

**A Report to the Honorable Bettina Ring, Secretary of Agriculture and Forestry and the Honorable Matthew Strickler, Secretary of Natural and Historic Resources**

**A Study of Tree Conservation and Preservation in Development  
HJR/SJR .....**

**Prepared by the Institute for Engagement & Negotiation (IEN) at the University of Virginia (UVA) on behalf of the Tree Conservation Work Group**

**October 1, 2021**

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## Executive Summary

During the 2020-2021 Virginia General Assembly (GA) session, the GA reviewed two different pieces of legislation and a budget proposal related to the preservation of trees and tree canopy during development. The two bills are HB 2042 and SB 1393 and budget proposal HB 1800 Item 107 #1c. A consensus path forward for these activities could not be reached during last years' GA session. A legislative study was subsequently requested and passed by the GA with the intent that key stakeholders would be convened to review and work on the two bills to reach consensus-based approaches to this issue.

A Tree Conservation Workgroup was established with 43 participants representing six key stakeholder sectors, who in their first meeting identified key issues and concerns for their sectors. Also, with facilitation by the University of Virginia's Institute for Engagement & Negotiation, each sector of the Tree Conservation Workgroup identified two representatives who would participate in a smaller Collaborative Decision Group (CDG) that would use a consensus-based process to develop specific recommendations within the established time frame. Through two consensus-building surveys, two in-person meetings, and two person external topic teams, the CDG members developed specific proposals in eight core topical areas. During this process, CDG members consulted stakeholder members of their sector groups and continued to address the questions and interests of other CDG members. The eight topics include: cluster development; requirements for tree canopy cover; tree preservation; tree banking; natural resources (forest and trees) inventory prior to development; penalties, local capacity for urban forestry; and trees as best management practices.

Significantly, none of the CDG member proposals were identified as non-starters or too difficult for consensus to be achieved. For all proposals where consensus could not be achieved in the time given, the CDG agreed to continue discussions to strive for addressing each other's concerns in a way that consensus recommendations could be achieved, and with the hope of developing consensus recommendations in time for submission to the 2022 General Assembly.

Through an intensive process, including work between meetings, the CDG adopted eight consensus recommendations covering seven of the eight topics. Additional recommendations were discussed but time constraints in the schedule and consensus building process did not allow for the research and discussion time that would have been needed for the CDG to achieve consensus; these are identified in the report as topics for continuing discussion. Below is the overview of consensus recommendations as well as those where discussion will be continued.

## Consensus Recommendations

1. **Natural Resources Inventory:** Allow credits for natural resources inventory (stand assessment) prior to development.
2. **Tree Banking:** Allow localities across the Commonwealth to use tree banking as a method of mitigation for development that is unable to achieve the locality's required tree preservation and canopy goals.
3. **Building Capacity:** Consider creating a 10-year statewide urban and community forest management plan through the VDOF with tree canopy goals.
4. **Building Capacity:** Consider developing an urban and community forest management framework that provides Best Management Practices and local program guidelines.
5. **Building Capacity:** Assess and develop adequate funding, staffing, and technical resources for urban and community forestry.
6. **Penalties:** No change in Virginia Code is recommended, as Virginia Code already provides that pursuant to §10.1-1127.1 penalties for violations of ordinances adopted shall be the same as those applicable to violations of the locality's zoning ordinances.
7. **Cluster Development:** The current Cluster Development mandate should be retained, as well as expanded to a broader category of counties and cities, but not indiscriminately.
8. **Cluster Development:** The current cluster development statute should be amended to allow for the clustering of multi-family, mixed-use, and commercial developments.
9. **Cluster Development:** Clarify current locality authorities to eliminate misunderstandings and articulate how localities are enabled to require identification of sensitive spaces and critical resources to protect them from impacts of cluster development.
10. **Tree Canopy:** The framework outlined below will serve as the basis for continuing stakeholder discussions, that will also include representatives of housing justice and consulting arborists.



## Study Background and Context

Several General Assembly bills related to tree preservation in developed areas were proposed during the 2020 General Assembly session. These proposals reflected various perspectives and approaches to encouraging tree preservation and increasing tree canopy. Following the 2020 session, the Virginia Department of Forestry (VDOF) led a concerted effort to bring interested stakeholders together to collaborate and find broader solutions to reduce the loss of trees and tree canopy in developed areas that could benefit multiple localities and be supported by other stakeholders as well. VDOF worked with the Green Infrastructure Center to convene the first meeting of locality representatives virtually and to prepare a summary report of policy proposals (available [here](#)).

Due to COVID restrictions and time constraints, the VDOF was unable to hold additional stakeholder meetings in 2020 as planned. There was legislation in the 2021 GA session to support continuing this work ([HB 2042](#), [SB 1393](#) and [HB 1800 Item 107 M](#)). Because of that legislation, the Secretaries of Agriculture and Forestry (SAF) and Natural and Historic Resources (SNR) have convened this subsequent stakeholder process. The University of Virginia's [Institute for Engagement & Negotiation](#) (IEN) was contracted to conduct stakeholder engagement and to deliver to the Commonwealth leadership a final report of consensus recommendations and areas where agreement could not be reached, by October 1, 2021. The three objectives for this study stipulated by the Virginia General Assembly include:

- encourage the conservation of mature trees and tree cover on sites being developed;
- increase tree canopy cover in communities;
- encourage and increase incentives for the preservation, planting, and replacement of trees during the land development process.

## Tree Conservation Workgroup Charge

The Secretaries of Agriculture and Forestry, and of Natural & Historic Resources, provided the following charge to the Stakeholder Tree Conservation Work Group:

*Develop and provide consensus policy recommendations to the Secretary of Agriculture and Forestry and Secretary of Natural and Historic Resources, for state and local governments, to encourage the conservation of mature trees and tree cover on sites being developed, increase tree canopy cover in communities, and encourage the planting of trees. These consensus recommendations may recommend amendments to state code including §§ 15.2-961 et al. or the*

*adoption of new Code sections that would enhance the preservation, planting, and replacement of trees during the land development process and increase incentives for the preservation, planting, and replacement of trees during the land development process.*

In service of this charge and the enacting legislative language that specifies examination of issues contained in HB 2042, the Work Group will take into consideration in its consensus recommendations the issues of enabling local tree replacement and planting ordinances to exceed existing requirements specifically to generate pollution reduction credits, address recurrent flooding in Chesapeake Bay Preservation Areas, address historical inequities resulting from redlining, and ensure conformity with local comprehensive plans.

Based on this charge, members of the CDG will participate in good faith to address the full range of issues identified in the charge, to develop consensus recommendations for submission to the Governor's Office and General Assembly. To identify common ground, build mutual gains, outcomes, and consensus recommendations, CDG members will actively consult and seek input from invited members of the larger stakeholder workgroup that are part of their designated sector, will represent these stakeholder member views to the best of their ability to the CDG, and will communicate with their sector group members on the progress made by the CDG and remaining issues and challenges that still need to be addressed.

## **Roles & Responsibilities**

The Tree Conservation Work Group was established by the Secretaries of Agriculture and Forestry, and Natural and Historic Resources, as directed by the General Assembly. The two Secretariats were represented on the project team by the following individuals.

- Heidi Hertz, Deputy Secretary of Agriculture and Forestry
- Rob Farrell, State Forester, Virginia Department of Forestry
- Terry Lasher, Assistant State Forester, Virginia Department of Forestry
- Ann Jennings, Deputy Secretary of Natural and Historic Resources
- Katie Sallee, Special Assistant for Policy & Communications for the Secretary of Natural and Historic Resources

The project team worked with the IEN to facilitate and coordinate the work group and design a consensus-based process for the group's work. IEN was represented by

Tanya Denckla Cobb, Director; Mike Foreman, Special Projects Manager; and Kelly Altizer, Associate.

Members of the Tree Conservation Work Group were asked to share their feedback via one stakeholder survey, participate in one meeting, and provide input to their sector group representatives on the smaller CDG. Last, the Work Group was asked to provide feedback on the consensus-based final recommendations before they were forwarded to the Administration.

In addition to this first meeting and initial survey, in the next steps of consensus building, CDG members were asked to complete another survey, attend two more meetings, and solicit and receive input from members of their sector within the Trees Conservation Work Group. During this process, each CDG member was asked to partner with one other member of the CDG to synthesize and refine one or more of the final draft proposals under consideration. They were also encouraged to consider the interests and concerns of other members that had been elicited during the process and to address these concerns in their proposals.

## **Consensus Building Process**

Tree Conservation Work Group members were identified and invited to participate in the process by the two Secretariats (Appendix A). Forty-three people were invited to join the Tree Conservation Work Group, representing the following seven sectors.

- Counties
- Cities
- Agricultural and Forestry Industries
- Environmental and Conservation Organizations
- Environmental Technical Experts
- Environmental Justice
- Residential Commercial Development and Construction

An initial survey sent to Tree Conservation Work Group members was designed to gain an understanding of stakeholder's interests as they related to the issues involved in the legislation. At the first meeting on June 28, 2021 (held virtually due to the Governor's Emergency Order), the survey results were shared, and Work Group members were asked to weigh in on the list of issues to expand upon and further clarify their interests and priorities, as well as concerns and suggestions. To do this, the sectors gathered separately in small groups (virtually), using a Google doc worksheet to work together more easily. Also, at that meeting, IEN facilitators explained the formal process of decision making by consensus, which offers participants the opportunity to share their

gradients of agreement with a proposal, and to work together to find ways to address each other's concerns and interests. The consensus process is designed to produce the strongest possible set of final recommendations that all participants can support.

In recognition of the expedited timeline required to complete this task, the project team determined that a smaller subsection of the Tree Conservation Work Group would be needed in order to quickly advance the work of the group and ensure that decisions could be made efficiently. This subgroup was referred to as the Collaborative Decision Group and tasked with representing the interests of their sector through subsequent surveys and meetings. At the first meeting when the Tree Conservation Work Group members met for a portion of the gathering in the sector groups noted above, they were also asked to choose two of their members and one alternate to represent their sector on the CDG. CDG members are listed in Appendix B.

IEN used the feedback provided in the first survey along with the information gathered from the small group work at the full Tree Conservation Work Group meeting, to create categories for the differing ideas and interests. That information was distributed as part of a second survey which was viewable by the full stakeholder group, but with responses requested only from members of the CDG. The CDG representatives were asked to review the ideas and categories, and then consult members of their sector group to develop three specific proposals that reflected the interests of their own sector as well those articulated by other sectors. As part of the consensus building process, CDG members were also asked to provide a rationale for each proposal, so that participants and members of the project team could gain a greater understanding of their perspective.

Proposals from CDG members fell into the following eight topical categories.

- Cluster development
- Requirements for tree canopy cover
- Tree preservation
- Tree banking
- Natural resources inventory prior to development
- Penalties
- Locality capacity for urban forestry
- Trees as Best Management Practices (BMPs)

In preparation for the first meeting of the CDG, a complete set of the unedited proposals paired with their rationales were compiled by IEN and organized into the above categories, and then shared with CDG members.

Held in person in Richmond, the first CDG meeting occurred on August 25, 2021 and was another big step forward in the consensus building process. Using a typical “gradients of agreement” method of testing for consensus, and working in a shared online Google doc, CDG members were asked to indicate their level of support for each proposal and, significantly, to indicate how the proposal would need to change in order for them to increase their support. For each topic, after members indicated their level of support and concerns, the CDG engaged in robust discussion about how to address members’ concerns.

During this process, the topic of “Trees as BMPs” was removed as a category for consideration in order to avoid duplication of effort, as another stakeholder group, convened by the Virginia Department of Environmental Quality (DEQ), would be tackling that topic. Also, at the request of the CDG members, the categories of “Requirements for Tree Canopy Cover” and “Tree Preservation” were combined, and “Conservation” was substituted for “Preservation” to reflect the preferences of the group.

At the conclusion of the meeting, because of the timeline and the need to move the proposals forward quickly in time for its second meeting two weeks later, each CDG member partnered “offline” with another CDG member between the two meetings, with each team taking one topical category and working to further synthesize and refine the proposals in that category to address the questions and concerns raised during the meeting. Drafting CDG pairs were asked to submit the results of their work quickly in order for the results to be reviewed by the full CDG prior to its next meeting.

Proposals were compiled by IEN and sent out to the full Tree Conservation Work Group, and to all CDG members for review, prior to the September 8, 2021 meeting. At this next meeting, the CDG used the same consensus building process to work through each topical category set of proposals; testing their level of support, identifying what might need to be addressed in order for their support to increase, and engaging in robust conversations. In some instances consensus could not be achieved due to the limited time available, but CDG members wanted to continue the discussion with the hope that agreement might be reached prior to the upcoming General Assembly session.

## Six Topical Categories, Themes, and Issues

### 1 - Natural Resources Inventory

**Consensus Recommendation #01:** *Allow credits for natural resources inventory (stand assessment) prior to development.*

*Allow jurisdictions that have adopted 15.2-961 or 15.2-961.1, to provide tree canopy credit for conservation of high conservation value forest stands, when a site developer provides a stand assessment before development plans are created, for review by the local jurisdiction. The ordinance may provide additional canopy credits (amount to be determined through additional discussion) for the conservation of these pre-identified forest communities that achieve environmental, ecological, and wildlife conservation objectives set by the locality. Conservation is intended to mean that forests are maintained for forest health and are considered working forest lands.*

*The ordinance may establish minimal area, dimensional and viability standards as prerequisites for the application of credits.*

*Forest communities shall be identified using the nomenclature of either the federal National Vegetation Classification System (FGDC-STD-005, or latest version) or the Natural Communities of Virginia Classification of Ecological Community Groups, Second Approximation (Version 2.2, or latest version).*

This recommendation was adopted by strong consensus. A natural resources inventory provided at the outset for a proposed development site is an important tool that enables localities to determine how to best protect important environmental assets. This recommendation will ensure that a timely inventory is provided that should also assist developers in ensuring for themselves that their development plan is appropriate for the site. At present this tool is being used with success in Arlington County, and the group feels this success could be replicated throughout the Commonwealth.

This consensus recommendation reflects the broad agreement that an optional approach that incentivizes developers to conserve high value forests is mutually beneficial for developers and localities. Each jurisdiction would determine for itself what constitutes high value forest types, in consultation with VDOF if needed, as the value provided by different types of trees varies by location and is not defined by economic value. Group members expressed a strong preference for “conservation” of high value forest types, which allows land to be worked or altered, over “preservation”, which does not. The goal is to have *healthy* forest lands contributing to an overall quality of life for communities.

Reflecting concerns of the group, this recommendation does not preclude silviculture, nor does it require a full tree inventory or individual tree identification which would be cost prohibitive to developers. Group members felt that a stand survey is a more economical option for site assessment. Some local jurisdictions may already have this information available, and if not, VDOF's Forest Conservation Model is a potential tool that could be used for this purpose.

In restricting this recommendation to jurisdictions that have already adopted 15.2- 961 language, the new change would mesh with existing requirements. In addition to creating more flexibility for developers and conserving additional forest land, this inventory and credit would likely have the added benefit of expediting the development approval process since a significant amount of information is being gathered before the process begins.

While not a component of the recommendation, group members also supported the idea of simplifying the current structure for credits while maintaining the integrity of the credits.

## **2 - Tree Banking**

**Consensus Recommendation #02:** *Enable localities across the Commonwealth to use tree banking as a method of mitigation for development that is unable to achieve the locality's required tree preservation and canopy goals. Additionally, tree mitigation plantings should be allowed to be conducted by nonprofits, and to be allowed on private property as well as public property, with the understanding that all such mitigation plantings must be done with locality consultation and approval to ensure community buy-in. Finally, all such transfers should occur as close as possible to the site that needed mitigation, and may occur from urban to rural localities, or rural to urban, again with the condition that no transfers should occur without the prior knowledge, consultation, and approval of the recipient locality to ensure community buy-in. Additional details will be provided by the stakeholders who will be continuing discussions on this.*

Tree Banking is a funding policy to allow for offset credits for a development when the requirements for tree canopy cannot be met on site due to impracticality or an unreasonable hardship. A variety of options were considered for potential approaches to tree banking, and ultimately stakeholders felt strongly that it should be at the discretion of each locality to determine to what extent, if any, they would participate in such a program. Agriculture in particular was an area of discussion, with a concern that working lands could be utilized for the purpose of tree banking to the detriment of that locality if

decision-making authority wasn't maintained by each jurisdiction. It was also noted that localities don't want to have to take on the administrative burden or monitoring of tree replacement by having to get deed restrictions or conservation easements, though the group did not explore how this could be resolved.

One of the key issues discussed was whether nonprofits should be able to take funding for tree banking. For example, a situation arose when the locality wanted to have a not-for-profit undertake the tree planting on its behalf. Within the CDG, all members agreed that the current statute *does* currently allow banking to be done with local nonprofits, so the question was raised as to whether the difficulty related to plantings on private property. All agreed that the statute does *not* allow tree banking on private property. These are issues that may need to be communicated or further clarified for localities in some manner. On both matters, CDG members agreed that nonprofits should be able to accept the funding, and that plantings should be able to occur on private property, as long as it is done with the approval and knowledge of the locality.

An additional concern for tree banking is the opportunity to transfer tree planting requirements out of the locality where the plantings could not be achieved to other localities, plus concerns about whether these transfers of tree planting requirements should be allowed to occur between urban and rural localities, urban to urban localities, or rural to rural localities. Another concern was raised that an individual could try to capitalize on the tree banking option to the detriment of agriculture.

Ultimately, the CDG agreed on several core principles that any such transfers should occur as close as possible to the site that needed mitigation, and that no transfers should occur without the prior knowledge, consultation, and approval of the recipient locality to ensure community buy-in. Some members noted that it could be helpful for rural localities to allow for planting transfers to urban areas. Another benefit could be realized if such transfers could help alleviate the limited amount of green space in historically underrepresented communities of color.

Other issues that were not resolved but would require further discussion include the idea that it could be helpful to create a statewide tree canopy bank that could manage the exchange of tree canopy plantings, with a strong priority given to sites that are as close as possible to the site that needed mitigation.

A second idea for further discussion is whether trees could be planted on any public lands within those jurisdictions. CDG members agreed that localities currently have this authority, but there may need to be discussion and clarification that this would apply to public lands not owned by the locality.

### 3 - Building Locality Capacity for Urban Forestry

**Consensus Recommendation #03:** *Consider creating a 10-year statewide urban and community forest management plan through the VDOF with tree canopy goals that address: climate change, sustainability, stormwater mitigation, urban heat islands, air quality, wildlife habitat, and community gardening with a lens on increasing the quality of life for Virginians. The urban forest management will be reviewed every two years with a progress report issued to the General Assembly.*

This recommendation was adopted by strong consensus. It reflects shared concerns that urban and community forestry is not given the prominence that is deserved for the role it does and can play in water quality, climate adaptation and ecosystem resilience. A statewide urban and community forestry plan would provide the basis for setting and achieving canopy goals, which are a vital tool for climate resilience and energy goals and discussed in another section of this report.

It is envisioned that the plan would serve as a guiding policy document, much like the Virginia Energy Plan, and not a regulatory document that would bind localities or developers or create an array of unfunded mandates. Further, it is envisioned that the plan would reflect the current situation, set aspirational goals, and identify strategies and metrics to help achieve and track implementation of those goals. It is important that the plan not create an expectation of one-size fits all, but instead reflect the diverse array of urban and suburban communities in the Commonwealth. For example, small towns in Southwest Virginia are just as eager to increase their tree canopies as higher density urban centers throughout the state, and the plan's vision, goals, and strategies should be inclusive of all communities. Also, targets already included in the Chesapeake Bay Plan could be referenced by and synergistic with this plan.

One of the hopes for the creation of this plan is that it would help support funding at the state level for state and community forestry programs. Currently the urban and community forestry program at the VDOF is underfunded and stretched thin, so the creation of this plan should not be undertaken as an additional burden on this program without providing additional resources for VDOF to create this plan.

**Consensus Recommendation #04:** *Consider developing an urban and community forest management framework that provides Best Management Practices and local program guidelines to allow for localities with different climatology, ecosystems, and development potential to operate within those guidelines.*

This recommendation was adopted by strong consensus. It reflects shared concerns that localities could benefit from a common set of guidelines, while recognizing that the guidelines must be sufficiently flexible to acknowledge and address the great diversity of climate, ecosystems, and development potential across the Commonwealth.

To address concerns about capacity and funding for the development of this Framework, a suggestion was made that Virginia Cooperative Extension (VCE) could be involved, supportive, or even take the lead in the development of these guidelines. At the same time, some members expressed the need for the state VDOF to remain involved with final purview over the product, while it could develop the Framework in collaboration with VCE. There was general agreement that the VDOF should work together with VCE on this effort, and that because of VCE's source of funding as well as its connection with the historically black college or university (HBCU) of Virginia State University VSU, a collaboration with VCE would provide some stability to the implementation of Framework.

**Consensus Recommendation #05:** *Assess and develop adequate Funding, Staffing, and Technical Resources for Urban and Community Forestry*

This set of recommendations was adopted by strong consensus. There is broad agreement that the state's current level of support, staffing, and resources for urban and community forestry are not adequate to support the changes needed across the Commonwealth to achieve ecosystem restoration, climate resilience and energy goals.

**Discussion Topics**

**Topic 1:** Consider reviewing the current staffing, funding, and technical resources available in urban and community forestry at the Virginia Department of Forestry to assess capacity, gaps, and areas of growth to be able to:

- i. provide technical assistance to more localities;
- ii. train and hire urban foresters; and
- iii. to assist in reaching future tree canopy goals set in the urban forest management plan. This analysis would ideally be completed prior to the 2022 session of the Virginia General Assembly.

One member expressed concern that VDOF may need support in developing a report that accurately reflects the scope of what is needed. Not every locality has urban forestry staff and therefore many outsource these responsibilities to community groups, the VDOF, or a local university.

At the same time, existing VDOF staff do not have the time to adequately manage enhanced urban programs. In order for any city to make progress with its urban and

community forestry programming, it needs specialized staff to do the work. Trained foresters/arborists have specialized knowledge allowing them to determine if existing trees are worth preserving during development (i.e., are they diseased, damaged, or in the process of demise that would not survive within a set period of construction). In particular, cities with formerly redlined neighborhoods can do this only with dedicated funding, personnel, and a management plan that addresses systemic issues.

**Topic 2:** Consider enhancing local capacity through a sustainable source of state funding dedicated to urban and community forestry that will allow local jurisdictions to plan, plant, and maintain urban forests in the long term.

It is imperative that the Governor and General Assembly find a sustainable source of funding for planning, planting, and maintenance for urban and community forestry in the Commonwealth. This would address stakeholder concerns about creating an unfunded mandate for local governments in future years while ensuring capacity for localities to maintain urban forests in the long term. Although Virginia is making progress with reforesting urban areas through tree plantings, community gardens, and riparian buffer programs, we still need to close the funding gap to maintain these green spaces to ensure they continue to provide the original intended benefits. In addition to setting canopy goals, localities need money to water, prune, mulch, and pay personnel to take care of our trees.

