Plants Marketing Partnership, which includes state agencies, advocacy groups, and industry, has worked with the Virginia Nursery and Landscaper Association (a member of the partnership) to highlight plants that are native to the Chesapeake Bay region, among other efforts.

Locally, the “Plant NoVA Natives” campaign, a partnership among the Northern Virginia Regional Commission (NVRC), the Northern Virginia Soil and Water Conservation District, and a number of other interested parties, promotes native plants via demonstration gardens, outreach at community events, and working with area garden centers on displays and labels. Although the Virginia Coastal Zone Management Program grant awarded to NVRC for the coordination of this program will expire on September 30, 2017, NVRC recently signed an agreement with the Community Foundation for Northern Virginia to raise private sector funds to support the Plant NoVA Natives campaign (the Northern Virginia Regional Park Authority has entered into a similar agreement).

It should be noted that an attempt to mandate nurseries to label invasive species was introduced in the 2008 General Assembly (GA), but was carried over to 2009 and then left in committee. Similarly, legislation directing the Board of Agriculture and Consumer Services to adopt regulations for the control of invasive plants was introduced in the 2012 GA, carried over to 2013, and left in committee. However, a different approach targeted at a specific invasive species—running bamboo—has been more successful; the 2017 GA enacted legislation (HB 2154 (Rasoul)/ SB 964 (Hanger)) authorizing localities to add running bamboo to existing ordinances regulating grass, and to adopt an ordinance requiring the proper upkeep of running bamboo, defined in Virginia Code § 15.2-901.1 as “any bamboo that is characterized by aggressive spreading behavior, including species in the genus *Phyllostachys*”—the Virginia Invasive Plant Species List includes Golden Bamboo (*Phyllostachys aurea*). Among other provisions, the legislation also directs the Virginia Departments of Conservation and Recreation, and Agriculture and Consumer Services to develop a model running bamboo ordinance for use by localities by July 1, 2018, and to examine the eligibility of certain plants for designation as noxious weeds (the County did not take a position on this legislation).

Bamboo is one of about 30 different invasive species on Fairfax County parkland, and one of the most problematic species to treat. Park Authority staff maintain a list of known bamboo locations based on reports from County residents and park managers, and two of the 22 known locations are currently being treated. These 22 known locations are a fraction of the problem, as Park Authority staff estimate that bamboo covers about 50 acres, distributed among 1/10 acre patches at about 500 different locations on park property. Restoration costs (i.e., bamboo removal, herbicide, replanting, and administrative costs) are estimated to be about \$30,000/acre, for a total cost of \$1.5 million.



RECOMMENDATION:

Because this proposal seeks to encourage voluntary compliance rather than mandating disclosure, legislation is not necessary. In 2015, the Legislative Committee directed staff to collaborate with interested parties, such as the “Plant NoVA Natives” campaign, on a public awareness effort, and this approach continues to be a productive avenue toward encouraging the purchase of native plants instead of non-native, potentially invasive species. As part of this effort, educational materials could once again be made available to the County’s General Assembly delegation for distribution to constituents (the third edition of the Plant NoVA Natives guide was published in May 2017, and other materials also may have been updated since 2015).

Additionally, since the General Assembly recently granted localities some new authority to address a particular invasive species (running bamboo), the County should consider implementing that prior to seeking any new authority to address this topic. Direct staff to form a workgroup (comprised of staff from the Park Authority, Department of Code Compliance, Department of Public Works and Environmental Services, Environmental Coordinator, and the Office of the County Attorney, among other relevant agencies) to explore adding running bamboo to the County’s Grass or Lawn Area Ordinance (Chapter 119) or a new running bamboo ordinance, and report back to a future meeting of the Board’s Environment Committee.