

Free-roaming Cat Stakeholder Workgroup Final Report: December 2021

Prepared by the Office of the Secretary of Natural and Historic Resources

Executive Summary

In 2021, at the request of the Chairman of the Virginia General Assembly's House Agriculture, Chesapeake, and Natural Resources Committee, the **Secretaries of Agriculture and Forestry, Natural Resources, and Health and Human Resources** convened a workgroup to develop legislation to reduce and control the population of free-roaming cats and mitigate the impact of free-roaming cats on the Commonwealth's native wildlife, natural resources, and public health. The activities of the workgroup were coordinated by the Office of the Secretary of Natural and Historic Resources (SNHR). The SNHR selected the 20 stakeholders from both private and public sectors, to include representatives from state and local government, animal shelter and control professionals, wildlife conservation and environmental experts, veterinary and human health experts, and animal welfare advocates. The SNHR hosted four sessions to inform workgroup members of their legislative responsibilities and identify recommendations to harmonize existing local free-roaming cat population management practices with animal protection and control and wildlife conservation needs. Mark E. Rubin of **The McCammon Group** facilitated and mediated these sessions to help guide a collaborative and productive working process. All meetings were open to public attendance in person and via virtual meeting platforms. Meetings were also attended by staff from the Division of Legislative Services to support drafting of potential legislation. A shared goal and unified message from stakeholders throughout the process was the emphasized importance of legislation created from unanimous, consensus-based agreement.

The goals of the workgroup session meetings were as follows:

- 1) Introduce and familiarize members with the workgroup scope & focus;
- 2) Identify areas of agreement, interest, and vision;
- 3) Collect feedback from workgroup members on potential legislative language addressing key areas of interest; and
- 4) Develop a final set of recommendations that reflects workgroup consensus and areas still needing work.

Throughout the process, the workgroup addressed a number of important topics, including locality-adopted cat management plans, requirements of trap-neuter-return (TNR) practitioners, veterinary care, feeding, recordkeeping, and education of practitioners. While the stakeholder workgroup did not reach unanimous consent on the proposals discussed, there was sufficient agreement by the workgroup of its desire to continue work on this topic beyond its constitution by the SNHR to inform the General Assembly at a later legislative session. This

report presents a summary of the information developed and considered by the workgroup, as well as an overview of the themes and various alternatives discussed by stakeholders.

Introduction

During the 2021 legislative session, the Virginia General Assembly considered SB 1390, a bill related to trap, neuter and release of free-roaming cats. While the Virginia Senate passed the bill, the House Agriculture, Chesapeake, and Natural Resources (ACNR) Committee identified a number of outstanding issues that needed to be addressed. As a result, the Chairman of the House ACNR Committee reached out to the Secretaries of Agriculture and Forestry, Natural Resources, and Health and Human Resources, requesting that they convene a workgroup to develop legislation to reduce and control the population of free-roaming cats and mitigate the impact of free-roaming acts on the Commonwealth’s native wildlife, natural resources, and public health (Appendix A). Specifically, the Chairman asked that the Secretaries harmonize existing local free-roaming cat population management practices with animal protection and control and wildlife conservation needs, resulting in draft legislation for the 2022 session of the General Assembly. The workgroup, comprised of 20 individuals invited by the SNHR, included the State Veterinarian, representatives of the Department of Health and the Department of Wildlife Resources, animal shelter and control professionals, wildlife conservation and environmental experts, veterinary and human health experts, and animal welfare advocates (Appendix B).

This report outlines the workgroup’s final recommendations and notes areas of consensus, and those issues with remaining reflected differences. From August through November 2021, the workgroup has:

- Discussed the scope, goals, and duties of the workgroup as directed by the General Assembly;
- Identified key topics of discussion to address the legislative directive; and
- Drafted and discussed proposed legislative language to address the identified topics.

Workgroup materials and documents, such as meeting minutes and draft legislative language, are available upon request.