Opportunities for funding through initiatives with similarly aligned objectives (e.g., Regional Greenhouse Gas Initiative) may be preferable to reliance on an annual appropriation. Currently, almost all funding for Virginia's urban and community forestry initiatives comes from the United States Forest Service. Therefore, current funding is neither sustainable nor reliable, as it may vary from year to year and is always up for consideration for the Congressional chopping block. All members agreed that not only sustainable funding, but also higher levels of funding is key for successful tree conservation and preservation.

**Topic 3:** Consider creating a statewide Green Corps field-based training program, as well as re-evaluating current VDOF and VCE programs to recruit, train, and hire an entry-level workforce in urban forestry.

**Topic 4:** Consider promoting urban forestry or arboriculture education at a 4-year or 2-year university or a historically black college or university (HBCU) to help facilitate the ideal of trees as environmental infrastructure and preventative health infrastructure.

The group discussed how urban forestry is a predominantly white, mostly male industry with few people of color in the field. Oftentimes, community engagement is a barrier in implementing and sustaining projects in Black and Brown neighborhoods. It's important to work with people from the community who have a relationship and understanding of other social issues, such as culture, mobility, language, and housing.

For the next generation, it's more effective to create a school-to-green pipeline, instead of a less than ideal alternative. This set of recommendations reflects the need to train four-year professionals to help spread the "gospel" in formerly redlined communities and to also train field staff to maintain this infrastructure into the future. The goal of these recommendations is to create more opportunities to simultaneously strengthen our environment, economy, and community members, all at the same time.

## 4 - Penalties

**Consensus Recommendation #06:** *No change in Virginia Code is recommended, as Virginia Code already provides that pursuant to §10.1-1127.1 penalties for violations of ordinances adopted shall be the same as those applicable to violations of the locality's zoning ordinances.*

### Discussion Topics:

**Topic 1: Do localities have the authority to enforce the requirements?** The group readily agreed that the current code in §10.1-1127.1, noted above, does provide localities with the authority needed to enforce violations of tree canopy ordinance requirements, including fines, abatement requirements, and criminal penalties.

**Topic 2: What would make the penalties from enforcement meaningful?** No recommendation was put forward for multiple reasons, including but not limited to the following:

- Confusion with regular zoning violation fees already in place;
- Issues with making a recommendation statewide given the differences in tree values by type and region; and
- Existing state law gives localities significant authority to penalize tree canopy ordinance violations including fines, abatement requirements and criminal penalties.

Several members raised the concern that penalties must be meaningful, or violations and the penalties attached to them would become nothing more than the "cost of doing business." Looking to other places in Virginia Code that might provide guidance for "meaningful" penalties, the group discussed how Virginia Code §10.1-1127.1 (Tree

conservation ordinance; civil penalties) covers violations that only relate to designated specimen trees, and therefore would not apply to a tree canopy ordinance except where specimen trees result in extra credits. Members of the group also noted that this Section of the Code has a fine ceiling of \$2,500, which is not enough to be a disincentive for the removal of a specimen tree; some suggested that this ceiling should be revisited. Also, Virginia Code §15.2-2286 - subsection 5 - covers penalties for zoning ordinance violations that would apply to land development, and this should be consulted as well.

**Topic 3: How localities might be incentivized to respond to these violations in a more consistent manner that would convey the importance of compliance.**

There is concern that some localities do not consistently or reliably respond to violations of the tree conservation, preservation, or canopy ordinance requirements, and do not reliably or predictably impose penalties. Without proper enforcement, the requirements are not effective and tree canopy goals are not achieved. No recommendation was put forward.

## **5 - Cluster development**

**Consensus Recommendation #07:** *The current Cluster Development mandate should be retained, as well as expanded to a broader category of counties and cities, but not indiscriminately. The CDG also agrees that it would not want a mandate for cluster development to harm rural counties and create a new incentive for development in areas that should be preserved for agriculture and forestry. More discussion is needed in order to determine how to expand the mandate while not creating a new incentive for development in rural counties, where economies of scale for agriculture and forestry are needed for economic viability.*

### **Discussion Topics**

**Topic 1:** Currently, the Code of Virginia [§ 15.2-2286.1](#) authorizes only high-growth localities to enact cluster development ordinances. According to a recent VDOF report, a cluster development is a "type of site layout that maintains zoned densities (even density bonuses) for a given lot but concentrates the development on a smaller footprint and preserves a portion of the lot as "open space." This type of development is seen as a compromise between a developer's need to maximize financial returns and the local jurisdiction's desire for conservation. Clusters allow lot sizes and setback changes to achieve modified lot arrangements. This preserves sensitive site features, such as steep slopes or wetlands, while still achieving allowed gross densities." Well-crafted cluster development ordinances can incentivize the preservation of trees/ open space

and that several amendments to the enabling statute could expand the use of cluster developments across the Commonwealth.

Given the potential for cluster development ordinances to help balance environmental/tree preservation goals with economic development objectives, it doesn't make sense to limit cluster development ordinances to a handful of localities based on population growth.

Members expressed the following concerns and interests that should help shape the final discussions and recommendations:

- **Locality flexibility:** Concern was expressed that localities should be allowed to add cluster development to their toolbox, but it should remain a local option and not be mandated. It would be best to expand the option, not mandate it. They should retain the ability to make decisions about what a cluster development includes. It's important to not make cluster development mandatory for counties where it would not be helpful, such as some rural counties. On the other hand, some localities should be doing clustering and aren't, and will never do it without a mandate.
- **Protection of working farm and forest lands:** Cluster development could give more options for development that would increase the landowner's interest in selling to development. This in turn could threaten working farm and forest lands, which need economies of scale to survive. For these reasons, an agricultural zone is different in its impacts and role for rural localities than for urban localities, and it would be helpful to restrict the applicability of the cluster development from being applied in agricultural zones.
- **Keep existing mandates:** Where mandates exist they should not be removed. If we want to expand the option to additional localities, then maybe we need a different kind of language to address those additional localities. Similarly, it would be important to "grandfather in" localities that have already adopted a policy.
- **Intersection with other sections of code:** Attention needs to be given to the intersection of this issue with the section on tree canopy and a locality's choice to create a cluster policy. Also, if localities shift from 10% growth rate to a lower growth rate, does a different ordinance need to apply?

**Topic 2:** Under the existing statute, cluster development ordinances are applicable to a minimum of 40% of the unimproved land in residential and agricultural zoning districts. Similar to the rationale above, an objective is to increase the use of cluster development ordinances as a tool to preserve trees and open space – i.e., increasing the threshold to something higher than 40% would ensure that these ordinances are applicable to a larger number of future development sites.

- **Unimproved land minimum:** Raising the minimum amount of unimproved land in a locality that would be subject to the cluster development option, from 40% to something higher, could mean that a larger portion of the county would be subject to the standard. One way to ensure that this would not impact working forestry and agricultural lands by attracting development to an agricultural zone, it would be important to clarify that these are not “unimproved lands.” On the other side of this, a question was raised: if the current language stimulates a minimum, why increase it? Some responded that jurisdictions who don’t like clustering stick only to the minimum. The authority already exists, but some localities resist exceeding the minimum.

Another question was raised: Wouldn’t increasing the percentage actually work against the success of the proposal? The higher you make it, the less likely a locality would be to take it on. It was noted that the proposal would not *require* clustering within the minimum percentage of unimproved lands, but is allowing it as an *option* and trying to help developers to think differently about how they design subdivisions. A final issue raised on this topic is the need for period renewal of the calculation of “unimproved” land?

- **Goal of preservation:** The advantage of offering cluster development as an option is that it preserves open space by increasing density. As long as the open space is protecting natural resources, it makes sense to cluster. If you set the density and take out protected areas from the calculations, that’s where it becomes difficult for developers. Also, if protected areas are included in the calculations, and developers are penalized for excluding protected areas in the open spaces, that would be counter-productive to the conservation goals. This dilemma led to the question: what would be the impact of striking the 40% minimum?

**Consensus Recommendation #08:** *The current cluster development statute should be amended to allow for the clustering of multi-family, mixed-use, and commercial developments.*

The current statute only pertains to single-family residential developments. Several suggestions were made to strengthen this proposal:

- A concern was expressed that it will be important to clarify how this proposal would fit into 15.2-961 and 15.2 - 961.1.
- Similarly, allowing for commercial or other non-residential cluster development may have a counter-productive impact by reducing tree canopy requirements on the clusters. In 15.2- 961, this language could create a perverse side effect

where it reduces the tree canopy. This could be fixed by a new “Mixed Use” canopy requirement in 15.2-961.

- This will work as long as this authority is not mandated, but is provided as an option.
- It was suggested that, because there is a 10% canopy requirement for commercial, and 20% for residential, introducing a mixed-use option could reduce overall tree canopy if mixed-use were treated as commercial not residential.

### **Consensus Recommendation for Continuing Discussions #09:**

*Clarify current locality authorities to eliminate misunderstandings and articulate how localities are enabled to require identification of sensitive spaces and critical resources to protect them from impacts of cluster development. Additional research and details will be provided by the stakeholders who will be continuing discussions on this.*

There is general agreement among stakeholders that a core goal of cluster development is to enable the conservation of open space, including sensitive sites and critical resources. However, there is no agreement on how the following language from Section B of [§15.2-2286.1](#) is actually used or interpreted at the locality level, and whether it accomplishes its original purpose or creates a perverse impact of not allowing localities to enforce their own ordinances that would protect sensitive spaces and critical resources. The language in question follows:

*“For any “open space” or “conservation areas” established in a cluster development, the locality shall not (i) require in such areas identification of slopes, species of woodlands or vegetation and whether any of such species are diseased, the locations of species listed as endangered, threatened, or of special concern, or riparian zones or require the applicant to provide a property resource map showing such matters in any conservation areas, other than that which may be required to comply with an ordinance adopted pursuant to § 15.2-961 or 15.2-961.1 or applicable state law;”*

The intention for open spaces in clusters is precisely to allow for greater conservation of sensitive spaces and critical resources. Clusters allow for more creative arrangements of lots and exceptions to existing standards, such as for set-backs, so that land can be conserved (e.g. for wildlife corridor or recreational path), while allowing lots to be arranged so as to avoid these areas. Developers have used these tools to develop areas that would be difficult to build on because of other restrictions for features that cannot be developed and would therefore make the site’s zoned density difficult to realize. Having smaller lots or unusually shaped lots can allow a developer to realize

development densities that are higher than what a by-right development would allow due to the flexibility afforded in clustering and conservation of sensitive site elements.

One perspective is that the above Section of Virginia Code prevents the depiction on site plans of important information in open space areas, which needs to be shown in order to be enforceable by the locality. As currently written, the legislation prevents the showing of details on a site plan that would usually be required in the locality's code. For example, Albemarle County has a buffer ordinance (100 feet, same as a Resource Protection Act buffer) and a steep slope ordinance -- both of which apply to rural areas. In this existing cluster code, these sensitive spaces and details would not be shown on a site plan if they were within designated open space of a cluster. Yet, in order for these sensitive spaces to be legally enforceable by the county (e.g. to meet the standards of the buffer ordinance), their details need to be shown on the *site plan*. The lived experience of this existing code is that it is unworkable for the locality to follow its own existing code.

A locality will not arbitrarily begin requiring new information on a site plan. They need to have existing codes be able to require what must be depicted on a site plan regardless of whether or not those areas fall within designated open space. In the proposed solution shown below, the items to be depicted on the site plan are governed by what is already in place in the locality. Furthermore, the locality could adopt other codes in the future, such as to protect steep slopes to prevent excessive sediment runoff, so there is no calendar date prohibiting what may be shown in the future.

Proposed added language for the Code:

*Nothing in this statute for any "open space" or "conservation areas" established in a cluster development, shall prevent the locality from following its established code, design guidance or other existing regulations with respect to avoidance of sensitive areas or protection of critical resources. All elements normally required to be shown on a site plan may be required to be shown on a plan for a cluster ordinance.*

A second perspective is that additional discussion and inquiry is needed before moving forward with legislation. The existing language was inserted into the statute to prevent localities from requiring extensive "natural resource inventories," similar to what was discussed at a prior CDG workgroup meeting. Additionally, localities do currently have the authority under their zoning/subdivision ordinances to require the delineation/mapping of many of the types of areas referenced in the cluster statute, without allowing for a full-scale natural resource inventory. For example, localities currently require preliminary plats and/or landscaping plans which show the location of physical features

such as buildings, streams, drainage ditches, floodplains, mapped dam break inundation zones, wetlands and Chesapeake Bay Preservation Areas, base flood elevations, etc. Lastly, the current cluster development statute contains several safeguards for local governments, including the following:

- Localities are permitted to enact “...*standards, conditions, and criteria for the clustering of single-family dwellings and the preservation of open space developments.*”
- In establishing those standards, conditions, and criteria, the “...*governing body may, in its discretion, include any provisions it determines appropriate to ensure quality development, preservation of open space, and compliance with its comprehensive plan and land use ordinances.*”
- “*A cluster development is otherwise subject to applicable land use ordinances of the locality...*”

Although existing language in Section B prohibits a locality from requiring the “*identification of slopes, species of woodlands or vegetation and whether any of such species are diseased, the locations of species listed as endangered, threatened, or of special concern, or riparian zones or require the applicant to provide a property resource map showing such matters in any conservation areas...*”, that prohibition does not apply to requirements of any “...*ordinance adopted pursuant to § 15.2-961 or 15.2-961.1 or **applicable state law***” (*emphasis added*).

The group agreed that more discussion is needed about how the current law is understood and implemented at the locality level. It was suggested that research would be helpful on whether there are any requirements for a locality to require a natural resources inventory in their zoning ordinance. Two county attorneys were consulted in the exploration of this issue, and both confirmed the authority of localities to require a natural resources inventory in their zoning ordinance.

In subdivision ordinances, localities have broad authority; it could be helpful for a cross section of planners from different types of localities to work together to develop language that would address their different needs and circumstances. Another issue to be considered is how sensitive areas are or are not counted in the computation of the 40% minimum “unimproved lands,” as this could shrink the amount of lands available for cluster or, conversely, shrink the protections of sensitive areas. This, too, would be helpful to understand.

## 6 – Requirements for Tree Canopy Cover/Tree Conservation

### Consensus Recommendation for Continuing Discussions #10: Conserving and Expanding Tree Canopies

*The framework outlined below will serve as the basis for continuing stakeholder discussions, that will also include representatives of housing justice and consulting arborists. In recognition of the unsettled state of these negotiations, and, in particular, the lack of agreement on issues of central importance to both the conservation community and the development community (e .g., authority for expanding tree canopies, amendments to the deviation letter process, the terms of any banking proposal that will be the subject of continuing discussions, and others), there is a need for continuing discussions by all sectors represented on the CDG, including housing justice. Once agreed upon, it is the intention of stakeholders to draft legislation that could be presented to legislators for introduction at the 2022 General Assembly Session.*

All participants agreed on the importance of tree canopies, as well as the need for conservation and even expansion of tree canopies in communities across the Commonwealth. The key points that need further discussion are *how* this will be achieved in a way that meets the interests of all stakeholders. The following is not intended to represent the definitive final set of all issues to be resolved, but represents the key issues that need to be resolved in order for key stakeholder organizations' core interests to be addressed.

#### **Key Issue #1: Expansion of a locality's ability to increase tree canopy limits**

Legislators have been discussing giving more flexibility to localities to set higher percentages for tree canopy and preservation. Currently, localities may opt in, but the requirements are fairly detailed. Whether achieved through conservation or preservation, tree canopy requirements currently specify what the canopy must be after 20 yrs. Also, while one statute applies to all Chesapeake Bay localities, the other applies to only one locality.

If (but only if) the conservation community and the development community are able to come to an agreement on *expanding a locality's ability to increase the tree canopy limits* currently set out in 15.2-961 and 15.2-961.1, a proposal is on the table for a new statute that would include two parts as follows:

**Proposal, Part I: Using 15.2-961 as a starting point, this new section would give all localities in Virginia the authority to enact a tree canopy ordinance that requires planting and replacement of trees during the development process. It would begin with the *following modified language from subsection A of 15.2-961*:**

Any locality may adopt an ordinance providing for the planting and replacement of trees during the development process pursuant to the provisions of this section. The following provisions would be included in this new section:

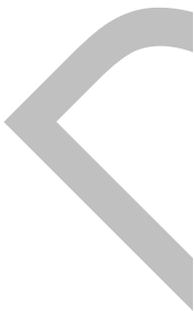
- a. It would use the canopy percentages established in 15.2-961 and would maintain its existing exemptions.
- b. We anticipate that tree planting and tree banking under this new statute would incorporate the recommendations of the CDG, including its subgroup of this issue. The conservation and development communities both consider the specific terms of the banking program to be pivotal to possible support for this proposal. Some of those provisions might be informed by suggestions for a limited new role for the State Forester which, as discussed below in Part II, will be the subject to further discussions, including budgetary concerns.
- c. The conservation and development communities have not reached an agreement on the question whether, unlike the current 15.2-961, a locality could exceed the standards provided in this tree planting and banking statute.
- d. All localities with existing tree canopy replacement programs as of the enactment date would be grandfathered.

**Proposal, Part II: Adopt a new statute, using 15.2-961.1 as a starting point, that gives all localities in Virginia (subject to any conditions listed below) the authority to enact a tree canopy ordinance that requires preservation of trees during the development process.**

- a. This new statute would use the canopy percentages established in 15.2-961.1 and would maintain its existing exemptions and those provided in 15.2-961. Consideration should be given to when and how a locality could exceed these percentages as discussed in section (d.) below. The conservation community will not agree to

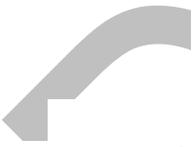
this new statute unless an acceptable agreement is reached on how localities could exceed those percentages.

- b. The development community believes this new statute could only be adopted if the locality has adopted a “tree preservation density bonus” ordinance as may be recommended by the CDG, including its cluster development subgroup. “Tree preservation density bonus” would include any agreed upon expanded cluster development ordinance recommended by the CDG. The conservation community believes agreement on the density bonus provision should be linked to agreement on authority to exceed the canopy limits as discussed in section (d.) below
- c. As in existing 15.2-961.1, while canopy percentages would be set in statute, localities would retain the ability to establish the tree preservation targets using the criteria established in the current Subsection D of 15.2-961.1
- d. Subsection E (1) and (2) and (3) of the existing statute, 15.2-961.1, includes a process by which ordinances allow for deviations from the preservation target. Discussions are underway concerning possible modifications to this subsection, including whether #3, concerning damage to trees during construction, should be modified or deleted because there are concerns in the conservation community that provision excuses and encourages substandard construction practices that jeopardize tree survivability. The development community will not agree to this new statute unless it continues to provide for submission of a deviation letter by the developer. The deviation letter process would use subsections E and F of 15.2-961.1 as a starting point but would be subject to negotiation and final language agreed upon. Negotiations will also focus on the proposal from the conservation community to amend Subsection E to allow localities limited flexibility to address local environmental concerns through authority to exceed the 15.2-961.1 tree canopy percentages by specific identified percentages and/or whether banking should be limited to meeting specific percentages of the tree canopy requirement.
- e. Subsections G, I, J, K, L, M, P, Q of 15.2-961.1 could possibly be replaced with more concise, flexible, and simpler language. It



would consider the recommendations of the CDG and its tree banking subgroup and, as discussed below, potentially informed by the recommendations concerning the State Forester, subject to the concerns identified and discussed in section (h.) below.

- f. The language relating to pre 7/1/1990 ordinances would be retained as provided in Subsection S 15.2-961.1.
- g. Language preserving the validity of any ordinance adopted pursuant to 15.2-961 would be retained and reference to 15.2-961.1 added.
- h. Subject to agreement on other provisions and negotiation of precise language, include a new provision in the statute that requires the State Forester, after receiving recommendations from an advisory panel comprised of experts and representatives of the groups represented on the CDG, to issue standards for computing achievement of the projected canopy targets authorized in 1a and 2a above. The possibility that such an advisory panel might also be used in establishing the guidance and standards referenced elsewhere in this proposal was briefly discussed by the conservation and development communities, but no resolution has yet been reached. Any additional role for the State Forester will require discussion and negotiation over providing necessary budgetary resources, clarity on what happens if necessary funds do not materialize and negotiation of other provisions of the bill and clarifying the authority of a locality to act where State Forester has not acted or is simply providing guidance or technical advice.



## **Key Issue #2: Giving flexibility to localities to increase tree canopy limits**

Further discussion is needed on specifically how a locality might adopt the lower canopy percentages in the Part I authority but also adopt the tree preservation and other provisions found in the Part II authority. One proposal on the table for consideration to address this concern follows:

**Proposal, Part 3: The two new agreed upon tree canopy options would be included in a single proposed bill that gives localities the ability to adopt either a planting and replacement statute as provided in 1 above or a preservation statute as provided in 2 above.**

## Core Stakeholder Concerns for Ongoing Discussions

In the ongoing discussions over these important issues, stakeholders understand that the following are core concerns that will need to be addressed.

- Geographic application of the above proposals
  - a. Currently one statute applies to all Chesapeake Bay localities, while the other applies to only one locality.
  - b. There is general agreement that both of the above proposals should apply statewide.
- Approved deviations from locality requirements
  - a. If a locality requires a tree *preservation* target as part of the ordinance, the development community needs a deviation process. (This is not needed for a tree *canopy* target.)
  - b. If deviations are allowed, it is important to a number of stakeholders that only a report by a qualified, certified expert should be able to overturn an arborist's determination.
- Authority for targets and deviations
  - a. It is preferable to a number of stakeholders for the deviation authority to go to the locality. Anything that constrains or eradicates a locality's existing authority will not be supported by these stakeholders.
- Standardizing the method for computing tree canopy ordinance targets
  - a. It is critical for there to be standardization of the *method* of computation, not for standardizing the target number or tying the hands of a locality.
  - b. The *method* of computation should be devised by a panel of experts convened by the State Forester and composed of the same stakeholder groups represented in the CDG. Guidance from the State Forester is important.
- Providing support for implementing the tree canopy ordinance targets
  - a. Localities may need support in developing their targets, and some consideration of who can provide this support is important.
  - b. Because of funding issues, the State Forester's role should be limited, or a funding stream to support the State Forester to assume this role should be found.
  - c. A "circuit rider" approach to provide guidance was discussed as an option, but funding would be an issue for this model as well.
  - d. There is general agreement that this support should not be provided by anyone, but must be provided by an urban forestry expert.

- Potential for exceeding the targets
  - a. A significant issue for consideration is whether localities can exceed the targets calculated by the approved method.

## **Conclusion**

This work represents the significant collective effort of the CDG on behalf of all the stakeholders listed in the attached transfer letter. This is an attempt by the stakeholders to compile issues and opportunities related to tree stuff as the basis for developing legislation. The stakeholders are committed to additional research and discussion to pursue solutions.

DRAFT

# Appendices

## Appendix A – Tree Conservation Work Group members

<b>Representatives of Counties</b>		
	Brandon Davis	Northern Shenandoah Valley Regional Commission
	Eldon James	APAVA
	Brian Keightley	Fairfax County
<b>CDG Alternate</b>	Joe Lerch	VACO
<b>CDG Member</b>	Chris McDonald	VACO
	Charles Rapp	Albemarle County
	Chris Sigler	Fairfax County
<b>CDG Member</b>	Vincent Verweij	Arlington County
<b>Representatives of Cities</b>		
	Carrie Bookholt	City of Virginia Beach
	Robert A. Buchardt	City of Virginia Beach
	Jeff Ceaser	City of Salem
	Ken Gillie	City of Danville
	Sarah Hagan	City of Lynchburg
	Erin Hawkins	City of Lynchburg
	Janine Lester	City of Richmond
	Anne Little	Tree Fredericksburg/ Trees Virginia
	Mitchell Smiley	VA Municipal League
<b>CDG Member</b>	Scott Smith	City of Hampton
	Lucy Stoll	City of Chesapeake
<b>CDG Alternate</b>	Jillian C. Sunderland	Hampton Roads Planning District Commission
<b>CDG Member</b>	Steven Traylor	City of Norfolk/ MAC-ISA
<b>Representatives of agricultural and forestry industries</b>		
<b>CDG Alternate</b>	Corey Conners	Virginia Forestry Association
	Ron Jenkins	Virginia Loggers Association
<b>CDG Member</b>	Bill Lakel	Molpus Woodlands Group
	Conner Miller	Virginia Forest Products Association

<b>CDG Member</b>	Martha Moore	Virginia Farm Bureau
	Beck Stanley	Virginia Agribusiness Council
<b>Professional environmental technical experts / Representatives of environmental and conservation organizations</b>		
<b>CDG Alternate</b>	Pat Calvert	VA Conservation Network
	Amber Ellis	James River Association
<b>CDG Member</b>	Karen Firehock	Green Infrastructure Center
	Brent Hunsinger	Friends of the Rappahannock
	Adrienne Kotula	Virginia Delegation of the Chesapeake Bay Commission
<b>CDG Member</b>	Peggy Sanner	Chesapeake Bay Foundation
<b>Environmental Justice representatives</b>		
	Duron Chavis	EJ Council/ Urban farming
	Ronald Howell	EJ Council/ VA State University
<b>CDG Member</b>	Sheri Shannon	Southside ReLeaf
	Amy Wentz	Southside ReLeaf
<b>Residential and commercial development and construction industries</b>		
<b>CDG Member</b>	Phil Abraham	Virginia Assoc. for Commercial Real Estate
<b>CDG Alternate</b>	Billy Almond	WPL - Landscape Architecture
<b>CDG Member</b>	Andrew Clark	Homebuilders Association of Virginia
	Jason Ericson	Dominion Energy
	Glenn Muckley	Stantec
	Tripp Perrin/Scott Johnson	SCI-world's largest cemetery and funeral home operator
<b>State agency/technical advisers to the CDG</b>		
	Drew Hammond	DEQ
	Terry Lasher	Virginia Department of Forestry
	Justin Williams	DEQ

## Appendix B

### Collaborative Decision Group (CDG) Members

- **Representatives of Counties:** Vincent Verweij, Chris MacDonald, Joe Lerch (alternate)
- **Representatives of Cities:** Steven Traylor, Scott Smith, Jill Sunderland (alternate)
- **Representatives of Agriculture and Forestry Industries:** Martha Moore, Bill Lakel, Corey Conners (alternate)
- **Representatives of Environmental and Conservation Organizations/Environmental Technical Experts:** Peggy Sanner, Karen Firehock, Pat Calvert (alternate)
- **Environmental Justice representatives:** Sheri Shannon
- **Representatives of Residential and Commercial Development/Construction Industries:** Phil Abraham, Andrew Clark, Billy Almond (alternate).

### Appendix C – Links to relevant documents

- [June 28<sup>th</sup> Tree Conservation Work Group Meeting Agenda and Summary](#)
- [August 25<sup>th</sup> CDG Meeting Agenda and Summary](#)
- [September 8<sup>th</sup> CDG Meeting Agenda](#)

## Appendix D

### Tree Conservation Work Group – Stakeholder Survey Distributed via Qualtrics

During the recent General Assembly session, the issue of tree and forest protection arose, with several pertinent bills ([HB 2042](#) and [HB 1800 Item 107 M](#)) being considered. As a result of the legislation, the Secretaries of Agriculture and Forestry and Natural Resources have been asked to convene a stakeholder group to determine viable approaches to this important issue. With support from the Department of Forestry, the University of Virginia Institute for Engagement & Negotiation (IEN) has been asked to conduct stakeholder engagement on this issue and to deliver to Commonwealth leadership a final report of consensus recommendations and areas where agreement could not be reached, by October 1, 2021. The three objectives for this study stipulated by the Virginia General Assembly include: 1. encourage the conservation of mature trees and tree cover on sites being developed; 2. increase tree canopy cover in communities; 3. encourage and increase incentives for the preservation, planting, and replacement of trees during the land development process. Due to the short time span available for the study, this survey is intended to help us frame the conversation and kick-start the consensus building process. Responses will be synthesized and shared with all stakeholders participating in the process and will lay a foundation for moving forward in an informed and positive way. Through this survey, our hope is to surface places for potential “easy wins” and agreement, as well as areas that will need more attention and creative discussion. We invite you to take this first opportunity to share your ideas, interests, and concerns to get them on the table. While the process will offer more opportunities for this sharing, the earlier that interests and concerns are shared, the longer the group will have to address these. **Please note: none of these survey responses will be considered a formal response on behalf of the organizations you or others represent.** This survey could take 10-20 minutes to complete but may take longer if you choose to share more information and ideas with the group. If you have questions about this survey or the project, please feel free to contact Kelly Altizer, IEN Associate, at [kaltizer@virginia.edu](mailto:kaltizer@virginia.edu).

Name:

Contact phone number:

Contact email address:

Organization you're representing (if applicable):

My primary affiliation during this process is (check one):

- Town or county government
- City government
- Agriculture and/or forest industries
- Environmental technical experts
- Environmental and conservation organizations
- EJ representatives
- Residential and commercial development and construction industries
- Other \_\_\_\_\_

Considering the three objectives stipulated by the General Assembly

- Encourage the conservation of mature trees and tree cover on sites being developed;
- Increase tree canopy cover in communities;
- Encourage and increase incentives for the preservation, planting, and replacement of trees during the land development process.

Please indicate your level of support for each of the following interests:

	A. Neutral (no opinion) (1)	B. Our organization has too many questions and concerns and cannot support this interest (2)	C. Our organization has questions and concerns about this, and it is not a high priority for us (3)	D. Our organization can live with and support this interest but it is not a high priority for us (4)	E. Our organization identifies with and will strongly advocate for this interest (5)
1. Consistency in regulations between localities across the state (1)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
2. Flexibility in regulations to account for differences between localities (2)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
3. Prescriptive rules that provide landowners with surety of their property's development potential (3)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
4. Having multiple planning tools to allow/encourage conserving trees during development (4)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
5. Conserving individual (large, mature, and or special) trees during development (5)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
6. Conserving tree canopy or forest cover during development (6)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
7. Flexibility to plant trees instead of conserving existing trees (7)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
8. Maximizing development in urban/suburban areas to reduce sprawl (8)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

9. Providing for in lieu fees when onsite conservation/planting is not feasible (9)

10. Ensuring that each development project maintains existing trees or tree cover (10)

11. Maintaining or increasing the overall canopy cover of the locality (11)

12. Reducing stormwater runoff from developed properties (12)

13. Preserving residual trees in existing neighborhoods (13)

14. Conserving natural areas during development (14)

15. Being able to readily identify when land transitions from rural use to planned development (15)

16. Including underserved neighborhoods in decision-making about tree preservation, canopy, and green spaces during development (22)

17. Using natural solutions for protecting water quality as opposed to built solutions (16)

18. Providing public access to natural spaces in developed areas (17)

19. Having mitigation such as tree planting occur as close as possible to site impacts being mitigated (18)

20. Having mitigation occur farther away if projects can provide greater environmental benefits (19)

21. Increased training for developers and local planners to utilize conservation tools (20)

22. Reducing or mitigating costs associated with regulations during development (21)

23. Increasing tree cover in redlined and underserved communities through development (23)

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For any of the above where you responded B or C, please share what would be needed to help you to move to a greater level of support:

From your (or your organization's) perspective, what are the most critical current barriers or challenges for achieving the three objectives stipulated by the General Assembly?

The three objectives are: · Encourage the conservation of mature trees and tree cover on sites being developed; · Increase tree canopy cover in communities; · Encourage and increase incentives for the preservation, planting, and replacement of trees during the land development process.

---

What other ideas, solutions, or approaches are options that would be most helpful to your organization's interests and that you would like to see considered during this process?

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What other ideas or recommendations would you suggest for resolution of the different interests and to achieve mutual gains for all stakeholders?

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Q23 (Optional) If you have developed suggested legislative language or amendments to §15.2-960, 961, 961.1 and 961.2 or other code sections to propose, we would encourage you to share these here.

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THANK YOU FOR YOUR TIME IN COMPLETING THIS SURVEY! Responses will be synthesized and shared with all stakeholders participating in the process, and will lay a foundation for moving forward in an informed and positive way. If you have questions about this survey or the project, please feel free to contact Kelly Altizer, IEN Associate, at [kaltizer@virginia.edu](mailto:kaltizer@virginia.edu).

## Appendix E

### Tree Conservation Work Group – Stakeholder Survey Results

#### Table results, in order of strength of support

#### Greatest Common Ground and Shared Interests

##### Greatest support, fewest questions/ concerns:

##### 1. Reducing stormwater runoff from developed properties

1. 22 - identify with/ strongly advocate for this interest
2. 5- can live with it, not a high priority
3. 1 - questions/ concerns, and not a high priority
4. 0- too many questions/concerns, and cannot support
5. 2 – *neutral*

**2. Conserving tree canopy or forest cover during development**

1. 21 - identify with/ strongly advocate for this interest
2. 6 - can live with it, not a high priority
3. 1 - questions/ concerns, and not a high priority
4. 0- too many questions/concerns, and cannot support
5. 2 – *neutral*

**3. Conserving natural areas during development**

1. 21 - identify with/ strongly advocate for this interest
2. 4- can live with it, not a high priority
3. 1 - questions/ concerns, and not a high priority
4. 0- too many questions/concerns, and cannot support
5. 4 – *neutral*

**4. Including underserved neighborhoods in decision-making about tree preservation, canopy, and green spaces during development**

1. 19 - identify with/ strongly advocate for this interest
2. 5- can live with it, not a high priority
3. 2 - questions/ concerns, and not a high priority
4. 0- too many questions/concerns, and cannot support
5. 4 – *neutral*

**5. Increasing tree cover in redlined and underserved communities through development**

1. 17 - identify with/ strongly advocate for this interest
2. 8 - can live with it, not a high priority
3. 3 - questions/ concerns, and not a high priority
4. 0- too many questions/concerns, and cannot support
5. 2 – *neutral*

**6. Preserving residual trees in existing neighborhoods**

1. 17 - identify with/ strongly advocate for this interest
2. 6- can live with it, not a high priority
3. 1 - questions/ concerns, and not a high priority
4. 0- too many questions/concerns, and cannot support
5. 6 – *neutral*

**7. Flexibility in regulations to account for differences between localities**

- a. 15 - identify with/ strongly advocate for this interest
- b. 8 - can live with it, not a high priority
- c. 4 - questions/ concerns, and not a high priority
- d. 0- too many questions/concerns, and cannot support
- e. 3 – *neutral*

**8. Increased training for developers and local planners to utilize conservation tools**

- a. 15 - identify with/ strongly advocate for this interest
- b. 8- can live with it, not a high priority
- c. 3 - questions/ concerns, and not a high priority
- d. 0- too many questions/concerns, and cannot support
- e. 5 – *neutral*

9. Providing public access to natural spaces in developed areas

- . 14 - identify with/ strongly advocate for this interest
- a. 9- can live with it, not a high priority
- b. 1 - questions/ concerns, and not a high priority
- c. 0- too many questions/concerns, and cannot support
- d. 6 – *neutral*

10. Maximizing development in urban/suburban areas to reduce sprawl

- . 14 - identify with/ strongly advocate for this interest
- a. 7- can live with it, not a high priority
- b. 3 - questions/ concerns, and not a high priority
- c. 0- too many questions/concerns, and cannot support
- d. 6 - *neutral*

**Significant support, with some questions and concerns; one cannot support as currently presented**

11. Having multiple planning tools to allow/encourage conserving trees during development

- a. 22 - identify with/ strongly advocate for this interest
- b. 4 - can live with it, not a high priority
- c. 2 - questions/ concerns, and not a high priority
- d. 1- too many questions/concerns, and cannot support
- e. 1 – *neutral*

12. Maintaining or increasing the overall canopy cover of the locality

- . 20 - identify with/ strongly advocate for this interest
- a. 4- can live with it, not a high priority
- b. 2 - questions/ concerns, and not a high priority
- c. 1- too many questions/concerns, and cannot support
- d. 3 - *neutral*

13. Conserving individual (large, mature, and or special) trees during development

- . 18 - identify with/ strongly advocate for this interest
- a. 6 - can live with it, not a high priority
- b. 3 - questions/ concerns, and not a high priority
- c. 1- too many questions/concerns, and cannot support
- d. 2 – *neutral*

14. Using natural solutions for protecting water quality as opposed to built solutions

- . 17 - identify with/ strongly advocate for this interest
- a. 6 - can live with it, not a high priority
- b. 3 - questions/ concerns, and not a high priority
- c. 1- too many questions/concerns, and cannot support
- d. 3 – *neutral*

15. Having mitigation such as tree planting occur as close as possible to site impacts being mitigated

- . 14 - identify with/ strongly advocate for this interest

- a. 8- can live with it, not a high priority
- b. 3 - questions/ concerns, and not a high priority
- c. 1- too many questions/concerns, and cannot support
- d. 4 - *neutral*

**Weak support, with many questions and concerns, one unable support as currently presented; Needs more work to find common ground**

**16. Flexibility to plant trees instead of conserving existing trees**

- a. 6 - identify with/ strongly advocate for this interest
- b. 15- can live with it, not a high priority
- c. 5 - questions/ concerns, and not a high priority
- d. 1- too many questions/concerns, and cannot support
- e. 3 – *neutral*

**17. Being able to readily identify when land transitions from rural use to planned development**

- . 7 - identify with/ strongly advocate for this interest
- a. 9- can live with it, not a high priority
- b. 1 - questions/ concerns, and not a high priority
- c. 1- too many questions/concerns, and cannot support
- d. 12 - *neutral*

**Lowest support overall, greatest number of questions/ concerns; two or three unable to support support as currently presented**

**18. Reducing or mitigating costs associated with regulations during development**

- a. 6 - identify with/ strongly advocate for this interest
- b. 9- can live with it, not a high priority
- c. 5 - questions/ concerns, and not a high priority
- d. 2- too many questions/concerns, and cannot support
- e. 8 – *neutral*

**19. Ensuring that each development project maintains existing trees or tree cover**

- a. 12 - identify with/ strongly advocate for this interest
- b. 9- can live with it, not a high priority
- c. 3 - questions/ concerns, and not a high priority
- d. 3- too many questions/concerns, and cannot support
- e. 3 – *neutral*

**20. Providing for in lieu fees when onsite conservation/ planting is not feasible**

- a. 8 - identify with/ strongly advocate for this interest
- b. 8- can live with it, not a high priority
- c. 7 - questions/ concerns, and not a high priority
- d. 2- too many questions/concerns, and cannot support
- e. 5 – *neutral*

**21. Prescriptive rules that provide landowners with surety of their property's development potential**

- . 6 - identify with/ strongly advocate for this interest
- a. 6- can live with it, not a high priority
- b. 8 - questions/ concerns, and not a high priority
- c. 2- too many questions/concerns, and cannot support
- d. 8 – neutral

**22. Consistency in regulations between localities across the state**

- a. 6 - identify with/ strongly advocate for this interest
- a. 7- can live with it, not a high priority
- b. 8 - questions/ concerns, and not a high priority
- c. 2- too many questions/concerns, and cannot support
- d. 7 – neutral

**23. Having mitigation occur farther away if projects can provide greater environmental benefits**

- a. 5 - identify with/ strongly advocate for this interest
- b. 10- can live with it, not a high priority
- c. 9 - questions/ concerns, and not a high priority
- d. 2- too many questions/concerns, and cannot support
- e. 5 - *neutral*

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## Appendix F Survey of CDG members, distributed via Qualtrics

Secretaries of Agriculture and Forestry and Natural & Historic Resources – Trees Conservation Work Group Charge

The Secretary of Agriculture and Forestry and Secretary of Natural & Historic Resources have provided the following charge to the Stakeholder Tree Conservation Workgroup:

Develop and provide consensus policy recommendations to the Secretary of Agriculture and Forestry and Secretary of Natural & Historic Resources, for state and local governments, to encourage the conservation of mature trees and tree cover on sites being developed, increase tree canopy cover in communities, and encourage the planting of trees. These consensus recommendations may recommend amendments to state code including §§ 15.2-961 et al. or the adoption of new Code sections that would enhance the preservation, planting, and replacement of trees during the land development process and increase incentives for the preservation, planting, and replacement of trees during the land development process.

In service of this charge and the enacting legislative language that specifies examination of issues contained in HB 2042, the Workgroup will take into consideration in its consensus recommendations the issues of enabling local tree replacement and planting ordinances to exceed existing requirements specifically to generate pollution reduction credits, address recurrent flooding in Chesapeake Bay Preservation Areas, address historical inequities resulting from redlining, and ensure conformity with local comprehensive plans. This survey is intended to advance the operations of the Tree Conservation Workgroup by soliciting specific proposals and concerns from members of the Collaborative Decision Group (CDG) prior to the first meeting of the CDG on August 25.

This survey should be completed only by CDG members (not alternates, unless either of the 2 members isn't able to participate) and submitted by **Monday August 9**. Members of the larger stakeholder Workgroup are encouraged to provide their input to their representatives in the CDG.

Ideas, proposals, and concerns that have been captured thus far (in the initial stakeholder survey, and at the June 28 meeting) are reflected below, broken into 5 categories. After reviewing this feedback, each member of the CDG is asked to provide up to 3 specific actionable proposals (3 total, **not** 3 per category) for legislative, regulatory, or other programmatic changes that meet the following criteria.

*Proposals should:*

1. Reflect the top priorities of your sector group.
2. Address concerns that others have expressed (i.e., the proposal should seek to create a

win/win for all interests).

3. Address any aspect of the group charge as outlined above, at the beginning of the survey.

The results of this survey will be synthesized and shared with CDG members prior to the August 25 meeting for further input and refinement. We estimate that it will take 15 minutes to complete, but that does not include consultation time that will be needed with your sector members of the Trees Conservation Workgroup prior to completing the survey.

For any questions about the survey please contact either Mike Foreman or Kelly Altizer, depending on the timing indicated below:

July 23rd-30th - Mike Foreman, IEN Special Projects Manager: [jmf2py@virginia.edu](mailto:jmf2py@virginia.edu)

July 31st-August 9th - Kelly Altizer, IEN Associate: [kaltizer@virginia.edu](mailto:kaltizer@virginia.edu)

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Name:

Email address:

### **Environmental Justice**

#### **Ideas:**

- 1a. Including underserved neighborhoods in decision-making about tree preservation, canopy, and green spaces during development.
- 1b. Increasing tree cover in redlined and underserved communities through development.
- 1c. Providing public access to natural spaces in developed areas

#### **Proposals:**

- 1d. The Commonwealth must ensure that members of redlined communities are part of the discussion to address the inequities of redlining.
- 1e. Address EJ issues around urban heat islands, flooding, air quality, etc. by adopting a focus on health.
- 1f. Using green infrastructure to mitigate environmental concerns in racially marginalized communities and increase property value

**Concerns:** None indicated

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## **Development**

### **Ideas:**

- 2a. Being able to readily identify when land transitions from rural use to planned development
- 2c. Conserving natural areas during development
- 2d. Maximizing development in urban/suburban areas to reduce sprawl
- 2e. Reducing or mitigating costs associated with regulations during development
- 2f. Ensuring that each development project maintains existing trees or tree cover
- 2g. Providing prescriptive rules to landowners with surety of their property's development potential
- 2h. Having multiple planning tools to allow/encourage conserving trees during development
- 2i. Increasing training for developers and local planners to utilize conservation tools

### **Proposals:**

- 2j. Support conservation efforts that maintain safeguards to protect the forest industry.
- 2k. Develop an incentive-based program to encourage developers to leave mature trees and canopies intact or develop alternative methods to achieve development without devastating canopies.
- 2l. Ensure that there is not a prohibition on commercial harvesting of trees.
- 2m. Require that a development achieve a minimum 20% canopy within 10 years
- 2n. Require builders to include a landscape package in their development rather than as an afterthought.
- 2o. Educate industry members on best management practices for tree preservation.

## Concerns:

- Balancing development with the preservation of mature trees.
  - Ensuring that the forestry industry is still available to function in developing areas.
  - Deforestation, urban sprawl, solar development, and lack of knowledge about the importance of trees are all concerns.
  - Ensuring that visible businesses in the space are protected.
  - Concern about development costs associated with a new way of thinking, designing, and executing projects.
  - The perception that completely clearing land and striping all topsoil before development is the lowest cost approach.
  - Protecting private property rights.
  - Reluctance from the development community to engage in tree preservation strategies.
  - The construction industry's enduring reluctance to adapt its practices to benefit the health of Virginia communities, families, and the environment.
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## Tree Preservation

### Ideas:

- 3a. Preserving residual trees in existing neighborhoods
- 3b. Maintaining or increasing the overall canopy cover of the locality
- 3c. Having multiple planning tools to allow/encourage conserving trees during development
- 3d. Conserving individual (large, mature, and or special) trees during development
- 3e. Conserving tree canopy or forest cover during development

### Proposals:

- 3f. Require community planning staff to meet with the developer & arborist to identify and preserve a selection of trees.
- 3g. Expand on and build stronger protections for existing tree canopy, such as conducting a natural resources inventory as the first step in the site planning process to preserve existing trees.
- 3h. Provide more credit for the preservation of large trees rather than allow the substitution of planted trees.

- 3i. Establish a grant process to support localities in the work of preserving trees.
- 3j. Community education on the benefits of tree cover is essential in order to develop a more robust appreciation for natural areas.
- 3k. Educate our planners, engineers, and construction workers on patterns of thinking that prioritize tree preservation
- 3l. Promote tree planting on private property through tree giveaways.
- 3m. Education materials and statistics that document the economic benefits of tree preservation would help to change the current practice of large-scale clearing and mass grading.
- 3n. Specify conservation and preservation of the existing tree canopy as the main priority, with tree planting as a supporting task.
- 3o. Develop, implement and enforce statewide tree canopy goals that will reverse the substantial canopy losses in recent years.
- 3p. Produce info quantifying the value of trees along with the incentives to help make the argument for preserving mature trees.
- 3q. Create a public policy to support forests in rural areas preserving both the forests themselves and forest-related industry.
- 3r. Allow for protection for trees in the way we plan our urban spaces to ensure their survival
- 3s. Incentivize the preservation of trees by valuing ecosystem services to balance development
- 3t. Utilize tree protection zones to protect mature trees whenever possible in the construction process.
- 3u. Ensure costs of tree maintenance and enforcement don't become barriers to participation.