Meeting Dates of the Stakeholder Workgroup on Free-roaming Cats

#	Date/Time	Objective(s)	Facilitators	Location
1	Thursday, August 26, 2021	Charge, scope, identification of issues	The McCammon Group (Mark Rubin)	Senate Room 3, Capital Building (hybrid)
2	Thursday, September 9, 2021	Large group work, establishment of small groups	The McCammon Group (Mark Rubin)	Senate Room 3, Capital Building (hybrid)
3	Thursday, October 21, 2021	Small group work and reports, large group work	The McCammon Group (Mark Rubin)	East Reading Room, Patrick Henry Building (hybrid)

4	Tuesday, November 16, 2021	Discussion of draft legislation, determination of consensus, potential next steps	The McCammon Group (Mark Rubin)	East Reading Room, Patrick Henry Building (hybrid)
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General Background

Over the past decade or more, numerous agencies and organizations have worked to address an array of issues related to free-roaming cats in Virginia. “Free-roaming cats” include domestic or feral outdoor, free-ranging cats that are unowned or are lost or abandoned and whose owner cannot be ascertained from a microchip or visible form of identification. Topics of concern have included, but are not limited to, humane treatment of these animals, implementation of trap-neuter-return (TNR) programs intended to reduce the number of free-roaming cats, disparity in existing laws and regulations regarding obligations of animal shelters and owners for cats and dogs, and impacts of free-roaming cats on wildlife and public health. “Trap-neuter-return” (or “trap-neuter-release” or “TNR”) is a process whereby free-roaming cats are live-trapped, spayed or neutered, ear-tipped (for identification), and, if possible, vaccinated, then released back to the general area from which they were trapped. The primary goal of most TNR programs is the reduction or eventual elimination of free-roaming cat populations.

In 2013-2014, the Virginia Department of Agriculture and Consumer Services convened the Comprehensive Animal Care Laws Working Group that provided Agency and stakeholder recommendations on cat population management strategies for the General Assembly to consider (Appendix C). Since then, some localities have begun to practice TNR programs with different requirements or restrictions, if any, and with or without local ordinances.

Representatives invited to the 2021 Free-roaming Stakeholder Workgroup had subject matter expertise in all of these areas. From the onset of the discussions, the members agreed unanimously that they all cared about the welfare of free-roaming cats and that the reduction of the number of free-roaming cats is necessary. As an outcome of that agreement, the discussions focused primarily on how best to accomplish this goal.

Proponents for TNR programs and cat colonies generally have advocated for TNR as the most humane method of reducing the population of free-roaming cats. Opponents of TNR programs regard these efforts as ineffective in reducing the significant harm to wildlife. Additionally, opponents state that free-roaming cats subject people to the risk of exposure to diseases, such as rabies, toxoplasmosis, etc.

In general, a “cat colony” is a group of two or more unowned domestic cats (*Felis catus*), allowed to roam at large, and for which care is often provided by a “caretaker.” A “caretaker” is an individual or entity (including a shelter or local animal control) who provides regular food and water for a cat colony and who may or may not monitor the health of cats in a colony and who may trap or work with a trapper to live-trap specific cats in a colony as part of a TNR effort.

A “trapper” is an individual who live-traps free-roaming cats, conveys the animals to an entity for veterinary care (e.g., spay/neuter, ear-tipping, vaccinations), and returns the animals to the location from which they were trapped, or another appropriate location. Not every cat colony is part of a TNR program.

Legal Background

Virginia has a robust, comprehensive animal care law (Code of Virginia §3.2, Chapter 65) that addresses a number of topics associated with domestic animals, including, but not limited to, animal welfare, transportation and sale of animals, and authority of local governing bodies. Of particular relevance to the discussions of the Free-roaming Cats Stakeholder Workgroup are several definitions in the existing law, including:

- "Abandon" means to desert, forsake, or absolutely give up an animal without having secured another owner or custodian for the animal or by failing to provide the elements of basic care as set forth in § 3.2-6503 for a period of four consecutive days; and
- "Owner" means any person who: (i) has a right of property in an animal; (ii) keeps or harbors an animal; (iii) has an animal in his care; or (iv) acts as a custodian of an animal.

A lack of clarity exists about the legal nexus between individuals supporting a free-roaming cat colony, either as a caretaker or trapper, and formal responsibilities attributed to them as a result of that relationship. A paramount question remains regarding whether or not the release of trapped free-roaming cats as part of a TNR program, or as part of the provision of general veterinary care, constitutes abandonment, for which there is a significant penalty as a misdemeanor offense.

§ 3.2-6504. Abandonment of animal; penalty.

No person shall abandon or dump any animal. Violation of this section is a Class 1 misdemeanor. Nothing in this section shall be construed to prohibit the release of an animal by its owner to a public or private animal shelter or other releasing agency.