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### **Concerns:**

- Concern that trees can't be conserved on-site or nearby.
- Newly planted trees are threatened by invasive species and a lack of care upon planting
- Tree preservation is seen as a deterrent to growth.
- Green infrastructure is not viewed as a necessary asset to localities, so trees, especially mature trees, are seen as an impediment rather than valuable structures.
- There are a lack of incentives for developers to preserve trees
- The inability to adopt local legislation that would require specimen tree preservation and tree replacement criteria.
- Conservation of mature trees requires lots of area to be preserved to protect that tree.
- Lack of local government funding to offer adequate incentives for tree preservation
- Concern over how exactly a mature tree is defined.
- A mature tree needs to be defined in a way consistent with the mature tree regulations being developed under the CBPA regulations by the State Water Control Board and should include reasonable exceptions to the definition.
- Native plant availability can be a barrier - consideration should be given to well-adapted species
- Hazards posed by mature trees
- Healthy canopies have a balance of mature and young trees
- Concern over the definition of native tree
- Potential lack of qualified individuals across the state who can provide the proper education

### **Environmental Mitigation**

#### **Ideas:**

- 4a. Flexibility to plant trees instead of conserving existing trees
- 4b. Having mitigation such as tree planting occur as close as possible to site impacts being mitigated
- 4c. Using natural solutions for protecting water quality as opposed to built solutions

4d. Having mitigation occur farther away if projects can provide greater environmental benefits

**Proposals:**

4e. Develop a process to use trees as BMPs and provide more credit when they are used in bioswales.

4f. Require an existing natural resource or tree inventory to be submitted prior to any engineering plan approval in order to prioritize the preservation of key natural resources and trees before any economic burden is incurred by the landowner or developer.

4g. Incentivize buffer planting or planting of conservation areas.

4h. Requirement for natural buffers for riparian areas near streams.

4i. The use of native trees should be the preferred alternative when replanting lost canopy.

4j. Evaluate trees as a stormwater management tool.

4k. Use of native trees/plants where possible

**Concerns:**

- Offsite nutrient credits have benefitted the watershed as a whole but have no visible or tangible local impact.
- Fees paid into a mitigation bank does little to offset negative impacts in the local community
- Offsite mitigation has led to the forestation of previously active farmland in our region.
- Urban sites don't have the land area required for green solutions. Creating effective natural and man-made water quality improvement tools will be challenging as more land is developed adding to the cumulative impact on Virginia's water quality.

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**Regulation**

**Ideas**

5a. Flexibility in regulations to account for differences between localities

5b. Providing for in lieu fees when onsite conservation/ planting is not feasible

5c. Consistency in regulations between localities across the state

**Proposals:**

5d. Provide greater flexibility to local governments to achieve their specific goals.

5e. Remove "Planning District 8" from § 15.2-961.1 which would enable all localities to collect fees to supply trees to community-based organizations to increase canopy on private property.

5f. Amend § 15.2-961.1 and § 15.2-961 to give localities the authority to establish their tree

canopy replacement and conservation goals to address equity in formerly redlined areas, increase flood resiliency, realize local comprehensive plan goals, and meet water quality permit requirements.

5g. Allow localities to establish their own canopy percentages/requirements.

5h. Private landowners should have access to a more robust, balanced set of incentives from which to choose when considering potential land use.

5i. Greater flexibility for local governments achieving their own local goals and meeting their local interests.

5j. Funding pools to help localities pay for any mandatory requirements.

5k. Localities should be able to require developers to submit their tree preservation plans as an initial step in the plan approval process and should involve community residents in the process.

5l. Stronger tree preservation ordinances

5m. Civil penalties for tree loss

5n. Stronger mitigation requirements

5o. Allow credits toward landscaping ordinances for the preservation of mature trees.

5p. Amend language discussing mature trees to include relative lack of adaptability near ground disturbance compared with younger trees.

5q. A non-regulatory approach integrating goals across sectors

5r. Statewide prescriptive statutes are not nuanced enough to take into account local differences in land management

5s. Fines should be set at a meaningful (not cost of doing business) level

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**Concerns:**

- Consistency between localities could restrict local efforts.
  - Prescriptive rules may tie the hands of future local boards/councils from being able to appropriately govern land use.
  - Some localities lack adequate planting standards so trees do not survive and local governments are not allowed by state code to require canopy coverage for levels greater than state code.
  - Lack of knowledge of local officials about forestry.
  - Concern over where funds will come from to help offset costs to localities
  - Lack of staff to enforce these regulations if they are passed on a local level.
  - The current zoning and development laws in the state do not prioritize the preservation of trees and natural resources early enough in the development process.
  - Underfunded forestry divisions with small staff and no resources to increase tree canopy.
  - Current laws and regulations regarding tree policy are not aligned and consistent.
  - The existing Code language dramatically privileges developers' preferences over what localities and their residents want for their community.
  - Increased canopy requirements can impact footprint of a development and limit density
  - Penalties should only be imposed for violating existing laws and regulations.
- 

**Miscellaneous****Proposals:**

- Include the private sector in conversations to ensure sufficient tree stock
- More flexibility for cemeteries.
- Analysis of best practices from communities across the country.
- Take into account the effect of sea level rise

**Concerns:**

- In lieu fees have a place, but it is important that the level of fees is high enough to incentivize actual tree preservation/replacement.
  - Cemeteries should have some trees, but burial is not possible if there are too many trees.
- 

After reviewing each category, please share up to 3 (total) specific actionable proposals for

legislative, regulatory or other programmatic changes that meet the following criteria:

1. Reflect the top priorities of your sector group.
2. Address concerns that others have expressed (the proposal should be framed as a win/win).
3. Address any aspect of the group charge as outlined at the beginning of the survey.

For each proposal, please share a “rationale” for why or how this will advance tree conservation in Virginia in accordance with the legislative charge with consideration for other stakeholder interests where known.

Proposal 1:

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Q12 Rationale for Proposal 1:

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Q13 Proposal 2:

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Rationale for Proposal 2:

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Proposal 3:

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Rationale for Proposal 3:

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For any questions about the survey please contact either Mike Foreman or Kelly Altizer, depending on the timing indicated below: July 23rd-30th - Mike Foreman, IEN Special Projects Manager: [jmf2py@virginia.edu](mailto:jmf2py@virginia.edu) July 31st-August 9th - Kelly Altizer, IEN Associate, [kaltizer@virginia.edu](mailto:kaltizer@virginia.edu)

## Appendix G – CDG proposals

### Secretariats of Agriculture and Forestry and Natural Resources Tree Conservation Work Group

The following proposals were compiled by the Institute for Engagement & Negotiation (IEN) based on proposals drafted by Collaborative Decision Group (CDG) via survey. This document will inform the work of the group at their next meeting on August 25<sup>th</sup>. Proposals are categorized below by topic in no particular order.

Cluster development – (from Virginia Code §15.2-2286.1)

**Proposal:**

Update the state's cluster ordinance which was rewritten several years ago and stripped of its key purpose which was originally to allow more creative site layouts that ALSO protect sensitive environmental features. Update the ordinance to:

- Remove prohibitions against natural resource inventories and mapping of sensitive site features.
- Remove prohibitions that exclude sensitive habitats or open space from density area calculations.
- Strike the 10 percent growth rate restriction from the law and allow any locality to implement a cluster ordinance. Even rural counties should be able to allow this voluntary tool to be used to protect sensitive resources. Clusters are not required and are up to the developer to propose.
- Increase flexibility for localities who have ordinances predating the new law to allow them to update them without penalty.

**Rationale:**

Cluster developments concentrate the development on a smaller footprint and preserve a portion of the lot as 'open space.' This type of development is seen as a compromise between a developer's need to maximize financial returns and the local jurisdiction's desire for conservation. Clusters allow for modifications to lot sizes and setback changes to achieve conservation of natural resources, views, and other amenities. This allows for the preservation of sensitive site features, such as steep slopes or wetlands, while still achieving allowed gross densities. The state's current Cluster Ordinance was rewritten several years ago and specific prohibitions were added that:

- limit adoption to communities with greater than 10 percent growth rates
- disallow requirements to survey or consider sensitive resources (steep slopes, wetlands etc.) in planning for cluster developments.

All of these restrictions are antithetical to the purpose of clustering which is to allow for creative re-arranging of lots to avoid sensitive environmental features while allowing for similar densities to be achieved as if those sensitive features were not present. The density is the same but the features on site are also preserved. VA needs more tools to meet its goals for the Ches Bay WIP.

**Proposal:**

Expand the use "cluster development ordinances" currently enabled under Virginia Code §15.2-2286.1; and evaluate other opportunities to minimize required lot clearing for road infrastructure.

**Rationale:**

There is a common misconception that developers uniformly want to remove most trees from a development site. However, more often than not, the removal of trees and natural vegetation is required to comply with local zoning ordinances, subdivision ordinances, VDOT standards, and other local development standards. Local ordinances and standards, such as building setback minimums, driveways, streets, sidewalks, drainage requirements, lot clearing and utility placement, and other common development regulations can effectively “disincentivize” tree preservation. For example:

- Conventional zoning typically requires lots of approximately equal sizes, restricting the potential to save green space and grouping of trees.
- Increasing subdivision road widths and design standards are often cited by the development community as a driver of cost and an impediment to the preservation of open space and existing vegetation. Adding extra pavement, or even compacted shoulders, dramatically increases impervious area, stormwater runoff and the cost of building stormwater facilities to detain and treat stormwater; the extra asphalt also absorbs heat and reduces tree save potential.

Subdivision road widths and design standards are extremely difficult for a developer to modify or reduce; however, allowing flexibility in these requirements would create greater opportunity for a developer to incorporate open space and/or existing trees into the subdivision design in a manner that does not jeopardize the number of lots needed to make the project financially viable. Additionally, these local ordinances often do not allow for flexibility to efficiently modify a subdivision design to incorporate existing trees or other natural vegetation. Cluster development zoning/subdivision ordinances would address many of the impediments to tree preservation mentioned above by allowing for flexibility in subdivision design and zoning ordinance requirements According to the Virginia Department of Forestry’s report from August 28th, 2020 (“A Select Review of the Virginia State Code for Trees and Forests”), cluster development is a: “...type of site layout that maintains zoned densities (even density bonuses) for a given lot, but concentrates the development on a smaller footprint and preserves a portion of the lot as “open space.” This type of development is seen as a compromise between a developer’s need to maximize financial returns and the local jurisdiction’s desire for conservation. Clusters allow lot sizes and setback changes to achieve modified lot arrangements. This preserves sensitive site features, such as steep slopes or wetlands, while still achieving allowed gross densities.” However, Virginia Code §15.2-2286.1 only grants authority to a limited number of localities to enact ordinances which allow for the clustering of residential units on smaller than average lots on a portion of a tract of land, allowing for the preservation of open spaces and/or trees. By statute, the authority to enact cluster development ordinances is limited to any county or city “that had a population growth rate of 10% or more from the next-to-latest to latest decennial census year” . Furthermore, any county or city “...that has a population density of more than 2,000 people per square mile...” is exempted from the requirements of the statute. We recommend that the workgroup evaluate whether the existing cluster development statute should be expanded to more localities. Relatedly, we recommend that the workgroup evaluate other approaches to minimizing required lot clearing for road infrastructure.

**Trees as BMPS**

**Proposal:**

Implementation of HB 520 from the 2020 General Assembly Session

**Rationale:**

In advance of the 2020 General Assembly Session, the Home Builders Association of Virginia (HBAV) and the Virginia Association for Commercial Real-Estate (VACRE) worked with Arlington County to draft HB 520, which was patroned by Delegate David Bulova, passed by the General Assembly, and signed by the Governor. HB 520 directed: ...the Department of Environmental Quality (DEQ) to convene a stakeholder advisory group for the purpose of studying the planting or preservation of trees as an urban land cover type and as a stormwater best management practice (BMP). The bill provides that the stakeholder group shall be composed of development and construction industry representatives, environmental technical experts, local government representatives, and others and that technical assistance shall be provided to DEQ by the Department of Forestry and the Department of Conservation and Recreation. The bill directs DEQ to report the findings of the stakeholder group by November 1, 2020, and to include a recommendation as to whether the planting or preservation of trees shall be deemed a creditable land cover type or BMP and, if so, how much credit shall be given for its optional use. Due to the pandemic, the Department of Environmental Quality was unable to convene the stakeholder advisory group prior to the November 2020 deadline. However, there seems to be broad consensus that the HB 520 stakeholder advisory group would result in a beneficial tree planting and preservation incentive.

**Proposal:**

4j – Evaluate trees as a stormwater management tool

**Rationale:**

This has been a continuing idea that our members have vocalized to us over the last several years. Our localities continue to face drastic stormwater needs, from more numerous and more flexible tools to increased funding. This is especially so as we draw nearer and nearer to the 2025 deadline for our WIP III requirements. To evaluate trees as a stormwater management tool – and a far more natural and cost-effective one at that – and establish them as some sort of bmp would be a tremendous step forward that truly can be aid not just our localities but the developers as well.

**Proposal:**

4j. Evaluate trees as a stormwater management tool.

**Rationale:**

While a conversation is ongoing about using trees as a stormwater management tool to help with water quality, and abating the impacts from smaller storms, it is important to continue looking at conservation of existing trees, and planting of new trees in unforested areas to address issues of stormwater. This tool can be a win-win, giving developers more tools to mitigate some stormwater, allow for longer-term conservation of trees, if counted as a BMP, and provide a more natural solution to parts of our stormwater pressures, along with grey infrastructure solutions. It is important to recognize that trees have a lifespan, not unlike engineered solutions, and enough flexibility should be built in to remove trees when needed, for high risk situations, and allow for replanting of the space of the lost trees with native trees. Making the land/soil part of the BMP will be critical, as space is often at a premium in more urban areas.

**Proposal:**

Enhance the regulatory stormwater management benefits of trees and quantify the socio economic values of the benefits of tree canopies.

**Rationale:**

Enhancing the SWM Credits will provide a financial incentive for developers to maintain or plant trees, as a means of offsetting the size and costs of other mitigation measures. Quantification of the socio economic benefits of canopies and preservation of mature canopies can help in attaining funding to implement these practices.

**Tree Banking**

**Proposal:**

3) Virginia should, by legislation, grant all localities the authority to develop tree canopy banking/trading programs that allow for offsite plantings. Such a trading program should incentivize onsite or "close in" protection/replacement but also allow for the possibility of more distant mitigation through tree plantings/protection at a higher ratio (i.e., 3:1). Allowing all localities (not just Planning District 8 as in existing law) to receive funds from developers for offsite tree plantings and allowing trees to be planted on private property in addition to public lands are additional tools that could assist localities and developers to achieve tree canopy goals in a more flexible way.

**Rationale:**

Virginia has long recognized that offsite mitigation or trading programs, if well designed, can provide the flexibility to accommodate different goals. Stream bank mitigation, wetlands mitigation, nutrient credit trading programs and local tree banking programs are examples. All localities should have the ability to develop and implement offsite/tree banking program, provided they are designed in a way to prioritize onsite vs. offsite tree canopies. Incentivization can be done through higher ratios (i.e., more acres planted and preserved if offsite) and also encouragement of "close in," local plantings/preservation by allowing for tree giveaways to nonprofits and for tree plantings on private property. Developers have great familiarity with similar programs and the flexibility they offer.

**Proposal:**

Tree Banking is a funding policy to allow for offset credits for a development, when the requirements for tree canopy cannot be met on site due to impracticality or an unreasonable hardship. • Allow non-profit organizations based in localities outside Planning District 8 to receive funds from localities for tree planting. • Allow trees to be planted on private property in addition to public lands. • Allow tree banking to occur at larger landscape scales outside of jurisdictional boundaries, such as watersheds, or to be applied statewide. • Remove cap limits on the amount of fines that can be levied to mitigate a tree's removal

**Rationale:**

Tree Banking is a funding policy to allow for offset credits for a development, when the requirements for tree canopy cannot be met on site due to impracticality or an unreasonable hardship. Local governments typically own no more than 20% of the land (schools, WTPs, parks) and yet mitigation plantings of offsite credits have to be established on government owned lands. The language allows for exceptions to the tree

replacement requirements based on unnecessary or unreasonable hardship for the developer. The code does not allow tree bank funds to be dispersed to nonprofit community organizations, thereby limiting a locality's ability to plant trees on private property. In highly developed communities, available land for mitigation may be lacking. However, the code limits expenditures to the non-attainment area in which credits were generated. Funds could be more adaptable by allowing jurisdictions to apply tree banking on a regional or watershed scale. Finally, the state caps the amount a locality can impose as a cost for tree removal during development, and thus levied fines do not reflect the "true" value of large, mature trees. Finally, trees are illegally removed from sites in some cases even when the site plan showed the trees to remain. Although a developer can be fined for this, VA's fines are so low that some simply see this as a cost of doing business. Tree banking could also be used to target reforestation in disadvantaged and red-lined communities.

### **Locality capacity for urban forestry**

#### **Proposal:**

Provide resources for each locality to establish an ongoing urban forestry division and develop a 10-year urban forest management plan that is updated every two years. This should include tree canopy goals that address: climate change, sustainability, stormwater mitigation, urban heat islands, air quality, food access + urban agriculture with a lens on increasing health outcomes for residents.

#### **Rationale:**

Rationale: Not every locality has an urban forestry division and outsources many responsibilities to community groups, the Department of Forestry or a local university. In order for any city to make progress with its urban forestry, it needs a staff to do the work. In particular, cities with formerly redlined neighborhoods can only do this with dedicated funding, personnel and a management plan that addresses systemic issues.

#### **Proposal:**

Funding of capacity building within local jurisdictions to add foresters/arborists that are credentialed and can manage tree programs.

#### **Rationale:**

Existing staffs do not have the time or training to adequately manage new programs that are proposed. Foresters/arborists have specialized knowledge allowing them to determine if existing trees are worth preserving (are they diseased, damaged, or in the process of demise that will not survive within a set period of construction.)

#### **Proposal:**

Virginia needs to commit state dollars to planting, maintenance and workforce development of urban forestry to combat climate change with green infrastructure. Cities with a history of redlining and urban renewal should receive priority funding to make this happen.

#### **Rationale:**

Although we're making progress with reforesting urban areas through tree plantings, community gardens and buffer programs, we still need to close the funding gap to maintain these green spaces. In addition to setting canopy goals, localities need money to water, prune, mulch and pay personnel to take care of our trees.

**Proposal:**

Creation of a statewide Green Corps training program to recruit, train and hire an entry-level workforce in urban forestry, urban agriculture, stormwater mitigation and green infrastructure. Program participants will focus on environmental justice and economic security in neighborhoods that historically have been disinvested in due to redlining and urban renewal. Recruitment of trainees should be high school students, returning residents and individuals living in underserved communities to build a career in urban forestry and agriculture.

**Rationale:**

Urban forestry is a predominantly white, male industry with few people of color and women in the field. Oftentimes, community engagement is a barrier in implementing and sustaining projects in Black and Brown neighborhoods. It's important to work with people from the community who have a relationship and understanding of other social issues, such as culture, mobility, language and housing. For the next generation, it's more effective to create a school-to-green pipeline, instead of a school-to-prison pipeline. Let's create more opportunities to strengthen our environment, economy and community members at the same time.

**Proposal:** Promote the idea of urban forestry or arboriculture education at 4 year or 2 year university or a HBCU to help promote the ideal of trees as environmental infrastructure and preventative health infrastructure.

**Rationale:** Need to train 4 year professionals to help spread the "gospel" in formerly redlined communities and also train field staff to maintain this infrastructure in the future

**Natural resources inventory prior to development****Proposal:**

2) Virginia should, by legislation, ensure that localities have the authority timely to obtain from developers the information localities need to effectuate their tree canopy goals in the plan approval process. Without limitation, localities should be authorized to require a developer to submit to the locality (before any timbering, land disturbance or related site approval) of a natural resources inventory (i.e., identification of environmental features) for a proposed development site. The information should be sufficiently detailed to allow assessment of the environmental assets, a determination of the protection that is needed for each feature or adequate mitigation to compensate for any impacts.

**Rationale:**

Localities need site specific information in order to assessed how to ensure important environment features are protected. A natural resources inventory will provide that information in a timely way that should also assist developers in ensuring the plan of development is appropriate for the site.

**Proposal:**

4f. Require an existing natural resource or tree inventory to be submitted prior to any engineering plan approval in order to prioritize the preservation of key natural resources and trees before any economic burden is incurred by the landowner or developer.

**Rationale:**

Making environmental assessments part of early design decisions will help make a more educated decision on siting development. This may require more work earlier in a project, but reduce conflicts after developers have spent significant funds on design. We believe this may be a win-win, because environmental assessments are often required anyway, and this just shifts the cost and effort earlier in the process. It could potentially create conflicts where the jurisdiction disagrees with a developer about the potential impact to the site's environmental assets, and clear guidelines should be set on what constitutes value, such as valuing intact ecosystems and contiguous tree canopy, and allowing for on-site mitigation, to have a "way out" in a situation of disagreement.

**Requirements for canopy cover****Proposal:**

1) Virginia should, by legislation, ensure all localities have the authority to establish any limits, and any requirements needed to achieve them, for the tree canopies to be achieved through preservation or replacement in connection with development projects, in order to achieve local environmental and economic development goals, including the following: a. Mitigation urban/suburban heat islands, especially to promote equity in formally redlined areas b. Local flooding, especially in Chesapeake Bay Preservation Act areas c. Promote water quality benefits, especially through nutrient uptake required by MS4 permits d. Protect public health by mitigation air pollution (NOx/smog, PM, carbon/CO<sub>2</sub>, etc.) e. Ensure the public's voice as expressed in the locality's comprehensive plan is honored (e.g., enhancing density, reducing sprawl, protecting wildlife corridors, etc.) f. Enhancing property values through increased open, green spaces

**Rationale:**

Current state law limits what localities may require of localities to enhance tree canopies within their jurisdiction, even where tree canopies are very important and cost effective tools to meet local economic and environmental goals. Affording localities this flexibility will provide local residents in all communities a meaningful voice (through the comprehensive plan and development of local ordinances) in shaping their communities to address negative legacies from the past (redlining and urban heat islands), current problems (local health issues, flooding and pollution control) and help address future concerns from property values to climate mitigation. Local flexibility will also ensure that tree canopy requirements meet local needs that are plainly different across Virginia's different regions.