In 2013, then-Virginia Attorney General Kenneth Cuccinelli, II, rendered an official advisory opinion (12 Op. Att’y Gen. 100; Appendix D) regarding several questions relevant to this issue. Specifically, the Attorney General was asked whether or not it was legal for a town or county to operate a TNR program, and specifically:

- Whether or not it is legal to trap feral (or, “free-roaming”) cats in a humane fashion;
- Whether such trapped cats may be neutered by a licensed veterinarian and released back to the location from which they were trapped; and
- Whether persons who trap feral cats in accordance with a locality’s TNR program become the *de facto* or *de jure* owners of such cats.

In his conclusion, the Attorney General noted that:

“...a locality may lawfully operate a capture and sterilization program for the purpose of controlling the population of feral cats. The feral cats may be captured in a humane fashion, and such captured cats may be sterilized by a licensed veterinarian. **The feral**

cats may not, however, be released by the locality back to the location from whence they came or some other location in the wild. ... persons who capture feral cats while acting as agents or in conjunction with a locality as part of its trap and sterilize program are companion animals finders and do not become the *de facto* or *de jure* owners of such cats.” [Emphasis added]

Of note is the declaration made by the Attorney General that individuals implementing TNR programs under the auspices of a locality not being considered “owners,” and, by extension, not bound by other “owner” obligations outlined in the Act. His opinion lacked guidance on individuals operating a TNR program outside of the auspices of a locality, but does note that, in his opinion, “... feral cats may not be released programmatically back to the location where they were captured or other location “in the wild.”” Even with the Attorney General’s opinion, legal questions remain regarding care of free-roaming cats and the operation of TNR programs.

In the 2021 session of the Virginia General Assembly, Senator Lynwood Lewis introduced SB 1390 (<https://lis.virginia.gov/cgi-bin/legp604.exe?211+ful+SB1390E+pdf>) to explicitly address the threat of punishment and allow increased utilization of TNR in two ways:

- Clarify the law to enable individual to release trapped and spayed/neutered cats back to where they were trapped without being charged with abandonment of a companion animal; and
- Expressly allow a “program,” such as a public shelter, to engage in TNR, since current law does not expressly authorize such activity, and the Dillon Rule prevents it.

Numerous discussions occurred during the session, without resolution, regarding the merits of the proposed legislation. Delegate Plum’s request to the Secretaries regarding this topic is a continuation of that conversation.

Workgroup Proposals

A. Cat management plan.

- a. *Proposal:* Direct the Virginia Department of Agriculture and Consumer Services, in coordination with the Virginia Departments of Health and Wildlife Resources, to convene a stakeholder workgroup to develop a model Free-Roaming Cat Management Responsibility Plan that could be used by any locality to reduce the number of free-roaming cats within the locality. Once the model Plan is available, localities would be required to develop and adopt a locality-specific Free-Roaming Cat Management Responsibility Plan. The purpose of the Plan would be to provide a framework under which cat colony caretakers and trappers would operate, a means through which that would occur (e.g., registration, authorization, permit), and any specific conditions and responsibilities that the locality wanted to apply to such a program (e.g., allowable locations of colonies). It would also integrate any existing cat-related ordinances currently effective in the locality and required that, if the locality’s animal shelter did not already accept cats, the shelter provide resources to citizens who contact it about cat-related concerns. The locality would be required to periodically review and update the Plan.

- b. *Benefits:* A locally-adopted Free-roaming Cat Management Responsibility Plan clarifies and enables the management of a cat colony. It provides a locality-endorsed approach under which caretakers and trappers operate and legal protections to those individuals or entities if they are adhering to the requirements of the Plan.
- c. *Concerns:* Local governments are already overwhelmed with work required by state and federal agencies and do not have the capacity to take on the task of developing and updating a Free-roaming Cat Management Responsibility Plan. Rather, a model Plan should be created that localities could use if they wanted guidance in the development of locally-driven cat management ordinances, but localities should not be obligated to create such a Plan. Additionally, experience has shown that the Virginia Department of Agriculture and Consumer Services is not the best entity to convene stakeholders to draft a model plan.