**Proposal:**

Specify conservation and preservation of the existing tree canopy as the main priority, with tree planting as a supporting task. Allow localities to set their own standards for tree canopy by zoning class. Amend §15.2-961.1, allowing localities to set standards for greater canopy cover requirements. Caps should be removed from the code which currently is stated as "not to exceed" (20 residential, 15 PUD, 10 commercial) and instead localities must be enabled to establish their own canopy caps. Allow localities to institute shorter timeframes for achieving tree canopy goals (e.g. 10 years instead of the usual 20 years that is allowed).

**Rationale:**

Currently credits for the Chesapeake Bay WIP provide credits for new tree planting and stream buffers but not for preservation of existing forests. This has led to removal of trees by some in order to get credit for newly planted trees. In addition, VA is the only state known to limit a localities ability to require minimum canopy coverage. §15.2-961 allows for establishment of canopy cover by zoning class; however it has a low adoption rate in Virginia, with only 18 jurisdictions utilizing it at this time. Canopy percentage targets in the code are inflexible at the state level, since the section caps canopy to 20% for Residential, 15% for Planned Unit Developments, and 10% for Commercial zones. This prevents local governments from setting higher standards for canopy coverage in these zones. Another tree conservation ordinance, §15.2-961.1, allows for greater canopy cover requirements and provides additional protections, but its application is limited to non-attainment areas in Planning District 8. Communities outside Planning District 8 have indicated an interest in utilizing these higher standards, and should be allowed to do so. Lastly, historic racism and Redlining has led to lower canopy cover in under-served and dis-invested communities of color. New tools are needed to help establish canopy cover as communities grow or redevelop.

**Proposal:**

Adopt a new local option tree canopy statute that is available statewide to any locality. This new statute would be applicable to all site plans for any subdivision or development and would use 15.2-961 as a starting point. The new statewide statute could include any changes in the terms of 15.2-961, add provisions from 15.2-961.1 and add any new concepts that are agreed upon on a consensus basis by the CDG. Any authority granted for tree conservation targets in the new statute, as provided in 15.2-961.1, must allow for applicants to submit a deviation letter authorizing deviations from the locally established tree preservation targets on a case-by-case basis. It must continue to prohibit a locality, as provided in 15.2-961.1, to meet a tree preservation target that prevents the applicant from developing a use authorized by the existing zoning for the property. Localities should not be able to exceed the standards established in the new statute. Instead, the statute should set the bar at appropriate levels that protect existing tree canopies and promote tree planting with uniform ceilings that will create certainty and uniformity in their application to projects. The statute should encourage uniform interpretation and implementation of the tree canopy targets contained in the new statute.

**Rationale:**

15.2-961 has a level of simplicity that is desirable but does not grant the authority to conserve trees sought by a number of localities and the conservation community. The two existing statutes contain most of the concepts that would meet the needs of localities while continuing to promote uniformity and consistency in their application. This new statute will have a level of simplicity not found in 15.2-961.1 and would include provisions that will encourage localities to adopt it without incurring significant additional costs or complexity in administration.

**Proposal:**

A new statewide local option tree canopy statute should encourage and incentivize in-fill development. Tree planting should be emphasized with in-fill development to create green space in urban environments and also protecting and benefiting underserved communities.

**Rationale:**

Encouraging in-fill development protects the loss of tree canopy that results from greenfield development. Tree conservation targets present a greater challenge for in-fill development because there are less trees on site pre-development. Encouraging tree planting during in-fill development will often allow for the planting of larger trees than would be preserved through conservation which can force the planting of smaller trees.

**Proposal:**

Have the Virginia State Forester establish a uniform, statewide projected tree canopy calculation methodology based on input from an advisory group comprised of impacted stakeholders

**Rationale:**

Virginia's two primary tree statutes contain provisions requiring a site plan for any subdivision or development be able to demonstrate that a site will meet a minimum tree cover or tree cover percentage 20 years after development. For example, Virginia Code §15.2-961.1 requires, after 20 years, a minimum 10% tree canopy for sites zoned business, commercial, or industrial; 10% tree canopy for a residential site zoned 20 or more units per acre; 15% tree canopy for a residential site zoned more than eight but less than 20 units per acre; 20% tree canopy for a residential site zoned more than four but not more than eight units per acre; 25% tree canopy for a residential site zoned more than two but not more than four units per acre; and 30% tree canopy for a residential site zoned two or fewer units per acre. Virginia Code §15.2-961 requires, after 20 years, a minimum 10% tree canopy for a site zoned business, commercial, or industrial; 10% tree canopy for a residential site zoned 20 or more units per acre; 15% tree canopy for a residential site zoned more than 10 but less than 20 units per acre; and 20% tree canopy for a residential site zoned 10 units or less per acre. Currently, the methodology for calculating projected tree canopy for different types/categories/classes of trees varies by locality. Providing a uniform, statewide methodology of calculating projected tree canopy coverage would provide consistency for the development community and their environmental consultants; and likewise, would reduce the burden on local government arborists and planning staff who are currently responsible for developing their own projections. Our recommendation is to have the Virginia State Forester convene a stakeholder advisory group to recommend for adoption a uniform methodology that must be utilized by local governments who enact tree ordinances under any future tree preservation, replacement, or planting statute. Consideration should also be given to requiring localities who have existing tree ordinances under 15.2-961 and 15.2-961.1 to use the statewide methodology.

**Proposal:**

5f. Amend § 15.2-961.1 and § 15.2-961 to give localities the authority to establish their tree canopy replacement and conservation goals to address equity in formerly redlined areas, increase flood resiliency, realize local comprehensive plan goals, and meet water quality permit requirements.

**Rationale:**

Proposal 5f - this providing localities with additional authority and local option tools - gets at the heart of what brought us here today. Indeed, these were the very objectives in legislation that resulted in these meetings. We unequivocally support providing localities the tools to achieve their specific needs and goals for flood resiliency, stormwater management, comp plans, etc.

**Proposal:** Provide an urban forestry canopy cover percentage range for localities.

**Rationale:** The proposal listed above could have the unforeseen consequence of leading to "industrial sectors" where canopy covers could be set ridiculously low. Giving localities a range perhaps above 25% or so.

### **Exceptions/deviations/mitigation**

**Proposal:**

A deviation letter requesting a modification to a locality's tree preservation target set under a new statewide statute that is submitted by a certified landscape architect or arborist may only be rejected or modified by a locality if requested by a certified landscape architect, an arborist or an urban forester on the staff or who is retained as a consultant to the locality. New concepts could be adopted to promote consistency and reduce costs for localities to administer which will encourage adoption of the statute.

**Rationale:**

Significant weight should be given to the professional opinion and calculations made by certified landscape architects and arborists. A planner or staff lacking this professional and science-based training should not be able to reject or modify the work of these professionals. Local staff or consultants who have such professional credentials should, however, retain the ability to request modifications to a deviation letter submitted by an applicant.

### **Tree Preservation**

**Proposal:**

Strengthen existing zoning ordinances to provide incentives to developer to preserve existing shade trees or trees over 15" diameter.

**Rationale:**

Able to use what is on the books already in certain localities

**Proposal:**

Allow for conservation of mature, middle and young trees in developing tree canopy over simply conserving mature trees.

**Rationale:**

Mature trees tend to succumb to disturbance and die more quickly. Develop a plan to prioritize which trees could best be saved long term and separate by species as opposed to a one size fits all with only mature trees. Soil and site conditions should be considered.

**Proposal:**

Be strategic in the use of trees for stormwater management by incentivizing trees in or near riparian buffers. Trees in quantity, or small stands, are better than a few along the street that may be damaged later when fixing other infrastructure.

**Rationale:**

A few trees or trees randomly along a road don't substantially provide protection for stormwater management. Riparian buffers along streams and a grouping of trees strategically placed may have a longer-term survival rate and better provide for water quality benefit. Shouldn't have a tree just for the sake of a tree – should be strategic. Consider hydrologic function on a site, or even watershed scale.

**Proposal:**

Develop a standard for the “right plant in the right place” as it needs to be site specific. When you change a landscape because of development, native trees may not be the best site-specific tree. In most cases, they probably can be. In any event, invasive species must be avoided.

**Rationale:**

Different species of trees often require different site/soil conditions, and every project will be different. Offer guidance to developers regarding site/soil characteristics and tree selection.

**Penalties****Proposal:**

Create more meaningful fines/penalties for individuals that don't adhere to the regulations.

**Rationale:**

Currently if fines/or penalties exist they are minimal and viewed as "the cost of doing business" &gt; it is cheaper to pay the fine then comply with the regulations. Developing a fine and/or penalty system would need to be based on the benefits provided, cost of replacement of the canopy lost, the impact to other factors resulting from canopy loss, SW increases, increase in carbon, increase in heat island affect and the associated medical costs associated with the neighboring populations.

**Local Government flexibility**

**Proposal:** Provide greater flexibility to local governments to achieve their specific goals (two proposals were worded this way, and both rationales are indicated below).

**Rationale:**

Across the Commonwealth we have 95 incredibly unique, diverse counties. Some are urban, some our suburban, some are rural. Some are coastal, some are landlocked. And amongst these counties, they all have their own unique perspectives, problems, proposed solutions, and goals. Development differs across our localities; environmental concerns and/or threats differ across our localities; planning - short term and long term - differs across our localities. Allowing localities to not merely set their own specific goals for tree preservation, water quality improvements, etc. but actually equipping them with a

broad array of tools that they can in turn choose from and implement as necessitated by their unique set of factors is critical. I know I have heard from developers etc. that they really desire consistency or predictability when it comes to the development process, and a part of that is why they often push for model rules or uniform policies or mandates that affect ALL localities. However, if there's one thing we hear from our members, it's that "one size fits all ill fits most." Providing flexibility in what goals our localities can set and how they can achieve them are imperative going forward. What works from one locality does not necessarily mean it will work for another. Frankly, it may not even address the actual needs or objectives of the other locality. Looking at the rest of the proposals in Section 5, many in fact fall under this umbrella header of "greater flexibility to local governments to achieve their specific goals." 5e is one way to achieve this, as is 5f, 5g, 5k, and so on. Frankly, even beyond Section 5, a number of other proposals fit under the umbrella of 5d. For example, we have had member localities raise items like 4e, 4f, 4i and others as proposed ideas. While we would not prefer prescriptive language for these proposals - in other words, that localities MUST require X or incentivize Y - these are items that we would be happy to consider supporting as a local option. This is our top priority pertaining to the focus and work of this CDG.

**Rationale:**

We have very different ecosystems in the Commonwealth, from coastal to montane. These ecosystems naturally support different levels of tree canopy. Similarly, urban development and equity issues differ across Virginia, as well, leading to different pressures and needs. Allowing local jurisdictions to set different targets, instead of blanket maximums, will help those jurisdictions define better targets, and work with their public, developers, and non-profits to find the best tools to meet those targets. Being able to set localized targets helps these communities address their needs, and similarly, set them appropriately to allow for sustainable development, where that is a local need. This can be a win-win, as it can reduce pressure on the state legislature to address these diverse needs, and allow localities, who are best informed about their needs and ecosystems to set realistic targets.

## Appendix H - Google Doc used for CDG work

### Secretary of Agriculture and Forestry and Secretary of Natural Resources Tree Conservation Work Group – Collaborative Decision Group (CDG)

August 25 1:00-4:00 p.m.

East Reading Room - Patrick Henry Building, Richmond

#### Decision-making by consensus

##### Refining agreements:

- A facilitator or any group member can ask for a test for consensus about an emerging proposal.
- A facilitator or group member clearly states the proposal on the table in a way that people can evaluate
- Others may wish to further clarify the proposal
- Group members indicate their gradient of agreement for a proposal (or proposal package):
  - 3 - I fully support both the content and implementation
  - 2 - I have questions or concerns but can live with the content and support its implementation
  - 1 - I have too many questions or concerns, and we need more discussion
- The group then hears from members, first, who are “1”s - to hear their concerns and what it would take to bring them to a “2” or a “3”
- For stronger consensus, the group then hears from members who are “2”s” - to hear their concerns and what it would take to bring them to a “3.”

##### Reaching Consensus Means:

- Everyone can live with the final agreements without compromising issues of fundamental importance
- Individual portions of the agreement may be less than ideal for some members, but overall the package is worthy of support
- Participants will work to support the full agreement and not just the parts they like best.

## Condensed Proposal Ideas

### Cluster Development:

- A. Consider a legislative change that would allow the Virginia Code regarding cluster development (§15.2-2286.1) to be applicable to all localities within the Commonwealth, and strike restrictions that require a growth rate of 10%.
- B. Consider expanding the use of “cluster development ordinances” currently enabled under Virginia Code §15.2-2286.1; and evaluate other opportunities to minimize required lot clearing for road infrastructure.
- C. Consider evaluating whether the existing cluster development statute should be expanded to more localities.
- D. Consider expanding the use of “cluster development ordinances” currently enabled under Virginia Code §15.2-2286.1; and evaluate other opportunities to minimize required lot clearing for road infrastructure. Consider evaluating whether the existing cluster development statute should be expanded to more localities.

As a package of recommendations, please indicate your current level of support.

Please place your name in the column to indicate your level of support for the package.

In the “Explanation,” please use the letters of each proposal to indicate where you have issues, questions, concerns, and suggestions.

3 - Fully support both content and implementation	2 - Have questions and concerns, but can live with content and implementation	1 - Too many questions and concerns, further conversation is needed	Explanation: If you are a “1” or a “2” please put here <b>specific</b> language changes that would enable you to move up the scale to either a “2” or a “3” in support
Vincent Verweij			This feels like a Win-win option, giving more flexibility to both development and local jurisdictions. It seems like it has gotten too hobbled by restrictions over time, and more flexibility will

			be a welcome tool. As long as this is used with the intent to conserve open space, it would help meet the goals of this group.
D Phil Abraham			Need to discuss in context of new tree canopy authority. May want to link expanded or a higher level of tree canopy authority applicable to residential development to the locality adopting a cluster ordinance.
	Scott Smith		Would like more information re: B,C,D. Fully support A.
		Peggy Sanner	Like the concept of expanding applicability of these provisions. Would need to consider implications for open space provisions and tree canopy rules. Interested in expanding protections for natural resources.
	Chris McDonald		Generally supportive of this proposal. Generally we support expansion of local option land use tools, but need to discuss with members and better understand implications and impacts. Would like to see specific proposals.
	Sheri Shannon		Need to learn more details about cluster development ordinances and natural resources inventory. Would like to discuss with EJ members.
Karen			It should apply to any

Firehock			locality who wants to use it. Problem is the current legislation does not allow indicating the location of steep slopes, wetlands, riparian buffers etc.It currently negates local government environmental regulations
	Corey Connors		Need to understand why the ordinance was rewritten with new prohibitions. Supportive of continued evaluation separate from this process (C), but concerned about potential changes on subject without further evaluation. More specificity re: proposals would be helpful.
		Martha Moore	In favor of expanding cluster development but not sure how to offer full support without more specific details.
Steven Traylor			Seems like there are options for all localities to get more proactive with canopy preservation.
Andrew Clark			In favor of proposal

**DISCUSSION NOTES:**

- Questions re: the differences between proposals.
- Clustering - for the development community its a way to balance the economics with the interests of tree preservation
- If this was framed as an opportunity to reduce impact to the open space, this could be seen as a win/win solution.

- Current legislation restricts the indication of steep slopes, etc. in the cluster development, which is why Albemarle, for example, has not taken up the current version of the regulation.
  - Clustering is good, but why prohibit people from indicating why sensitive features are located?
- GIC report distributed to the group provides a good background.
- Karen and Andrew to work on this? - coordinating with local government reps (individually to adhere to the public meeting rules)
- Continuing this discussion into tree canopy topic
- Bring cluster into parallel with preserving trees
- Goal of having the different pieces of legislation be in sync with each other

## Requirements for Tree Canopy Cover

- A. Consider requesting the State Forester to establish a uniform, statewide projected tree canopy calculation methodology to reflect different ecosystems and development pressures within the state, with input from a technical advisory group of impacted stakeholders and experts.
- B. Consider amending the statute(s) so that each locality may specify their tree canopy replacement and conservation goals to achieve local environmental and economic goals, such as addressing historical inequities in formerly redlined areas, increasing flood resiliency, realizing local comprehensive plan goals, and meeting water quality permit requirements.
- C. Consider changing the current requirements so that a deviation letter requesting a modification to a locality's tree preservation target that was set by a certified landscape architect or arborist, may only be rejected or modified by a locality if requested by a certified landscape architect, an arborist or an urban forester on the staff or who is retained as a consultant to the locality.
- D. Consider a new statewide local option tree canopy statute that encourages and incentivizes in-fill development. Tree planting should be emphasized with in-fill development to create green space in urban environments and also protecting and benefiting underserved communities.

As a package of recommendations, please indicate your current level of support.

Please place your name in the column to indicate your level of support for the package.

In the “Explanation,” please use the letters of each proposal to indicate where you have issues, questions, concerns, and suggestions.

<p><b>3 -</b> Fully support both content and implementation</p>	<p><b>2 -</b> Have questions and concerns, but can live with content and implementation</p>	<p><b>1 -</b> Too many questions and concerns, further conversion is needed</p>	<p><b>Explanation:</b> If you are a “1” or a “2” please put here <b>specific</b> language changes that would enable you to move up the scale to either a “2” or a “3” in support</p>
	<p>Peggy Sanner</p>		<p>Fully support B. Cannot support A because (i) not sure what tree canopy calculation specifically means, and (ii) do not have the understanding that the method of calculator is a major issue. Is it? (iii) would not agree with giving state forester open-ended authority beyond calculation or ability to delay implementation.</p>
	<p>Scott Smith</p>		<p>Fully support A and B. Need more information about C (perceive many legal challenges saying local expert is not qualified).</p>
	<p>Andrew Clark</p>		<p>Cannot support B. Support A and C. Support D after discussion w other stakeholders about consensus provisions from 961 and 961.1 that should be included in the new statute</p>
<p>Vincent Verweij</p>			<p>This allows for local communities to better set targets, whether they are developed or developing, and meet needs for tree conservation to address heat island, equity, and biodiversity issues. From Arlington’s practice, 961 does still conserve trees, because conserved trees are counted, and where trees cannot reasonably be conserved, 961 allows more flexibility. I would not oppose expansion of 961.1 beyond Northern Virginia, but I see more value in Option B, just allowing to set wider targets, within local ordinances, regardless of having adopted 961 or 961.1. Option A is acceptable, but allows for less local flexibility and adaptation to local needs and ecosystems. 961.1 also comes with issues of a high amount of exception requests, which can put significant stress on local forestry staff. I would support consistency in application of</p>

			code, to help with predictability from a development perspective, but flexibility in targets will be critical. Not noted here, but conserving planting space and healthy soil is ultimately more impactful in the long term.
		Corey Connors	<p>Tree canopy is an important goal. However, without specific details, one could ask if this could potentially subvert the authority of the Department of Forestry/State Forester? What impact would these statutes have on silvicultural activity? Could support A.</p> <p>Additional scientific background supporting the specificity needed in tree canopy goals: <a href="https://www.americanforests.org/blog/no-longer-recommend-40-percent-urban-tree-canopy-goal/">https://www.americanforests.org/blog/no-longer-recommend-40-percent-urban-tree-canopy-goal/</a></p>
	Sheri Shannon		Support B. Concerned about A and potential inequitable biases built into methodology and standard. Question about C and legal challenges in the planning process.
	Chris McDonald		Fully support B. Concerned about methodology and resulting standard and impact of A. Also concerned about new standard in A overriding/weakening/subverting existing authority of certain localities. Understand the tension between needs of the localities and the needs of the development community. Need to learn more about C. No issues with D. Would support expansion of 15.2-961. We are not trying to capture forestry operations in any new proposals. Support a nuanced approach to avoid this.
		Martha Moore	Have to maintain the State Forester authority over riparian requirements. Not sure how this would intersect with tree preservation because you really need to include provisions for the right tree for right site conditions. Learn more towards A.
	karenFirehock		Currently state code caps canopy for residential, commercial and PUD. Let localities set

Steven Traylor			May need to establish minimum TCC for counties, towns and cities and or region to reduce confusion.
Phil Abraham A, C and D		Phil Abraham B	Broad authority to exceed new increased goals is a non-starter for my members

## DISCUSSION NOTES:

- If authority of the state forester is preserved, that would help both Corey and Martha move upward in their support. It must be specified in this new code so that it is applicable here in this new code. (Corey: please add that agricultural/silvicultural exemptions be preserved as in other places in the code - in the event of a new statute)
- Not sure we need a new code, may be able to amend existing code
- Only state that caps the canopy that can be set for residential, and planned use zoning classes - so why not allow localities to set their own caps for these, and this would not impact forestry districts.
- In some localities impacts have been experienced by forestry districts, so cannot make that assumption, would need to specify that it would not impact forestry districts
- Might be able to support higher limits, but very much need to have some kind of uniformity - the limits are critical to building industry
  - Want to preserve ability of localities using existing statute - not looking to take this away from localities, don't want to upset what is currently in place or being implemented
- Consistency across the board would help the consulting/development community
- Provisions relating to tree canopy requirements in Comp Plans can be used to deter or stop or guide growth. So to have blanket requirements for localities that sets a high target undermines the flexibility that is needed.
- One statute arbitrarily applies to a certain part of the state and that doesn't make much sense
- Having a tree canopy goal allows for localities to go higher, it's a minimum goal. Localities can go higher. Example of Albemarle has a goal of 40% but canopy is actually 44%, but they might lose trees. So having the goal is helpful for long-term consistency.
- Could we look at A + B and find some middle ground.
- B would provide better flexibility for local jurisdictions

## Tree Banking

- A. Consider providing to all localities the authority to develop tree canopy banking/trading programs that allow for offsite plantings.
- B. Consider that any not-for-profits located within the locality or locality within the designated county can receive mitigation banking funding for tree planting.
- C. Consider allowing tree banking to occur at larger landscape scales outside of jurisdictional boundaries, such as watersheds, or to be applied statewide.
- D. Consider that trees can be planted on any public lands within those jurisdictions.
- E. Consider allowing trees to be planted on private property in addition to public lands.

As a package of recommendations, please indicate your current level of support.

Please place your name in the column to indicate your level of support for the package.

In the "Explanation," please use the letters of each proposal to indicate where you have issues, questions, concerns, and suggestions.

<b>3 -</b> Fully support both content and implementation	<b>2 -</b> Have questions and concerns, but can live with content and implementation	<b>1 -</b> Too many questions and concerns, further conversation is needed	<b>Explanation:</b> If you are a "1" or a "2" please put here <b>specific</b> language changes that would enable you to move up the scale to either a "2" or a "3" in support
	Scott Smith		Fully support A, D, E. Agree with B, however concerned how this will impact city's ability to create some. Wetland banking does not allow cities to create wetland banks. 1 on C - tree banking will not allow localities to reach goal.
		Martha Moore	It is not fair for another locality to target land uses in another locality. This also

			<p>targets existing rural uses of land and harms the farmers trying to maintain a scale of operation to help their farms survive. Tree banking for the sake of tree banking doesn't help the forestry industry because these bank initiatives usually do not allow for harvesting and replanting of those trees.</p> <p>So if it is urban to urban within the same locality then we can move closer to support.</p>
	Phil Abraham		<p>Tree-banking authority is important bu</p>
	Peggy Sanner		<p>I am very interested in a potential expansion of tree banking, but emphasizing offsite planting/preservation and also steeply iincentivizing onsite protection/preservation through high ratios for offsite (e.g., 3:1) . If offsite is chosen, should be locality approved, subject to public comment and</p>
	Vincent Verweij		<p>Private property planting will be critical in this option. Public space only has so much opportunity for reforestation, and diminishing private urban forests will negatively impact our community's health. Going across jurisdictions is good for the regional ecosystem, but may be very difficult to implement. Residents of</p>

			<p>Fairfax County may not want to give residents of Loudoun County trees that they lost. Tree loss is personal, and impacts your community. To see them not replaced there is difficult to stomach for many. That all being said, allowing for banking to plant trees in formerly red-lined areas, even across jurisdictions, may be a good opportunity to address equity issues. Also agree that mitigation should be urban-urban, rural-rural</p>
	Corey Connors		<p>Questions: Where is this tree banking going to happen? How would the provisions regarding private lands be structured? What restrictions would be placed on forest management on private property for trees “banked” under this program?</p>
	Andrew Clark		<p>Could support A but need additional information about how the tree banking program works in Northern Virginia (localities with 961.1 authority)</p>
	Steven Traylor		<p>Support A,B,D &amp; E . I believe crossing jurisdictional boundaries is a legal quagmire and the wrong message to send to constituents I fully agree with Vincent also on the point of private to private tree replacement and public to public</p>
	Sheri		<p>Support B, D and E. Would</p>

	Shannon		like to see clarification on settings if possible (urban, ex-urban, rural) for A, primarily because density is often increasing in areas that are formerly redlined. So, can support offsite plantings in areas identified as priority areas by locality. Focus should also include maintenance and watering in addition to planting.
	Chris McDonald		Fully support A. Need more info on B and C. What is cost impact of D? And would it be a local option or mandate? What would all of this look like? Seems like we need more information or detail on how this would work. How does this mesh with urban v. suburban v. rural? Would be curious about how this could hypothetically be used to remedy formerly redlined areas, and at the very least how it could be used to prevent it from making things any worse. In general, to the extent that these are permissive, we're supportive.
Karen Firehock			Support A, B, D, E

**DISCUSSION NOTES:**

- Goal is to expand 961.1 - to allow more creativity and flexibility to plant on private lands, not just public lands. There's only so much public lands.
- Want to recognize that offsite replacements and protections have a place, but effective banking program needs to include steep incentivizing of onsite preservation - e.g., if you do it onsite, you could have a 1:1 ratio; if you do it offsite, you could have a 3:1 ratio.
- Want to ensure that the locality where mitigation occurs actually get the benefit.

- One of the goals is to enable localities - if they've run out of room in their locality - to enable mitigation to occur within the watershed.
- Ideally, should aim for private (development/loss of trees) to private tree (mitigation) replacement, and public (development/loss of trees) to public tree replacement.
- If developing a site with a requirement to preserve a certain amount of trees, and the developer finds that it is impractical, then you can satisfy the obligation at a different site. It's also possible that actions such as riparian buffers might satisfy or be able to serve as mitigation
- Banking actually creates opportunities for plantings in underserved areas if mitigation is allowed to happen in underserved areas.
- Would support urban to urban mitigation. But rural areas are not supportive of urban to rural mitigation, as this encroaches on farmland preservation.
  - If it is changed to "urban to urban mitigation" and within the locality, would move from a "1" up the scale.
- Could we offer incentives to developers, as opposed to mandates?
- Wants to raise possibility that mitigation could be targeted to support plantings in formerly redlined areas
- Hope is that communities that are setting canopy goal, then they need an action plan, so it would be helpful if the localities would identify in their action plan the places where this would be desirable for "equity mitigation." Those areas would/should need to be heavily involved so that it is determined whether they WANT those trees, and to ensure that maintenance will be provided long-term.
  - One of the problems with offsite , and off-locality options, is the removal of responsibility for long-term maintenance.
  - A possible way to address this would be to shift the burden for maintenance to the developer for a limited time of, say, three years, to give the tree the best opportunity for survival.

## Tree Preservation

- A. Consider strengthening existing zoning ordinances to provide incentives to developers to preserve existing shade trees or trees over 15" diameter.
- B. Consider allowing for the conservation of mature, middle and young trees in developing tree canopy over simply conserving mature trees.
- C. Consider the strategic use of trees for stormwater management by incentivizing leaving trees in or near riparian buffers.
- D. Consider developing a standard for the “right plant in the right place” as the selection of tree species/ cultivars needs to be site specific.

As a package of recommendations, please indicate your current level of support.

Please place your name in the column to indicate your level of support for the package.

In the “Explanation,” please use the letters of each proposal to indicate where you have issues, questions, concerns, and suggestions.

<b>3 -</b> Fully support both content and implementation	<b>2 -</b> Have questions and concerns, but can live with content and implementation	<b>1 -</b> Too many questions and concerns, further conversation is needed	<b>Explanation:</b> If you are a “1” or a “2” please put here <b>specific</b> language changes that would enable you to move up the scale to either a “2” or a “3” in support
	Vincent Verweij		Concerned that focusing too much on large trees will be difficult to do. The larger the tree, the harder it is to conserve properly. I support B and C, but I believe implementation of A will be very difficult, practically. We may end up with a lot of improperly conserved trees, where the removal burden falls on the new owner(s), or a lot of exceptions, which can lead to excessive time and resources spent by local jurisdictions writing exceptions. Looking at forest patches and intact ecosystems will be more effective, as well. Option D seems to relate more to planting, not conservation, but if it is intended to talk about conservation, this language needs to be improved. Perhaps requiring conservation at larger lots, and replanting on smaller lots is appropriate.

Martha Moore			Support B, C, D
	Phil Abraham B,C and D		“A” needs to recognize the numerous circumstances where preserving a tree with 15” or more diameter is not appropriate or best solution. Recognize the importance of incentivizing in-fill development and circumstances where tree planting might produce better environmental results than conservation
Scott Smith			
	Peggy Sanner		Strong support for C. Interested in arborists’ and others’ thoughts on the other points,
	Chris McDonald		Support C. Tentative support for B. Really need more information from members - and in particular technical experts - about the other proposals and their impact.
Corey Connors			Full support for B, C, and D.
Sheri Shannon			Strong support for C
	Steven Traylor		Consider using standardized Tree Risk Assessment Reports in language of whether or not to preserve mature trees in tree preservatoni plans.
	Andrew Clark		Similar to earlier discussion: we are supportive of creating new statute combining provisions of 961 and 961.1
	Karen Firehock		

**DISCUSSION NOTES:**

- What might have worked previously might not be the best plant for that particular site.

- 961 and 961.1 - two statutes, one applies just to NOVA, so some localities can't do "tree preservation."
  - Goal would be to combine/ integrate these two statutes
- Idea of larger lots having flexibility requirements and need to be realistic about long-term survival
- Management of trees issues that might appropriately go outside of the code, perhaps in regulation or guidance, so long as we can agree on the general principles of what would go in the code.
- Infill development - there are issues that may require different treatment of trees - incentives for large trees may be counter-indicated in those spaces, so may want to have some flexibility
- Can we add urban heat islands to this as an important consideration

### Natural resources inventory prior to development

- A. Consider allowing any locality within the Commonwealth to require the submission to the locality (before any timbering, land disturbance or related site approval) of a natural resources inventory (i.e. identification of environmental features) for a proposed development site.
- B. Consider allowing any locality within the Commonwealth to require the submission by the developer to the locality (before any timbering, land disturbance or related site approval) of a natural resources inventory (i.e., identification of environmental features) for a proposed development site.
- C. Consider requiring an existing natural resource or tree inventory to be submitted prior to any engineering plan approval, in order to prioritize the preservation of key natural resources and trees before any economic burden is incurred by the landowner or developer.

As a package of recommendations, please indicate your current level of support.

Please place your name in the column to indicate your level of support for the package.

In the "Explanation," please use the letters of each proposal to indicate where you have issues, questions, concerns, and suggestions.

<b>3 -</b> Fully support	<b>2 -</b> Have questions	<b>1 -</b> Too many	Explanation:
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both content and implementation	and concerns, but can live with content and implementation	questions and concerns, further conversion is needed	If you are a “1” or a “2” please put here <b>specific</b> language changes that would enable you to move up the scale to either a “2” or a “3” in support
	Scott Smith		A + B - limits need to be determined re: what is included. This could easily be too expensive to complete the inventory preventing activities. C - The existing natural resource or tree inventory is an expense and could be very expensive
		Phil Abraham	Replace “natural resources” with “trees” and many/most localities do this if they currently care about tree planting and preservation. To go further is beyond the scope of this work group and does not consider duplicative requirements
	Vincent Verweij		This can help reduce cost. There does has to be some kind of “stick” to this, though. An inventory alone does not mean anything if the information does not create actionable changes.
		Martha Moore	Don’t understand what would be required in an inventory and timing for this when it is due.
		Karen Firehock	Inventory is too specific, we already can require designating steep slopes, riparian buffers, or location of mature forests.
		Corey Connors	It’s not always 100% clear what will become of forest land once it is harvested (reforestation vs. development).
	Chris McDonald		Generally supportive of these proposals, but would like to learn more about what would be in such a “natural resources inventory.” Would

			that be up to the locality? Or would that be defined in Code. To Vincent's point, what would the point of this be? Is this simply an inventory report requirement, or would there be some sort of actionable authority paired with this? Is this authority, to some degree, that localities already have? Would this conflict with any current authority?
	Steven Traylor		Need more specificity on what is to be inventoried along with specificity of minimum diameter with possible variables that take into account other woody plants.
		Andrew Clark	Many localities are currently requiring the submission of landscape plans, tree protection plans, etc that are similar to what is being proposed - these are often submitted at the time of plan review. Detailing every natural resource feature on a development parcel would be extremely costly and involved.
	Peggy Sanner		Learning more about natural resources inventories, what is included, what is potential cost, and what could be done with this
	Sheri Shannon		Support. Would like to see more definitions around what's included in the inventory.

**DISCUSSION NOTES:**

- Important for site plan reviewer to have all the information they need from the beginning, to understand the concerns, ecosystem issues, etc., in the approval process

- Very broad to say “natural resources inventory” - especially if requiring identification of all trees by species. So the cost of this could amount to a couple \$100K if you have a large parcel.
- The word “inventory” is problematic, as that denotes specific individual trees - and that is extremely expensive.
- Some discussion about what localities are currently doing. There are a lot of localities that require tree protection plans etc. that get into what is on the site. It’s not exhaustive, but does go into some detail. Are those requirements a general local government authority, or tied to statutes?
- It’s not always clear at time of harvest what is to become of privately owned land. How would these requirements apply in a situation like that?
- The action tied to the inventory is important. Need to define what a high value natural resource is. For example, meadows, wetlands, large stands of (mature) trees. Need clear expectations. It’s not enough to just provide an assessment.
- To avoid costly implications of the phrase “natural resources inventory” - replace natural resources with “trees” as that is our charge. But need to set targets for preservation targets (which will have implications for the canopy requirements) actually allows them more flexibility in achieving the preservation/ conservation
- Concerned that this is going to far: we can already require - and do - specifications for slopes, riparian buffers,
- To address these concerns, could possibly do an earlier inventory (not high-cost) of high-value resources so that development could be targetted away from those high-value resources; this advance work could be helpful, and is being done in some places already, but do we need this in state code
- Assumption that we will entrust planners and elected officials so why would we not put it in state code so we can ensure that it happens everywhere?
- In an ideal world, would require tree inventory, strategy development, etc. .... But this should be happening upstream in Comp Plans ...
- Concern that we can’t go on private property that we might miss ecosystems of the site. Developers might have better access than Cities.
- Something that might be a better fit as a best practice. When you legislate something that localities already have authority for, you might wind up taking away something they’re already able to do. To do a full tree inventory might not be necessary to achieve your tree conservation goals
- 

## Penalties

- A. Consider that penalties for violations of ordinances adopted pursuant to this section shall be the same as those applicable to violations of the locality’s zoning ordinances.

B. Consider creating more meaningful fines/penalties for individuals that don't adhere to the regulations.

As a package of recommendations, please indicate your current level of support.

Please place your name in the column to indicate your level of support for the package.

In the "Explanation," please use the letters of each proposal to indicate where you have issues, questions, concerns, and suggestions.

<p><b>3 -</b> Fully support both content and implementation</p>	<p><b>2 -</b> Have questions and concerns, but can live with content and implementation</p>	<p><b>1 -</b> Too many questions and concerns, further conversion is needed</p>	<p>Explanation: If you are a "1" or a "2" please put here <b>specific</b> language changes that would enable you to move up the scale to either a "2" or a "3" in support</p>
	<p>Scott Smith</p>		<p>Full support for A. Do not support B - if penalties/fines don't adhere to the regulations, what will they adhere to? This needs clarification.</p>
		<p>Corey Connors</p>	<p>Prefer incentives to penalties</p>
	<p>Vincent Verweij</p>		<p>There are penalties in place already for violations of 961 and 961.1, and there is some flexibility on the local level. There has been some concern raised that penalties for Specimen tree violations could be increased, but I'm not sure how many designated specimen trees there are in the Commonwealth. I would support raising the penalties in 961, or tying them to the actual loss of the value of the trees lost or impacted. Using the Council of Tree &amp; Landscape Appraisers Guide for Plant Appraisal to assess real values of trees lost can be a great standardized tool for penalties.</p>
		<p>Martha Moore</p>	<p>Prefer incentives vs. penalties</p>

	Chris McDonald		Need more information on current fines/penalties as well as additional input from members. If penalties are indeed too light or ineffective, would support an increased structure to prevent future wrongdoing. Would like to learn more.
	Philip Abraham		Need clarity on existing penalty authority. Not against preventing violations that are simply treated as a cost of doing business through enhanced penalties if demonstrated existing authority is inadequate. Link to willful violations too.
Steven Traylor			Allowing for specific language for Certified Landscape Appraisal method.
	Andrew Clark		Civil penalties for violating ZO exist in code now. Localities also currently have ability to requirement replanting of trees that are taken down/destroyed during construction process; and some localities require developer to post surety to cover the cost of replacing landscaping that dies within a year; and surety to cover cost of installing landscaping if the developer does not meet conditions of local approval. Our preference is incentive based approaches to tree preservation.
	Sheri Shannon		Support B. Would like to discuss with EJ members around penalties and incentives and how those are levied via community benefits.
	Peggy Sanner		Support and especially appreciate the detailed comments of Norfolk and Arlington on how penalties can be assessed.

Karen Firehock			Fines are currently too low for removal of trees to be protected on site plans. Can we use approved professional appraisal rates to value tree loss?
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## DISCUSSION NOTES:

- Current code already offers localities to levy civil penalties; do we just want to give higher authority to penalties?
- Yes, we do want to have require higher penalties; example of developer who was willing to cut down 300-yr beech trees because the penalty was too low. So need ability to impose higher penalties to create a real disincentive to prevent developers from breaking the law.
  - Fines could include both financial and replacement requirements
- In Norfolk, impose \$200/ diameter inch ... and that can go up to \$400/diameter inch. There is a method available for certified tree risk appraisal - Norfolk based it on that appraisal method.
  - Yes, this method is the best approach as it gets at the real value of a tree as opposed to an arbitrary value assigned.
- Incentives as opposed to penalties? Yes, let's look at the kind of incentives we've used with stormwater; this are effective, and also reflect a philosophical approach that is important to us.
- <https://www.isa-arbor.com/events/eventscalendar/index?id=9050> Tree Plant Appraisal Qualification
- <https://www.asca-consultants.org/page/TPAQ>

## Locality capacity for urban forestry

- A. Consider providing resources for each locality to establish an ongoing urban forestry division and develop a 10-year urban forest management plan that is updated every two years. This should include tree canopy goals that address: climate change, sustainability, stormwater mitigation, urban heat islands, air quality, food access, urban agriculture with a lens on increasing health outcomes for residents.
- B. Consider funding capacity building within local jurisdictions to add foresters/arborists that are credentialed and can manage tree programs.

- C. Consider creating a statewide Green Corps training program to recruit, train and hire an entry-level workforce in urban forestry.
- D. Consider promoting urban forestry or arboriculture education at 4 year or 2 year university or a historically black college or university (HBCU) to help facilitate the ideal of trees as environmental infrastructure and preventative health infrastructure.

As a package of recommendations, please indicate your current level of support.

Please place your name in the column to indicate your level of support for the package.

In the "Explanation," please use the letters of each proposal to indicate where you have issues, questions, concerns, and suggestions.

<b>3 -</b> Fully support both content and implementation	<b>2 -</b> Have questions and concerns, but can live with content and implementation	<b>1 -</b> Too many questions and concerns, further conversion is needed	<b>Explanation:</b> If you are a "1" or a "2" please put here <b>specific</b> language changes that would enable you to move up the scale to either a "2" or a "3" in support
Scott Smith			Fully support A, B, D. C - not sure how this would work. Would state employees be assigned to communities, who would they report to?
Martha Moore			Support D and VSU is a land grant university and has a College of Agriculture but needs funding and help in recruiting students to these programs.
		Martha Moore	Oppose (A) each locality having an urban forestry division vs. expanding resources through the urban forestry division in DOF - again, funding. To build off of Corey's thoughts on VT Urban Natural Resources, add Extension Specialists to work with localities because like VSU, VT is a land grant university and both VT and VSU have the outreach arm through Cooperative Extension. Cooperative Extension already works with localities on urban agricultural initiatives and research to connect science with what

			would work.
	Chris McDonald		<p>Would strongly support A in so far as an urban forestry division remains a local option. May not be feasible for every locality to do this, so to the extent that this is a mandate, even with state support this could be seriously problematic. This is particularly so should the General Assembly or a future Administration eventually strike this funding and leave local governments with another unfunded mandate. And does every locality even <i>need</i> an urban forestry division? Simply may not be necessary in certain localities.</p> <p>Would such state assistance <i>only</i> be for a specific “urban forestry division,” or could such assistance be applicable for similar offices, staff positions, contractors, etc? Would be supportive of an expanded interpretation of this.</p> <p>Generally support the high level concept of B but would like more information about what this would actually entail.</p> <p>Broadly speaking, we will always support additional technical assistance - via funding, experts, et.c - to local governments when it comes to these kind of initiatives.</p> <p>We have no position on Proposals C and D.</p>
	Corey Connors		<p>Need to first establish a strong foundation at the state level for urban forestry before launching locally-based initiatives. Also, VT is currently developing a degree program in Urban Natural Resources. VERY supportive of bolstering urban forestry capacity, but want to make sure we can crawl before</p>

			we walk.
	Vincent Verweij		<p>Fully support this. Capacity to provide full guidance on conservation and planting is limited at the local level, and qualified professionals are not always available. Providing additional training to create a greater workforce, along with providing more resources to support that workforce will be critical to longterm success of our urban forests.</p> <p>Localities do have to have the resources to support the urban forestry component of their regulations. Support from VDOF can help, and even localities like Arlington benefit from VDOF's support on a regular basis.</p> <p>An unfunded mandate from the state to require local jurisdictions to have forestry staff might be hard to meet for communities with fewer resources.</p>
	PeggySanner		Support state forestry expertise to localities; very fearful that funding for DOF will be hard to come by.
Sheri Shannon			
Steven Traylor			Would there be any way to institute funding for Tree Warden type or program as seen in Massachussets in localities that have no urban forester or staff. The above is similar to B but maybe just required for city or towns.
	Phil Abraham		Concern with cost of A and suggest our proposal 6(e) pages 41-42 could provide some of its benefits but at less cost to state. The state would need to fund this 6(e) capability at DOF.
	Andrew Clark		A: establishing a new dept should be decision made by local government. Support efforts to expand VaDoF

			technical expertise to localities
Karen Firehock			VDOF already has an UCF program. Give them more \$!

## DISCUSSION NOTES:

- A would support localities who currently don't have resources to hire arborists, and would provide them with important guidance; DOF could be a tremendous help to these more rural localities, and give them data and approaches that they otherwise would not be able to afford
- Concern with A, if it were to become a mandate, down the road, if funding were struck from the legislation this could become an unfunded mandate and a burden on the low-resource localities
- Currently two positions are funded in urban forestry - a critically UNDERfunded program - we need a more robust urban forestry program at the state level.
- VT is in process of developing a new program for urban forestry, so this will be helpful and a step in the right direction. Wherever we can incentivize and encourage 2 and 4 yr colleges to take this on, the better we will be
- Current urban forestry staff is underfunded in terms of need, and they are always on the road. It is a tremendous program, and if we want to make an investment in this, would be a tremendous place to put resources.
- Want to identify the current inequities: need and want to include language around funding urban forestry programs, and to prioritize those areas that don't have the resources for it - e.g. Petersburg.
  - Also, our tree ordinance has not been updated since 1992, and that is unacceptable. So would be extremely helpful if language is included to this effect.
- Interested in funding ideas - concern is that of the agencies, DOF is one of the least funded,
  - There was a proposal for a ?? and this was 150% of the current budget.
- Concern about giving responsibility to the state forester for *implementation*, but would support funding to be given to localities
- Some states fund their urban foresters through state budgets; VA funds it through federally U&CF funds, so we're at the whim of the federal budget; need to make these positions permanent
- Program out of Southern University was the basis for the proposal around HBCUs; this is a great model for what could be done. Work of Beatra Wilson.

- Proposal should not focus on locality urban forestry divisions, but should be supporting the state urban forestry, and our VT/VSU and Cooperative Extension folks who can support localities
- If we can prioritize those localities that have coastal climate change challenges, and formerly redlined areas, for support with locality forestry, that would be helpful and a priority

**Trees as BMPs-No work on this category is required by this group at this time**

- A. Through HB 520 from the 2020 General Assembly and to better address onsite stormwater management, the conserving or planting of trees as a stormwater management tool, DEQ will convene a group to decide the number of credits.

*This process should be completed by next year's GA session. The bill directs DEQ to report the findings of the stakeholder group by November 1, 2020, and to include a recommendation as to whether the planting or preservation of trees shall be deemed a creditable land cover type or BMP and, if so, how much credit shall be given for its optional use.*

**2 person drafting teams**

- Combining tree canopy/tree preservation - consensus to combine them. Phil + Peggy will work together, consulting with Vincent and Andrew.
- Natural resources inventory - Vincent, Sheri
- Cluster development - Karen, Andrew
- Tree banking - Scott, Martha
- Penalties - Steven, Phil
- Locality capacity - Sheri, Corey

Everything to Kelly by COB is on Sept. 3rd for distribution.

Appendix I - Google doc used by CDG members, September 8<sup>th</sup>

Secretary of Agriculture and Forestry and Secretary of Natural & Historic Resources

Tree Conservation Work Group – Collaborative Decision Group (CDG)

September 8 1:00-4:00 p.m.