B. Colony management

- a. *Proposal:* A cat colony caretaker will be required to report to the local animal control authority about any free-roaming colony management activities that it conducts. This individual will be required to secure permission for such activities if they occur on property of another. The caretaker will also be required to register each colony at which it conducts free-roaming colony management activities with local animal control authorities and provide name and contact information of the individual or entity that provides food, shelter, veterinary care, or other support, as well as the contact information of the person granting permission for colony care activities, if on the property of another.
- b. *Benefits:* Reporting and registration facilitates discovery and reporting of information about any individual cat, as needed to address public health or wildlife conservation concerns. Such a process also provides accountability and responsibility to minimum standards of care and serves as part of the process of determining whether or not the cat management program is achieving its goal.
- c. *Concerns:* There are many practitioners of free-roaming cat management activities that will find this reporting and registration process overly burdensome, which may then result in them ceasing to support a colony. A threshold may help reduce some of this burden. There is no cognitive state agency (e.g., Department of Agriculture and Consumer Services) for the receipt of annual reports (e.g., a census of the colony overall). Reports should ideally be completed online. Registration and reporting should build on what is already in place for releasing animals from shelters.

C. Siting of a colony

- a. *Proposal:* Caretakers shall not site a colony in a wildlife-sensitive area. No existing colony that is located in a wildlife-sensitive area shall be maintained there by a trapper or caretaker.
- b. *Benefits:* Free-roaming cats have a significant impact on wildlife. There are a number of areas across the Commonwealth where public or private entities are actively managing for at-risk wildlife (such as endangered species or high biodiversity) and where the presence of free-roaming cats would have a negative

impact on the conservation work being performed. The Department of Wildlife Resources has offered its subject matter expertise to identify and spatially represent those areas of the Commonwealth that would be designated, for the purposes of free-roaming cat statutes, as wildlife-sensitive areas.

- c. *Concerns:* If an existing colony occurs in an area that is designated as a wildlife-sensitive area, there is no framework (e.g., timeframe, allowable actions) under which to work to effect a relocation or elimination of that colony. The criteria used to delineate wildlife-sensitive areas should be vetted in a public forum, through administrative or regulatory processes, to provide opportunity for stakeholder engagement and feedback.

D. Veterinary care

- a. *Proposal:* The caretaker of a cat colony shall have each cat sterilized, ear-tipped (to facilitate the identification of sterilized, vaccinated cats), vaccinated for rabies, implanted with a microchip registered to the caretaker, and provided with any necessary treatment recommended by a veterinarian. This veterinary care shall be provided at the time of sterilization or performance of any other veterinary procedure requiring anesthesia.
- b. *Benefits:* Sterilization and vaccination for rabies ameliorates a number of concerns existing now about free-roaming cats. Specifically, having cats vaccinated for rabies addresses human health (exposure to rabies of individuals purposefully or accidentally interacting with these cats) and wildlife health (transmission of rabies to/from cats and rabies-vector wild animals) concerns. Sterilization is the only means by which an overall reduction in the free-roaming cat population can be effected. Ear-tipping is a standard practice for visually identifying cats that have been sterilized and vaccinated, eliminating unnecessary trapping. Microchipping facilitates more timely identification of the veterinary history for a particular cat through the connection of chip to veterinary records.
- c. *Concerns:* Many veterinarians donate services to sterilize and vaccinate free-roaming cats or charge a highly-reduced rate. Requiring cats to be microchipped could cause a diversion of funds or donated services for vitally-important sterilizations and vaccinations. Additional sources of revenue are needed to support the cost of microchipping. “Necessary treatment recommended by a veterinarian” is overly broad and may obligate a caretaker or trapper to pay for, or a veterinarian to provide *gratis* or at a reduced cost, veterinary care that is not critical to the overall health and well-being of a free-roaming cat.

E. Feeding

- a. *Proposal:* Free-roaming cats shall be fed only during daylight hours for not longer than 30 minutes at a time, not more than twice a day, except when necessary to trap a cat. The food should be contained in a sanitary feeding receptacle that is above the ground and covered to prevent easy access by wildlife. The caretaker must remain present during the feeding episodes and within sight of the feeding. Food receptacles will be removed between feeding events. The caretaker providing food will not dump it on the ground, leave open any food package, use

an automatic feeder, or place or leave food in a manner as to make it accessible to or easily obtained by wildlife.

- b. *Benefits:* These requirements address concerns related to the artificial concentration of wildlife at these feeding sites. Wild animals gathering at such feeding stations can result in increased human-wildlife conflict, transmission of disease to/from wild animals to free-roaming cats and other domestic animals feeding in the area. Daytime feeding and removal of all food reduces the likelihood that animals such as bears, raccoons, opossums, or other species will find these sites.
- c. *Concerns:* Colony caretakers often feed the cats before and after work. There are times of the year when it is dark before and/or after typical work hours, and it may not be possible for a caretaker to feed a colony during daylight. Some cats in a colony may require more than 30 minutes to feed because of a lack of any socialization to humans. If the caretaker is required to be on-site and able to see the feeding station while feeding is underway, there is no need to require that food be placed above the ground covered, as the caretaker will be able to observe and deter any wild animal that may approach the site during the feeding period.

F. Recordkeeping

- a. *Proposal:* Free-roaming cat caretakers shall maintain records regarding activities associated with the cats. These records will be available to any state or local government entity requesting to inspect the records. A record will be maintained for the life of a cat, plus one year. The requirements will not apply to any caretaker trapping or providing care for cats on his/her own property. The record for each cat trapped or rescued will include: name and contact of the caretaker; name and contact of the trapper; date and address of the location of trapping; name and contact of the owner of the property on which the cat was trapped; documentation of authorization of the property owner to trap, release, and provide care for cats on the property; and address where the cat was released. The record for each cat sterilized will include: name and contact information of the individual or caretaker responsible for providing the cat with a duty of care; address of the colony into which the cat was released; name and contact of the owner of the property on which the colony is located; documentation of authorization of the property owner to trap, release, and provide care for cats on the property; and custodial and medical records. The caretaker (or trapper, if the animal was trapped by someone other than the caretaker) will keep records of any wildlife inadvertently trapped during the process of trapping cats, including disposition of the wildlife.
- b. *Benefits:* Formally documenting actions associated with any free-roaming cat informs the evaluation of whether or not a TNR program is actually achieving the goal of population reduction. Formalized recordkeeping also facilitates and expedites access to information about a particular cat when needed to address a public health or wildlife concern.
- c. *Concerns:* Recordkeeping should not be so onerous that organizations and veterinarians will not participate in TNR activities. Requiring an individual to maintain all of the records is a tremendous burden; that responsibility should lie

with an organization or entity (e.g., public shelter) under which the caretaker is operating. If this level of detailed recordkeeping is enabled, the disposition of the cat should also be noted (e.g., adoption, transfer). Of particular concern to caretakers is data privacy (e.g., caretaker name, address) and that the records are not otherwise protected from release under the state's Freedom of Information Act. Caretakers and providers provided examples of harassment resulting from the exposure of their names and contact information.

G. Education

- a. *Proposal:* The Department of Agriculture and Consumer Services, in consultation with the Departments of Health and Wildlife Resources, evaluate and approve third-party training standards for trappers and caretakers of free-roaming cats. Standards will include a required basic online training course (4-6 hours) and annual continuing education, approved by the Department of Agriculture and Consumer Services, of 2-4 hours. This training must be completed prior to trapping or caretaking at any colony. Trappers and caretakers must register with their local animal control authority and contact the appropriate animal control authority before trapping or caretaking, if the colony is in a different locality.
- b. *Benefits:* Training helps ensure that best management practices are being employed by caretakers and trappers, which protects both the cats and people. Training also reinforces the expectations and requirements of being a trapper or a caretaker, which should reduce the likelihood of someone entering into the activity without the ability to implement all needed actions. Continuing education facilitates trappers and caretakers being up-to-date on new practices or changes in law or regulation. This model works well in the wildlife rehabilitation community.
- c. *Concerns:* Training for trappers is different than training for caretakers. The two programs need to be distinct and separate. The amount of time for required training may be too onerous for many practitioners; there is a concern about people dropping out of TNR programs as a result. The private sector should be given the opportunity to provide training; the state agencies do not necessarily have to prescribe or deliver training. An individual caring for a relatively small number of free-roaming cats probably does not need training; there should be a threshold number of cats being cared for or trapped in a particular colony that triggers when training will be required.

A concept that was raised, but only peripherally discussed, is “return to field,” whereby cats admitted to a shelter are neutered and returned to cat colonies. Such a program would need to be clearly defined and considered as part of future legislation.