Conference Room 1 - Patrick Henry Building, Richmond

**Cluster Development**

- Karen Firehock, Andrew Clark

**Summary of Discussion:**

Currently, the Code of Virginia [§ 15.2-2286.1](#) authorizes only high-growth localities to enact cluster development ordinances. According to a recent Virginia Department of Forestry report, a cluster development is a type of site layout that maintains zoned densities (even density bonuses) for a given lot but concentrates the development on a smaller footprint and preserves a portion of the lot as “open space.” This type of development is seen as a compromise between a developer’s need to maximize financial returns and the local jurisdiction’s desire for conservation. Clusters allow lot sizes and setback changes to achieve modified lot arrangements. This preserves sensitive site features, such as steep slopes or wetlands, while still achieving allowed gross densities.”

Karen and Andrew agreed that well-crafted cluster development ordinances can incentivize the preservation of trees/ open space and that several amendments to the enabling statute could expand the use of cluster developments across the Commonwealth.

We identified three consensus amendments and one non-consensus amendment, which are explained below. They also agreed that additional discussions with local governments and other stakeholders are warranted prior to the drafting/introduction of legislation to the General Assembly.

**Consensus Amendment 1:** Authorize more localities to enact cluster development ordinances under Virginia Code [§ 15.2-2286.1](#) by striking the following provision: *“The provisions of this section shall apply to any county or city that had a population growth rate of 10% or more from the next-to-latest to latest decennial census year, based on population reported by the United States Bureau of the Census.”*

**Rationale:** The current Code of Virginia only authorizes some localities to enact cluster development ordinances:

*The provisions of this section shall apply to any county or city that had a population growth rate of 10% or more from the next-to-latest to latest decennial census year, based on population reported by the United States Bureau of the Census. However, the requirements of this section shall not apply to any such county or city that has a population density of more than 2,000 people per square mile, according to the most recent report of the United States Bureau of the Census*

Given the potential for cluster development ordinances to help balance environmental/tree preservation goals with economic development objectives, it doesn’t make sense to limit cluster development ordinances to a handful of localities based on population growth.

## BUILDING CONSENSUS

Please indicate your current level of support for the proposal by placing your name in the appropriate column.

In the "Explanation," please put specific suggestions for specific language changes that would enable you to move up the scale.

<b>3 -</b> Fully support both content and implementation	<b>2 -</b> Have questions and concerns, but can live with content and implementation	<b>1 -</b> Too many questions and concerns, further conversation is needed	Explanation: If you are a "1" or a "2" <b>please put here <u>specific language changes that would enable you to move up the scale</u></b> to either a "2" or a "3" in support
Vincent Verweij			
	Scott Smith		Change "shall" to "may", allow localities to add tool to their tool box, but not mandate every locality to add to their zoning ordinance. Need to protect agricultural communities.
Steven Traylor			
	Chris McDonald		Tentatively fine with an expansion of cluster development authority as long as it remains a local option for localities. Expand the option, don't expand the mandate. Need to discuss implications of this new language with our land use and planning expert.
	Corey Connors		
Andrew Clark			
		Martha Moore	Can't support that it applying everywhere until we figure out the solution on Paragraph B of 15.2-2286.1
Phil Abraham			Willing
	Pat Calvert		
	Sheri Shannon		
	Peggy Sanner		Questions include

			grandfathering and applicability of mandatory language
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**Discussion:**

- Don't want more development to threaten more farm and forest land. Ag zone for rural localities is different than residential in urban localities.
- If we kept the ability to restrict the ordinance from applying to Ag Zone's, would that be helpful? Yes: concern that the requirement to use this in Ag Zones would actually serve as an incentive for development
  - Does clustering create development, or does development just happen anyway? Don't want to incentivize chopping up rural ares into little plots of land. Need economies of scale for the forest industry and ag to survive
  - Concern that this gives more options for development that would increase the landowner's interest in selling to development
  - If changed the language to "May" - would be able to support
  - Locality still maintains ability to make decisions about what it includes
- Localities buying nutrient trading credits buying land from underneath farmers. Don't want to incentivize chopping up parcels and making smaller parcels of land. Taking away the rural locality's ability to decide for itself with its citizens.
- Want to make sure that are not removing a mandate for the localities where it's already mandated. If we want to expand it to additional localities, then maybe we need a different kind of language to address those additional localities.
- Some intersection with the section on tree canopy and locality's choice to create a cluster policy
- Grandfather in for localities that have already adopted a policy
- Some localities should be doing clustering and aren't and they will never do it without a mandate.
- When localities shift from 10% growth rate to lower growth, does a different ordinance need to apply?
- If a locality has less than 10% growth, the cluster development ordinance would be optional
- BUT... we need to make sure we're not making this mandatory for counties where it would not be helpful, such as some rural counties.

**Consensus Amendment 2:** Increase the 40% threshold to expand the use of clustering within localities.

**Rationale:** Under the existing statute, cluster development ordinances are applicable to a minimum of 40% of the unimproved land in residential and agricultural zoning districts. Similar to the rationale above, our objective is to increase the use of cluster development ordinances as a tool to preserve trees and open space – increasing the threshold to something higher than 40% would ensure that these ordinances are applicable to a larger number of future development sites

**NEW PROPOSAL to COVER #1 and #2**

**CDG agrees that the current mandate should be retained, and that the mandate should be expanded to a broader category of counties and cities, but not indiscriminately. The CDG also agrees that it would not want a mandate for cluster development to harm rural counties and create**

a new incentive for development in areas that should be preserved for agriculture and forestry. More discussion is needed in order to determine how to expand the mandate while not creating a new incentive for development in rural counties, where economies of scale for agriculture and forestry are needed for economic viability.

**FULL CONSENSUS ACHIEVED**

3 - Fully support both content and implementation	2 - Have questions and concerns, but can live with content and implementation	1 - Too many questions and concerns, further conversation is needed	Explanation: If you are a "1" or a "2" please put here <b>specific language changes that would enable you to move up the scale</b> to either a "2" or a "3" in support
Martha Moore			
Scott Smith			
Phil Abraham			
Andrew Clark			
Corey Connors			
Steven Traylor			
Sheri Shannon			
Peggy Sanner			
Pat Calvert			

**Discussion:**

- Cluster a minimum of 40% of the unimproved land. Increasing 40% sets the minimum threshold a little higher, and a larger portion of the county would be subjected to that standard.
- Does "shall" allow someone to put in a development in an ag zone?
- If the current language stimulates a minimum, why increase it? Some jurisdictions who don't like clustering stick only to the minimum. Of all the unimproved parcels, a minimum of % have to be clustered. The authority already exists, but some localities resist exceeding the minimum.
- Wouldn't increasing it actually work against the success of the proposal? The higher you make it, the less likely a locality would be to take it on.
- This is just saying have clustering on the books as an option for the developer. "Shall" v. "may."
- Trying to get developers to think differently about subdivisions.
- Does it require developers to do cluster? No. It allows more options on more land.

- When do you determine the amount of undeveloped land? Is there not a periodic renewal of the calculation?
- Advantage is the density with preserving properties. If you're losing density, it starts making sense to cluster, as long as you're not penalizing saying that the open space can't contain these protected natural resources.
- If you set the density and take out protected areas from the calculations, that's where it becomes difficult for developers
- What would be the impact of striking the 40%?

**Consensus Amendment 3: Karen and Andrew also agreed that the current cluster development statute should be amended to allow for the clustering of multi-family, mixed-use, and commercial developments. The current statute only pertains to single-family residential developments.**

### BUILDING CONSENSUS

Please indicate your current level of support for the proposal by placing your name in the appropriate column.

In the "Explanation," please put specific suggestions for specific language changes that would enable you to move up the scale.

3 - Fully support both content and implementation	2 - Have questions and concerns, but can live with content and implementation	1 - Too many questions and concerns, further conversation is needed	Explanation: If you are a "1" or a "2" <b>please put here specific language changes that would enable you to move up the scale</b> to either a "2" or a "3" in support
	Vincent Verweij		Concerned that allowing for commercial or other non-residential development may reduce tree canopy requirements on these clustered. This could be fixed by a new "Mixed Use" canopy requirement in 961
Scott Smith			
Peggy Sanner			Will need to clarify how this proposal would fit into 15.2-961 and 15.2 - 961.1.
	Chris		Tentatively fine with this just

	McDonald		want some clarity/more info how this meshes with current code provisions (and other proposed amendments in this document)
Pat Calvert			
Steven Traylor			
Sheri Shannon			
	Corey Connors		In the event consensus is met on other clustering provisions, would support change.
		Martha Moore	If you change the authority to "may" for SUb BMar
Phii Abraham			

**Discussion:**

- Just providing the option, not forcing the requirement?
- In the currently 961 language could create a perverse side effect where it reduces the tree canopy overall
- 10% canopy requirement for commercial, 20% for residential - introducing mixed use could reduce the tree canopy if it were treated as commercial not residential.

**#4. Non-Consensus Amendment:**

Karen and Andrew also discussed the purpose of the following language from Section B of [§15.2-2286.1](#): *"For any "open space" or "conservation areas" established in a cluster development, the locality shall not (i) require in such areas identification of slopes, species of woodlands or vegetation and whether any of such species are diseased, the locations of species listed as endangered, threatened, or of special concern, or riparian zones or require the applicant to provide a property resource map showing such matters in any conservation areas, other than that which may be required to comply with an ordinance adopted pursuant to § 15.2-961 or 15.2-961.1 or applicable state law;"*

**Karen's Perspective:**

The problem with the above language is that it prevents depicting important information in open space areas that need to be shown in order to be enforceable. The intention for open spaces in clusters is precisely to allow for their conservation. Clusters allow for more creative arrangements of lots and exceptions to existing standards for set-backs etc. so that land can be conserved such as for a wildlife corridor or recreational path, while allowing lots to be arranged so as to avoid these areas. Developers have used these tools to develop areas that would be difficult to build on because of other restrictions for features that cannot be developed – these features can make the site's zoned density difficult to realize. Having smaller lots or unusually shaped lots can allow a developer to realize development densities that

are higher than what a by-right development would allow due to the flexibility afforded in clustering and conservation of sensitive site elements.

The legislation, as currently written, prevents the showing of details on a site plan that would usually be required in the locality's code. For example, Albemarle County has a buffer ordinance (100 feet, same as an RPA buffer) and a steep slope ordinance -- both of which apply to rural areas. In this existing cluster code, these would not be shown on a site plan if they were within designated open space of a cluster. These areas need to be shown on the SITE PLAN to be legally enforceable (e.g. to meet the standards of the buffer ordinance). The existing code makes it unworkable to follow a locality's own existing code. A locality will not arbitrarily begin requiring new information on a site plan. They need to have existing codes be able to require what must be depicted on a site plan regardless of whether or not those areas fall within designated open space. In the proposed solution shown below, the items to be depicted on the site plan are governed by what is already in place in the locality.

Furthermore, the locality could adopt other codes in the future such as to protect steep slopes to prevent excessive sediment runoff so there is no calendar date prohibiting what may be shown in the future. Thus the following change is offered for consideration by the committee to strike the above code text about what can be shown in a site plan and replace it with this:

**Karen's Proposed Language:**

Nothing in this statute for any "open space" or "conservation areas" established in a cluster development, shall prevent the locality from following its established code, design guidance or other existing regulations with respect to avoidance of sensitive areas or protection of critical resources. All elements normally required to be shown on a site plan may be required to be shown on a plan for a cluster ordinance.

**Andrew's Perspective:**

We have a different interpretation, but Karen raises an interesting point that we need (and will) look into further-- so additional discussion is needed before moving forward with legislation. The existing language was inserted into the statute to prevent localities from requiring extensive "natural resource inventories", similar to what was discussed at the prior CDG workgroup meeting. Additionally, localities do currently have the authority under their zoning/subdivision ordinances to require the delineation/mapping of many of the types of areas referenced in the cluster statute, without allowing for a full-scale natural resource inventory. For example, localities currently require preliminary plats and/or landscaping plans which show the location of physical features such as buildings, streams, drainage ditches, floodplains, mapped dam break inundation zones, wetlands and Chesapeake Bay Preservation Areas, base flood elevations, etc. Lastly, the current cluster development statute contains several safeguards for local governments, including

- Localities are permitted to enact "...standards, conditions, and criteria for the clustering of single-family dwellings and the preservation of open space developments."
- In establishing those standards, conditions, and criteria, the "...governing body may, in its discretion, include any provisions it determines appropriate to ensure quality development, preservation of open space, and compliance with its comprehensive plan and land use ordinances."
- "A cluster development is otherwise subject to applicable land use ordinances of the locality..."

Although existing language in Section B prohibits a locality from requiring the *“identification of slopes, species of woodlands or vegetation and whether any of such species are diseased, the locations of species listed as endangered, threatened, or of special concern, or riparian zones or require the applicant to provide a property resource map showing such matters in any conservation areas....”*, that prohibition does not apply to requirements of any *“...ordinance adopted pursuant to § 15.2-961 or 15.2-961.1 or applicable state law”* (emphasis added).

So, I don't think additional language is needed, but we will continue looking into this and discussing with Karen and other stakeholders.

#### Discussion:

- Could someone do research on whether there are any requirements for a locality to require a NR inventory in their zoning ordinance? Subdivision ordinance localities have broad authority - look for a cross section of planners to develop language?
- Who could do this research? Karen served consulted with two county attorneys and they confirmed the authority of localities to require a NR inventory in their zoning ordinance
- Do you all agree about sensitive areas and how they're counted? Some localities don't have sensitive areas in computing the 40% so it shrinks the amount...that piece wasn't discussed but could be.

#### Tree Canopies and Preservation

- Peggy Sanner, Phil Abraham

What follows are recommendations only, not points on which agreement or consensus has been reached. Each part of an acceptable tree canopy framework will depend on all of the other parts, so evaluation and potential acceptance will depend on review of the whole and agreement by interested parties on the whole. Accordingly, the points below should be considered provisional, subject to reconsideration, amendment, and rejection, depending on the final set of recommendations, the final report and/or any draft legislative language.

1. If (but only if) the conservation community and the development community are able to come to an agreement on expanding a locality's ability to increase the tree canopy limits currently set out in 15.2-961 and 15.2-961.1, we would propose this work to focus on adoption of a new statute that would include two parts as follows:

**Part I: Using 15.2-961 as a starting point, this new section would give all localities in Virginia the authority to enact a tree canopy ordinance that requires planting and replacement of trees during the development process. It would begin with the following modified language from subsection A of 15.2-961:**

Any locality may adopt an ordinance providing for the planting and replacement of trees during the development process pursuant to the provisions of this section. The following provisions would be included in this new section:

a. It would use the canopy percentages established in 15.2-961 and would maintain its existing exemptions.

b. We anticipate that tree planting and tree banking under this new statute would incorporate the recommendations of the CDG, including its subgroup of this issue. The conservation and development communities both consider the specific terms of the banking program to be pivotal to possible support for this proposal. Some of those provisions might be informed by suggestions for a limited new role for the State Forester which, as discussed below in Part II, will be the subject to further discussions, including budgetary concerns.

c. The conservation and development communities have not reached an agreement on the question whether, unlike the current 15.2-961, a locality could exceed the standards provided in this tree planting and banking statute.

d. All localities with existing tree canopy replacement programs as of the enactment date would be grandfathered.

**Part II: Adopt a new statute, using 15.2-961.1 as a starting point, that gives all localities in Virginia (subject to any conditions listed below) the authority to enact a tree canopy ordinance that requires preservation of trees during the development process.**

a. This new statute would use the canopy percentages established in 15.2-961.1 and would maintain its existing exemptions and those provided in 15.2-961. Consideration should be given to when and how a locality could exceed these percentages as discussed in section (d.) below. The conservation community will not agree to this new statute unless an acceptable agreement is reached on how localities could exceed those percentages.

b. The development community believes this new statute could only be adopted if the locality has adopted a “tree preservation density bonus” ordinance as may be recommended by the CDG, including its cluster development subgroup. “Tree preservation density bonus” would include any agreed upon expanded cluster development ordinance recommended by the CDG. The conservation community believes agreement on the density bonus provision should be linked to agreement on authority to exceed the canopy limits as discussed in section (d.) below

c. As in existing 15.2-961.1, while canopy percentages would be set in statute, localities would retain the ability to establish the tree preservation targets using the criteria established in the current Subsection D of 15.2-961.1

d. Subsection E (1) and (2) and (3) of the existing statute, 15.2-961.1, includes a process by which ordinances allow for deviations from the preservation target. Discussions are underway concerning possible modifications to this subsection, including whether #3, concerning damage to trees during construction, should be modified or deleted because there are concerns in the conservation community that provision excuses and encourages substandard construction practices that jeopardize tree

survivability. The development community will not agree to this new statute unless it continues to provide for submission of a deviation letter by the developer. The deviation letter process would use subsections E and F of 15.2-961.1 as a starting point but would be subject to negotiation and final language agreed upon. Negotiations will also focus on the proposal from the conservation community to amend Subsection E to allow localities limited flexibility to address local environmental concerns through authority to exceed the 15.2-961.1 tree canopy percentages by specific identified percentages and/or whether banking should be limited to meeting specific percentages of the tree canopy requirement.

e. Subsections G, I, J, K, L, M, P, Q of 15.2-961.1 could possibly be replaced with more concise, flexible, and simpler language. It would take into account the recommendations of the CDG and its tree banking subgroup and, as discussed below, potentially informed by the recommendations concerning the State Forester, subject to the concerns identified and discussed in section (h.) below.

f. The language relating to pre 7/1/1990 ordinances would be retained as provided in Subsection S 15.2-961.1.

g. Language preserving the validity of any ordinance adopted pursuant to 15.2-961 would be retained and reference to 15.2-961.1 added.

h. Subject to agreement on other provisions and negotiation of precise language, include a new provision in the statute that requires the State Forester, after receiving recommendations from an advisory panel comprised of experts and representatives of the groups represented on the CDG, to issue standards for computing achievement of the projected canopy targets authorized in 1a and 2a above. The possibility that such an advisory panel might also be used in establishing the guidance and standards referenced elsewhere in this proposal was briefly discussed by the conservation and development communities, but no resolution has yet been reached. Any additional role for the State Forester will require discussion and negotiation over providing necessary budgetary resources, clarity on what happens if necessary funds do not materialize and negotiation of other provisions of the bill and clarifying the authority of a locality to act where State Forester has not acted or is simply providing guidance or technical advice.

2. **The two new agreed upon tree canopy options would be included in a single proposed bill that gives localities the ability to adopt either a planting and replacement statute as provided in 1 above or a preservation statute as provided in 2 above.** Further discussion is needed on specifically how a locality might adopt the lower canopy percentages in the Part I authority but also adopt the tree preservation and other provisions found in the Part II authority.

#### Discussion:

- Background: Legislators have been discussing giving more flexibility to localities to have higher percentages of tree canopy and preservation; localities may opt in, but the requirements are fairly detailed. Whether preservation or conservation, there are tree canopy requirements for what it

must be after 20 yrs. Also, while one statute applies to all Ches Bay localities, the other applies to only one locality.

- Our proposal is that both statutes should apply statewide, and are also considering that they *could* create higher requirements for canopy.
- Also developer is allowed in one statute to deviate from the requirements, so we are considering that the deviation authority should go to the locality.
- 961.1 gives localities the most power: the question is - can they exceed the targets? And can they
- Conservation community wants changes
- Development community needs a deviation process IF the locality requires a tree preservation target as part of the ordinance. (Not for tree canopy requirement.)
- Also, another issue is who has authority to approve deviations. E.g. a planner should not be able to overturn an arborist's determination.
- Role of state forester in this: critical that state forester to use a panel of experts comprised of same groups represented here to develop a method for computing the tree canopy ordinances. Want standardization, not trying to tie hands. What kinds of tree would be counted, how, etc. Don't want to tie locality's hands in the ordinance, but would like to have guidance for this from the state forester.
- Because of issues of funding for the state forester, role should be limited .... OR ... funding stream for state forester's role should be found. Possibility of a "circuit rider" to provide guidance was discussed, but funding would be an issue.
- Very much want urban forestry experts assigned to these roles, not anyone.
- If this conversation continues, housing justice should be included in the next round of discussions.

**(Consensus Proposal) 3. In recognition of the unsettled state of these negotiations, and, in particular, the lack of agreement on issues of central importance to both the conservation community and the development community (e.g., authority for expanding tree canopies, amendments to the deviation letter process, the terms of any banking proposal that will be the subject of continuing discussions, and others) we recommend that the report of the Tree Work Group reflect the need for continuing discussions by all sectors represented on the CDG and their work on drafting proposed legislation that, once agreed upon, could be presented to legislators for introduction at the 2022 General Assembly Session. The CDG agrees that the framework outlined above would serve as the basis for continuing discussion, that would also include representatives of housing justice and consulting arborists.**

### **BUILDING CONSENSUS**

Please indicate your current level of support for proposal the in #3 by placing your name in the appropriate column.

In the "Explanation," please put specific suggestions for specific language changes that would enable you to move up the scale.

FULL CONSENSUS ACHIEVED

3 - Fully support both content and implementation	2 - Have questions and concerns, but can live with content and implementation	1 - Too many questions and concerns, further conversation is needed	Explanation: If you are a "1" or a "2" <b>please put here <u>specific language changes</u> that would enable you to move up the scale</b> to either a "2" or a "3" in support
Martha Moore			Only if the banking items is a separate point for consideration.
Vincent Verweij			While there is strong support for increasing the tools available, and the need is expressed as urgent, this conversation sets up the discussion well. This is probably the most critical component of this discussion, and will benefit from more detailed discussion.
Chris McDonald			Support Provision 3. In regards to the continued work in this area and all possible resulting proposals that fall or may fall under this section, we support options that clearly preserve existing authority under 961 and 961.1. We will not support language that constrains or eradicates a locality's existing authority. Happy to continue the conversation and engagement on this issue in the future and hope this path forward lays the groundwork for compromise.
Andrew Clark			
Scott Smith			
Steven Traylor			
Phil Abraham			
Peggy Sanner			
Corey Connors			
Pat Calvert			
Sheri Shannon			

**Discussion:**

- Need for housing justice to be included in the conversation

## Natural Resources Inventory

- Vincent Verweij, Sheri Shannon

Sheri and I worked on the issue of natural resources inventories before engineering plans.

I believe the best way to approach this is through an incentive-based method, where if developers seek to develop a lot, they get it surveyed first, and get credit if there are high value forest stands which they then save, through conscientious design of the site. This is a method used in prior legislation, for individual trees, native trees, and other benefits. It uses existing legal language, for some of the proposed code changes, and works in context with the other 961 codes.

Following is the draft legal language, with a more narrative-based description after it.