Many points of disagreement are tied to specific definitions that need to be included in any proposed legislation. Many members of the workgroup also thought that local governments needed to have greater participation in this discussion, as it appeared that localities could be responsible for development, delivery and enforcement of a TNR or other free-roaming cat colony management program. Any future legislative proposals should not invalidate any existing local ordinance that regulates cats or the management of free-roaming cats and may

allow localities to adopt requirements for free-roaming cat management that are more stringent, if desired.

At the final meeting in November, the workgroup members from Virginia Tech presented a draft proposal outlining a number of ideas for monitoring and research that would further advance knowledge about issues surrounding trap-neuter-vaccinate-release (TNVR) programs and free-roaming cats in Virginia, in anticipation of legislation at some future point (Appendix E). Workgroup members were in general agreement that the ideas had merit and expressed a desire to collaborate to identify potential funding sources and to scope out the ideas more fully.

Conclusion

Even through the stakeholder workgroup did not reach unanimous consent to the proposals discussed herein, there was sufficient agreement by some members of the TNR community and some members of the wildlife conservation community to provide a basis for continued discussion, outside of the scope and charge of this workgroup. Of particular focus is how to expand TNR, particularly in allowing public shelters to engage in release, while at the same time protecting public health and wildlife. The outcomes of that work could inform potential future legislation.

Appendix A. Letter of Request from Chairman, House Agriculture, Chesapeake, and Natural Resources Committee, Virginia General Assembly



COMMONWEALTH OF VIRGINIA
HOUSE OF DELEGATES
RICHMOND

KENNETH R. PLUM

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COMMITTEE ASSIGNMENTS:
AGRICULTURE, CHESAPEAKE AND NATURAL RESOURCES
APPROPRIATIONS
COMMUNICATIONS, TECHNOLOGY AND INNOVATION
PUBLIC SAFETY

March 10, 2021

The Honorable Bettina Ring
The Honorable Matthew J. Strickler
The Honorable Daniel Carey, MD
P.O. Box 1475
Richmond, VA 23218

Dear Secretaries Ring, Strickler, and Carey,

In your roles as the Secretaries of Agriculture and Forestry, Natural Resources and Health and Human Services, I am writing to you as the Chairman of the House Agriculture, Chesapeake, and Natural Resources Committee to respectively request you convene a workgroup to develop legislation to reduce and control the population of free-roaming cats and mitigate the impact of free-roaming cats on the Commonwealth's native wildlife, natural resources, and public health.

During the 2021 Session of the General Assembly, Senator Lynwood Lewis patroned SB 1390, a bill related to Trap, Neuter and Release (TNR) of cats. I thank Senator Lewis for his leadership in addressing this important issue, which bears serious implications throughout the Commonwealth.

In 2013-2014, the Virginia Department of Agricultural and Consumer Services convened the Comprehensive Animal Care Laws Working Group that provided Agency and stakeholder recommendations on cat population management strategies for the General Assembly to consider. Since that time, some localities have begun to practice TNR programs with different requirements or restrictions, if any, and with or without local ordinances.

Given the jurisdictions of your three Secretariats, I am respectfully asking that you harmonize existing local free-roaming cat population management practices with animal protection and control and wildlife conservation stakeholder input to draft legislation for the 2022 Session of the General Assembly.

It is my hope that a work group would be overseen by the Department of Agriculture and Consumer Services and include representatives of the State Veterinarian, the Department of Public Health, the Department of Wildlife Resources, and the Department of Conservation and Recreation, as well as animal shelter and control professionals, wildlife conservation and environmental experts, veterinary and human health experts, and representatives of local governments, agricultural interests, and property owners.

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Continued strengthening of the Commonwealth's free-roaming cat population management policy is a priority for me and the House Agriculture, Chesapeake Natural Resources Committee. Your work in convening a work group can ensure broad stakeholder input, review and support and make certain that local control and proven best practices are considered by the 2022 General Assembly.

Thank you for your time and for considering this request.

Sincerely,

A handwritten signature in cursive script that reads "Kenneth R. Plum".

Kenneth R. Plum

Appendix B. Stakeholder Workgroup Members

Name	Affiliation
Sharon Quillen Adams	Virginia Alliance for Animal Shelters
Molly Armus	The Humane Society of the United States
Tom Blackburn	Audubon Society of Northern Virginia
Dr. Charles Broaddus	Virginia Department of Agriculture and Consumer Services
Edward Clark	Wildlife Center of Virginia
Paulette Dean	Danville Area Humane Society
Teresa Dockery	Bristol Humane Society
Michelle Dosson	Norfolk Animal Care Center
Stephanie Boyles Griffin	The Humane Society of the United States
Rebecca Gwynn	Virginia Department of Wildlife Resources
Marge Hackett	Operation Cat Snip, City of Newport News
Dr. Laura Hungerford	Virginia-Maryland College of Veterinary Medicine, Virginia Tech
Dr. Angela Ivey	Richmond SPCA
Dr. Sarah Karpanty	Department of Fish and Wildlife Conservation, Virginia Tech
Heidi Meinzer	Virginia Federation of Humane Societies
Dr. Julia Murphy	Virginia Department of Health
Daphna Nachminovitch	People for the Ethical Treatment of Animals
Dr. Jennifer Riley	Blue Ridge Wildlife Center
Grant Sizemore	American Bird Conservancy
Kathryn Strouse	Virginia Animal Control Association

* Scott Meacham, Virginia Division of Legislative Services, participated in a consultation capacity to support development of proposed legislation.

*Katie Sallee, MSW, Special Assistant for Policy & Communications for the Secretary of Natural and Historic Resources, managed all of the workgroup meetings, public notices, minutes, etc.

Appendix C. Comprehensive Animal Care Laws Working Group Composite Proposal (2014)

Comprehensive Animal Care Laws Working Group Composite Proposal

§3.2-6539.1. Ordinances regarding cats.

A. By July 1, 2021 the governing body of each county or city may cause to be enacted an ordinance concerning the management of free roaming cats that promotes animal welfare, public health and safety, and environmental stewardship. Such ordinance shall at a minimum require confinement and disposition by the public animal/shelter for the locality of any cat that is (i) suffering from an apparent violation of this chapter or any pursuant ordinance, or (ii) is deemed less than 3 months of age and is found running at large without identification. Such ordinance may also include but is not limited to the following:

- 1. Requiring the licensure of cats pursuant to §3.2-6524;*
- 2. Prohibiting the free roaming of all, unidentified, or unsterilized cats;*
- 3. Authorizing the sterilization of free roaming cats; and*
- 4. Adopting a community cat program.*

All ordinances enacted pursuant to this section shall ensure to the fullest extent possible the welfare of cats in all matters concerning control, confinement and disposition. This section does not authorize the destruction of cats except in circumstances where euthanasia by a licensed veterinarian or in accordance with methods approved by the State Veterinarian in state directive 79-1 is authorized by this chapter.

A locality may establish a uniform schedule of civil penalties for violations of specific provisions of ordinances enacted pursuant to the section in accordance with subsection B of § 3.2-6543.

B. A locality may adopt an ordinance that authorizes the sterilization of free roaming cats during all or designated portions of the year, provided that no cat may be captured on private property without the consent of the property owner or his agent. Employees or designated agents of the locality may capture, confine, sterilize, and return to the location of capture any healthy unsterilized cat according to a protocol established by a supervising licensed veterinarian designated or appointed by the locality. Such a protocol shall at a minimum require the cat be ear tipped, microchipped and vaccinated for rabies as part of the sterilization procedure. Any cat captured pursuant to such an ordinance that is critically ill or critically injured may be euthanized by a licensed veterinarian or a certified euthanasia technician. The supervising veterinarian may authorize additional vaccinations or treatments as deemed necessary. Any cat captured pursuant to such an ordinance that is suffering from an apparent violation of this chapter or a pursuant ordinance shall be confined and disposed of by the public animal shelter for the locality. The locality or its designated agent shall be considered the custodian of any cat captured pursuant to this or-

dinance until it is released to a community program. The public animal shelter for the locality shall maintain a record of each cat captured pursuant to such an ordinance in accordance with §3.2-6557.

The release of a healthy cat pursuant to such an ordinance by a locality or its designated agent shall not be considered a violation of any section of this chapter. If the locality has by ordinance prevented the free roaming of unsterilized cats, it may recoup the cost of sterilizing the cat from the owner if known according to a sliding fee scale based on income.