Draft legal language:

**Allow jurisdictions that have adopted 15.2-961 or 15.2-961.1, to provide tree canopy credit for conservation of high value forest stands, when a site developer provides a stand assessment before development plans are created, for review by the local jurisdiction. The ordinance may provide canopy credits of up to two times the actual canopy area for the conservation of these pre-identified forest communities that achieve environmental, ecological, and wildlife conservation objectives set by the locality.**

**The ordinance may establish minimal area, dimensional and viability standards as prerequisites for the application of credits.**

**Forest communities shall be identified using the nomenclature of either the federal National Vegetation Classification System (FGDC-STD-005, or latest version) or the Natural Communities of Virginia Classification of Ecological Community Groups, Second Approximation (Version 2.2, or latest version).**



Discussion, based on CDG discussions, and discussions with Sheri:

Narrative: Allow jurisdictions that have adopted tree canopy requirements from §15.2-961 or its subsections, to incentivize the early inventory of a development site's stands of trees for conservation of the highest value forest patches, using the following sequence:

1. The developer chooses to have the site surveyed for forest composition before planning the site, identifying forest stands on the site. No individual tree identification would be required, but it can be done, to assist with later submissions.
2. The jurisdiction develops a list of high conservation value forest types (i.e. Oak-hickory, Loblolly-Shortleaf Pine), or works with their regional VDOF contact to understand typical forest types for their jurisdiction that provide high value to their community. This value could range

widely, from conserving forestland for wildlife, recreation, or other purposes, and use would not necessarily be restricted by this ordinance.

3. If the developer chooses this option, and identifies high value forests to be conserved, they can get conservation credit for those areas, for example, up to 2 X credit for conservation of that stand. This credit would not be available for those who do not do a pre-engineering plan survey.

4. The jurisdiction approves or rejects this stand for gaining credit. If approved, the developer can take the credit. If rejected, the developer follows standard tree canopy rules (regular conservation and/or planting, depending on whichever 961 rule is adopted)

#### Benefits:

- Restrict to jurisdictions that already have 961 language adopted, so that this change can work with the requirements. Jurisdictions with 961 language adopted are also likely to already have trained forestry staff to review these inventories. Jurisdictions considering adopting 961 language could work with their regional VDOF contact to understand if this new language could be adopted alongside their future ordinance.
- Incentive system. Does not require inventories for sites without valuable forests, but incentivizes conservation of forested land.
- Does not preclude silviculture. The developer could choose to have the site logged, but would not be able to take this credit. Could still develop the site according to local tree canopy requirements.
- Does not require a full tree inventory. A stand survey can be an economical assessment of a site. Some local jurisdictions may already have this information available.

#### Proposal for consideration:

**Allow jurisdictions that have adopted 15.2-961 or 15.2-961.1, to provide tree canopy credit for conservation of high conservation value forest stands, when a site developer provides a stand assessment before development plans are created, for review by the local jurisdiction. The ordinance may provide additional canopy credits (amount to be determined through additional discussion) for the conservation of these pre-identified forest communities that achieve environmental, ecological, and wildlife conservation objectives set by the locality. Conservation is intended to mean that forests are maintained for forest health and are considered working forest lands.**

**The ordinance may establish minimal area, dimensional and viability standards as prerequisites for the application of credits.**

**Forest communities shall be identified using the nomenclature of either the federal National Vegetation Classification System (FGDC-STD-005, or latest version) or the Natural Communities of Virginia Classification of Ecological Community Groups, Second Approximation (Version 2.2, or latest version).**

## BUILDING CONSENSUS

Please indicate your current level of support for the proposal by placing your name in the appropriate column.

In the "Explanation," please put specific suggestions for specific language changes that would enable you to move up the scale.

### FULL CONSENSUS ACHIEVED

<b>3 -</b> Fully support both content and implementation	<b>2 -</b> Have questions and concerns, but can live with content and implementation	<b>1 -</b> Too many questions and concerns, further conversation is needed	Explanation: If you are a "1" or a "2" <b>please put here specific language changes that would enable you to move up the scale</b> to either a "2" or a "3" in support
Scott Smith			
Vincent Verweij			
Chris McDonald			
Martha Moore			
Phil Abraham			
Sheri Shannon			
Peggy Sanner			
Corey Connors			
Pat Calvert			
Andrew Clark			
Steven Traylor			

### Discussion:

- It costs \$ before you can develop the lot, and what does it mean?
- Benefits to jurisdictions by retaining higher value forest land, and developers by awarding extra credit
- Benefits developers in that they can get extra credit for preserving the higher-value land

- We see it being used by Arlington, and it is beneficial, so would like to see it have broader applicability
- Optional (not required) for developers - gives them a better idea of where they might get credit
- Have used language from 961 to develop this language
- The term “Stand” - is this term that is commonly used?
- What does “conservation” mean? Prefer the term conservation over preservation: preservation implies you don’t touch it, whereas conservation means you can maintain the trees, it is a “working lands.” The goal is to have *healthy* forest lands.
- How will value be determined? Jurisdiction would identify specific types of forest as high value - e.g., high conservation value (not economic)
- Intent is to provide options for natural resources inventory *prior* to development.
- Right now the credit doesn’t exist. This would allow for extra credit for someone being proactive in development. If the developer comes to an agreement early on with the locality, they would receive this credit and would also likely speed up the later development approval process
- 961.1 has more detail, including this language would allow for better flexibility and more conservation of forest land
- DOF Forest Conservation Model as potential tool
- Part of the further discussion about the amount of the credits should also look at how to simplify the current schedule for credits, while not sacrificing integrity of intent of the credits.

### Tree banking

- Martha Moore, Scott Smith

Scott Smith and Martha Moore met on 8/26/21 and narrowed down the proposals to what could move toward consensus and what couldn’t. They next reached out to:

1. Scott reached out to Karen Firehock at [firehock@gjinc.org](mailto:firehock@gjinc.org) to help us contextually understand the concerns and where these proposals came from.
2. Martha then reached out to Vincent Verweij at [Vverweij@arlingtonva.us](mailto:Vverweij@arlingtonva.us) to help us contextually understand the limitations.
3. Finally, Martha then reached out to Joe Lerch with VACO for some additional clarifying questions.

Please note that the following is a summary of the progress made on this category but doesn’t reflect confirmed support of all parties to the conclusions. The conclusions were synthesized from the responses to questions where it appeared that consensus may be able to be achieved.

### The following are taken off the list because of lack of ability to see a path towards consensus:

1. Consider providing to all localities the authority to develop tree canopy banking/trading programs that allow for onsite plantings.

1. This concept is too broad.
  2. Challenge with rural localities not having expertise in order to utilize this.
  3. Not fair for one jurisdiction to have access to land in other jurisdictions to solve the problem.
2. Consider allowing tree banking to occur at larger landscape scales **outside of jurisdictional boundaries**, such as watersheds, or to be applied statewide.
    1. Not fair for one jurisdiction to have access to land in other jurisdictions to solve their problem. From a working farm perspective, this puts an added pressure on maintaining an economically viable operation and can't compete with economic pressure that a different land use might infuse in the land market of the receiving locality.
    2. Causes unintended consequences in that the receiving local government may not want to provide tree canopy for another jurisdiction without a say. This could impact the receiving jurisdictions ability to plan for the needs in their locality.

**The following may have more opportunities for consensus:**

3. **Consider that any not-for-profits located within the locality or locality within the designated county can receive mitigation banking funding for tree planting.**

Rationale

1. Localities in Planning District 8 have this authority –

**“G. The ordinance shall provide for the establishment of a tree canopy bank or fund whereby any portion of the tree canopy requirement that cannot be met on-site may be met through off-site tree preservation or tree planting efforts.**

Such provisions may be offered where it can be demonstrated that application of the requirements of subsection C would cause irresolvable conflicts with other local site development requirements, standards, or comprehensive planning goals, where sites or portions of sites lack sufficient space for future tree growth, where planting spaces will not provide adequate space for healthy root development, where trees will cause unavoidable conflicts with underground or overhead utilities, or where it can be demonstrated that trees are likely to cause damage to public infrastructure. The ordinance may utilize any of the following off-site canopy establishment mechanisms:

1. A tree canopy bank may be established in order for the locality to facilitate **off-site tree preservation, tree planting, stream bank, and riparian restoration projects.** Banking efforts shall provide **tree canopy that is preserved in perpetuity through conservation easements, deed restrictions, or similar protective mechanisms acceptable to the locality.** Projects used in off-site banking will meet the same ordinance standards established for on-site tree canopy; however, the locality may also require the submission of five-year management plans and funds to ensure the execution of maintenance and management obligations identified in those plans. **Any such bank shall occur within the same nonattainment area** *{What does this mean?}* **in which the locality approving the tree banking is situated.**

2. A tree canopy fund may be established to act as a fiscal mechanism to collect, manage, and disburse fees collected from developers that cannot provide full canopy

requirements on-site. The locality may use this **fund directly to plant trees on public property**, or the locality may elect to **disburse this fund to community-based organizations exempt from taxation under § 501(c)(3) of the Internal Revenue Code with tree planting or community beautification missions for tree planting programs that benefit the community at large**. For purposes of establishing consistent and predictable fees, the ordinance shall establish cost units that are based on average costs to establish 20-year canopy areas using two-inch caliper nursery stock trees. Any funds collected by localities for these purposes shall be spent within a five-year period established by the collection date, or the locality shall return such funds to the original contributor, or legal successor.” Partial excerpt from § 15.2-961.1

It appears that expanding this authority to all localities to disperse funds under a tree banking scenario to nonprofits for replacement of trees lost during development is one that could be further fleshed out and consensus achieved.

Other issues surfaced with this Code section was that localities didn't want to have to take on the administrative burden or monitoring of tree replacement by having to get deed restrictions or conservation easements. It is unclear how to resolve this.

## BUILDING CONSENSUS

**Proposed recommendation:** Consider that any not-for-profits located within the locality or locality within the designated county can receive mitigation banking funding for tree planting. Also, the rationale and additional clarifications needed, would be included in the report.

### Discussion:

- Tree banking statute
- Extensive tree canopy fund banking system in Arlington Co - where there was a conflict over tree banking using a nonprofit; If it is true that nonprofits could take this funding, that would change the program for Arlington Co (for the better)
- Speculate that conflict that existed in Arlington was about the issue that the statute does not allow it to be planted on private property.
  - But statute does currently allow banking to be done with local nonprofits.
- So the issue is that it does not allow banking on private property.
- The issue might be the cash amount
- Concern of urban to urban or rural to rural
- Would like to see the possibility for a rural locality to allow for planting in urban areas;
  - Would be able to support rural to urban or vice-versa, but only if the recipient localities agree. Needs to be an agreement
- Tree Statute could include language that would enable trading out of the locality, with the stipulation that any trading is accomplished with the agreement of the recipient locality and that

nonprofits could not conduct the tree banking activity in the locality without the authority of the locality, to ensure community buy-in.

- Consider a statewide tree canopy bank that would manage the exchange of tree canopy plantings, with strong priority given to sites that are as close as possible to the site that needed mitigation.
- Unlikely that it would stay at the local government level, concern that an individual would try to capitalize on the set-up to the detriment of agriculture.
- Need to protect the ability of localities to decide for themselves.

4. **Consider that trees can be planted on any public lands within those jurisdictions.**

1. It is unclear why localities believe they don't have this authority unless it is in reference to public lands not owned by the locality. Again, it would need further clarification of this concept.

**NEW PROPOSAL: CDG agrees that tree banking should be allowed and that tree mitigation plantings should not be forced on localities without their consultation and approval. It further agrees that tree mitigation plantings should be allowed to be conducted by nonprofits, and that such plantings should be allowed on private property, as well as public property, with the understanding that all such plantings should be done with locality consultation and approval, to ensure community buy-in. Further discussion is needed to iron out the details of how this would work.**

**BUILDING CONSENSUS**

Please indicate your current level of support for the proposal by placing your name in the appropriate column.

In the "Explanation," please put specific suggestions for specific language changes that would enable you to move up the scale.

<b>3 -</b> Fully support both content and implementation	<b>2 -</b> Have questions and concerns, but can live with content and implementation	<b>1 -</b> Too many questions and concerns, further conversation is needed	Explanation: If you are a "1" or a "2" <b>please put here specific language changes that would enable you to move up the scale</b> to either a "2" or a "3" in support
Scott Smith			

Vincent Verweij			
Corey Connors			
Chris McDonald			
Phil Abraham			
Steven Traylor			
Martha Moore			
Sheri Shannon			
Andrew Clark			
Peggy Sanner			
Pat Calvert			

**5. Consider allowing trees to be planted on private property in addition to public lands.**

- a. Another issue surfaced was the appearance of conflict of interest with a tree bank directing funds to plant trees on private property. Further clarification of this “conflict of interest” would be needed to flesh out this concern.
- b. The agriculture community would only support this authority expanded to localities if the tree banking concept is only allowed within the locality’s jurisdictional boundaries. It appears there is a sentence in the above Code section for Planning District 8 that allows these banks to disperse funds within “a nonattainment area” which could be larger than the localities jurisdictional boundaries. Again, one locality should not have the ability to impact the land uses in another locality.

**Penalties**

- Steven Traylor, Phil Abraham

A. Consider that penalties for violations of ordinances adopted pursuant to this section shall be the same as those applicable to violations of the locality’s zoning ordinances.

Our subGroup fully supports this penalty language recommendation that was submitted to the Collaborative Decision Group. It is the most clear method for localities to levy fines , mitigation or abatement strategies on the local level.

**BUILDING CONSENSUS**

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<b>3 -</b> Fully support both content and implementation	<b>2 -</b> Have questions and concerns, but can live with content and implementation	<b>1 -</b> Too many questions and concerns, further conversation is needed	Explanation: If you are a "1" or a "2" <b>please put here specific language changes that would enable you to move up the scale</b> to either a "2" or a "3" in support
Phil Abraham			
Scott Smith			
Andrew Clark			
	Peggy Sanner		There is a concern among many residents that localities do not take the opportunities to impose penalties. Is there a way to incentivize localities to take these violations seriously?
	Chris McDonald		
	Pat Calvert		Penalties must be meaningful, else violations may be seen as the cost of doing biz.
	Vincent Verweij		Agree that local zoning ordinances can set penalties, and this may be a local enforcement problem. Somewhat separately from this, but related, 10.1-1127.1 has a fine ceiling that should be revisited. \$2,500 is not enough to be a disincentive to remove a specimen tree.
	Sheri Shannon		
	Corey Connors		
	Martha Moore		
Steven Traylor			

**Discussion:**

- There is a strong perception by many residents that tree canopy violations are not taken into account by county administrations. They see what they think are violations, so they assume that these violations are not addressed because the locality thinks they are the "cost of doing business" or not considered important. Enforcement problem not an authority problem.

- Isn't there already something that would cover violations for tree canopy?
  - 10.1-1127.1 - covers violations that only relate to designated specimen trees, wouldn't apply to a tree canopy ordinance except where specimen trees result in extra credits
  - 15.2-2286 - subsection 5 - covers penalties for zoning ordinance violations that would apply to land development

B. Consider creating more meaningful fines/penalties for individuals that don't adhere to the regulations.

Our subGroup discussion does not support moving forward on any language that would place “more meaningful penalties/fines” at this time for multiple reasons including but not limited to the following: 1) confusion with regular zoning violation fees already in place 2) issues with making a recommendation statewide given the differences in tree values by type and region and (3) existing state law gives localities significant authority to penalize tree canopy ordinance violations including fines, abatement requirements and criminal penalties.

### BUILDING CONSENSUS

The facilitators propose that this topic be reported in the Tree Preservation Work Group Report as one that could not be resolved in the time given and needs further discussion. The test for consensus below is to assess where the group lands on that proposal (not resolved/needs more discussion), not the language noted about re: meaningful fines.

Please indicate your current level of support for the proposal by placing your name in the appropriate column.

In the “Explanation,” please put specific suggestions for specific language changes that would enable you to move up the scale.

<b>3 -</b> Fully support both content and implementation	<b>2 -</b> Have questions and concerns, but can live with content and implementation	<b>1 -</b> Too many questions and concerns, further conversation is needed	Explanation: If you are a “1” or a “2” <b>please put here <u>specific language changes</u> that would enable you to move up the scale</b> to either a “2” or a “3” in support
Andrew Clark			Agree with recommendation
Phil Abraham			
Corey Connors			Agree that it is fully unresolved.
Scott Smith			
Sheri Shannon			
Steven Traylor			

Peggy Sanner			Agree it is unresolved. See response to preceding topic.
	Vincent Verweij		Agree that local zoning ordinances can set penalties, and this may be a local enforcement problem. Somewhat separately from this, but related, 10.1-1127.1 has a fine ceiling that should be revisited. \$2,500 is not enough to be a disincentive to remove a specimen tree.
	Chris McDonald		Wouldn't mind exploring further recommendations or ideas for enforcement, but agree that time is an issue here and this may not be the best set of ideas to consider at this moment. A topic that needs further analysis.
Martha Moore			Agree it is unresolved.
Pat Calvert			

**Locality capacity for urban forestry**

- Sheri Shannon, Corey Connors
- **Proposal: Consider creating a 10-year urban and community forest management plan through the Virginia Department of Forestry with tree canopy goals that address: climate change, sustainability, stormwater mitigation, urban heat islands, air quality, wildlife habitat, and community gardening with a lens on increasing the quality of life for Virginians. The urban forest management will be reviewed every two years with a progress report issued to the General Assembly**

**BUILDING CONSENSUS**

Please indicate your current level of support for the proposal by placing your name in the appropriate column.

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CONSENSUS ACHIEVED WITH SOME REQUEST FOR QUALIFICATIONS AND CLARIFICATIONS ON THE PROPOSAL

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	Steven Traylor		Would like more specifics from VDOF. perhaps changing language to a 10 yr statewide urban and community forest management plan
	Phil Abraham		Would like more clarity on plan being a guiding policy document and not a regulatory document that would bind localities or developers
	Chris McDonald		Would like to see more about what this plan would entail and whether it would mandate action at the state or local level or would remain aspirational/informational. Would there be goals and objectives? Requirements? To Phil's point, would this essentially mimic the Virginia Energy Plan? To the extent that it's something akin to the VEP we wouldn't have any real issues with this concept - take stock of the current situation, set aspirational goals, and report on it. Context will be important in this plan and these potential categories. Do not want this to become some one-size fits all set of plans. Also echo the concerns of others that this may translate to an array of (unfunded) mandates.
Vincent Verweij			Supportive if the targets in the plans are intended to be goals, and not explicit potentially unfunded mandates. A document like this can help argue for funding of state and community forestry programs at the state level.
	Scott Smith		Concerned about the capacity of the DOF to develop seems they are stretched and underfunded.
	Andrew Clark		Need additional information about the implementation of the plan; impact on development/land-use applications; etc
Peggy SAnner			A statewide urban forestry plan would provide the basis for setting and achieving canopy goals
Sheri Shannon			
Martha Moore			
Pat Calvert			

Corey Connors			
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**Discussion:**

- Beginning with what DOF can do now.
- Sensitivity to not creating a unfunded mandate that would make it difficult on local governments
- Capacity assessment prior to the GA session.
- Not clear on what this plan would be. Is this like the state energy plan? Is it aspirational, or something that Informs policy but doesn't bind localities.
  - It is aspirational, but we also need metrics to achieve climate goals. So that we can track and measure that we're doing what we need to be doing.
  - We already have some targets through the Ches Bay Plan, so this could go hand in hand with the urban forest plan.
- How to be more inclusive about this approach so that it is inclusive for small rural towns; Big Stone Gap would like to have street trees just as much as an urban environment; move to use "urban and community forests"

**Proposal: Consider developing an urban and community forest management framework (i.e. Best Management Practices, local program guidelines) to allow for localities with different climatology, ecosystems, and development potential to operate within those guidelines.**

- **Who would execute the report TBD**

**BUILDING CONSENSUS**

Please indicate your current level of support for the proposal by placing your name in the appropriate column.

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	Scott Smith		Concerned this will be an underfunded and rushed effort.
Corey Connors			

Sheri Shannon			
	Martha Moore		Just need a little more information on framework and the implications. Would like for Cooperative Extension to be included in developing this.
Vincent Verweij			Would support VDOF creating a plan, if they get funding to do so, in collaboration with Virginia Extension.
Steven Traylor			
	Chris McDonald		Would need more information and need to see more specifics about what this would actually entail.
	Andrew Clark		More info needed
	Phil Abraham		Need to clarify the role of who is lead (DOF?) and good idea to also involve cooperative extension service
Pat Calvert			Collaborative venture of DOF & VA Coop Ext?
Peggy SAnner			Would support robusts DOF involvement, along with Coop, ext.

**Discussion:**

- Purview of this with VCE, because of its source of funding, and connection with VSU (an HBCU), would provide some stability to the implementation of this.
- Desire for DOF purview, to have highest jurisdictional authority involvement

In the interest of time, the remaining proposals in this category were combined into one proposal package:

- A. Consider reviewing the current staffing, funding, and technical resources available in urban and community forestry at the Virginia Department of Forestry to assess capacity, gaps, and areas of growth to be able to: 1) provide technical assistance to more localities; 2) train and hire urban foresters; and 3) to assist in reaching future tree canopy goals set in the urban forest management plan. This analysis would ideally be completed prior to the 2022 session of the Virginia General Assembly.**
- B. Consider enhancing local capacity through a sustainable source of state funding dedicated to urban and community forestry that will allow local jurisdictions to plan, plant, and maintain urban forests in the long term.**

- C. Consider creating a statewide Green Corps field-based training program, as well as re-evaluating current Department of Forestry and Cooperative Extension programs to recruit, train, and hire an entry-level workforce in urban forestry.
- D. Consider promoting urban forestry or arboriculture education at a 4-year or 2-year university or a historically black college or university (HBCU) to help facilitate the ideal of trees as environmental infrastructure and preventative health infrastructure.

**BUILDING CONSENSUS**

Please indicate your current level of support for the proposal by placing your name in the appropriate column.

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	Chris McDonald		A review of current staffing and resources (and needs) at Forestry is an important first step. Fully support increased and dedicated sources of funding both for state and local programs and initiatives (though imagine that will be amongst the hardest of our recommendations to achieve). Don't actually have any problems with any of the educational programs proposed, we just have no position on that.
Phil Abraham			Needs fleshing out still but good overall concepts. More staff and resources for DOF is key
Steven Traylor			
Corey Connors			
Martha Moore			
Vincent Verweij			Sustainable funding is key.
Andrew Clark			Generally supportive of the concepts, particularly

			additional funding for DoF
	Scott smith		Funding will be key. Concerned DOF will not have a clear understanding of the scope of what is wanted to develop a report on ability to respond. Fully support C & D
	Sheri Shannon		
	Pat Calvert		
	Peggy Sanner		These are all good ideas. Strong support for A and D.

**Note on funding:** The most critical need identified by the CDG to enhance local capacity is finding a sustainable source of state funding dedicated to urban & community forestry. Currently, almost all funding for Virginia’s urban forestry initiatives comes from the United States Forest Service.

It is imperative that the Governor and General Assembly find a sustainable source of funding for Planning, Planting, and Maintenance for urban and community forestry in the Commonwealth. This would address stakeholder concerns about creating an unfunded mandate for local governments in future years while ensuring capacity for localities to maintain urban forests in the long term. Opportunities for funding through initiatives with similarly aligned objectives (e.g., RGGI) may be preferable to reliance on an annual appropriation.