C. A locality may adopt an ordinance establishing a community cat program to allow for communal management of existing free-roaming cat populations, provided that no such management shall occur on public lands without the written permission of the appropriate administrative authority or on private land without the consent of the property owner. Such an ordinance shall establish a protocol for the management of such cat populations, and at a minimum shall require that all cats in managed populations be sterilized, microchipped, and kept current in rabies vaccination and that they be managed at a suitable distance from any sensitive wildlife area, or any school, park, or other public venue where children congregate. The protocol may establish additional criteria regarding registration or licensure, provision of veterinary treatment, qualification of caretakers, and relocation of managed populations provided that no new populations of cats shall be established on public lands unless suitably enclosed.

All cats in community cat programs shall remain subject to §3.2-6503. A record of each managed cat, including its microchip number and current rabies vaccination certificate, shall be kept at the public animal shelter for the locality. The capture, confinement, and return to an at-large status of a cat in a community cat program by an employee or designated agent of the locality or a recognized caretaker shall not be considered a violation of any section of this chapter.

§3.2-6539.2. Cats roaming at large on state or federal property managed for wildlife or recreational purposes, confinement and disposition.

Employees or agents of state and federal agencies with responsibility for management of state or federal land managed for wildlife or recreational purposes shall be authorized to capture and confine any cats found running at large on such lands. All captured cats that bear identification or that are socialized to people shall be confined and disposed of per §3.2-6546 by the public animal shelter for the locality in which trapping occurred. The locality in which trapping occurred may require that all other captured cats be confined and disposed of per §3.2-6546 by the public animal shelter. All other captured cats may also be confined and disposed of per §3.2-6548 by a private animal shelter. All other captured cats not reclaimed by an owner or taken into custody by an animal shelter within 48 hours of capture may be euthanized in accordance with the methods approved by the State Veterinarian.

§3.2-6539.3. Nuisance companion animals.

A. As used in this section:

"Nuisance companion animal" means a companion animal that through its behavior or condition is a threat to public health or safety, or that has caused substantive damage to or loss of enjoy-

ment of private property. A companion animal shall not be considered a nuisance companion animal if properly confined to the property of its owner or custodian at all times. The species, breed, use in lawful recreational or hunting activities, or lawful roaming at large of a companion animal shall not in itself constitute a condition that creates a threat to public health or safety.

B. Any law-enforcement officer or animal control officer who has reason to believe that a companion animal within his jurisdiction is a nuisance companion animal shall apply to a magistrate serving the jurisdiction for the issuance of a summons requiring the owner or custodian, if known, to appear before a general district court at a specified time. The summons shall advise the owner of the nature of the proceeding and the matters at issue. If a law-enforcement officer successfully makes an application for the issuance of a summons, he shall contact the local animal control officer and inform him of the location of the companion animal and the relevant facts pertaining to his belief that the animal is a nuisance. The animal control officer shall confine the animal until such time as evidence shall be heard and a verdict rendered. If the animal control officer determines that the owner or custodian can abate the nuisance by confining the animal, he may permit the owner or custodian to confine the animal until such time as evidence shall be heard and a verdict rendered. The court, through its contempt powers, may compel the owner, custodian, or harbinger of the animal to produce the animal. If, after hearing the evidence, the court finds that the animal is a nuisance companion animal, the court shall order that the animal's owner or custodian abate the condition or circumstance that creates a nuisance, or if the owner or custodian is unknown or unable to reasonably abate the nuisance that the animal be confined and disposed of in accordance with subsection D of §3.2-6546 by the public animal shelter for the locality. The court, upon finding the animal to be a nuisance companion animal, may order the owner, custodian, or harbinger thereof to pay restitution for actual damages to private property caused by the animal. The court, in its discretion, may also order the owner to pay all reasonable expenses incurred in caring and providing for such animal from the time the animal is taken into custody until such time as the animal is disposed of or returned to the owner. The procedure for appeal and trial shall be the same as provided by law for misdemeanors. Trial by jury shall be as provided in Article 4 (§ 19.2-260 et seq.) of Chapter 15 of Title 19.2. The Commonwealth shall be required to prove its case beyond a reasonable doubt.

C. Any law-enforcement officer or animal control officer who has reason to believe that a nuisance companion animal within his jurisdiction is in violation of a court order issued in accordance with this section shall apply to a magistrate serving the jurisdiction for the issuance of a summons requiring the owner or custodian, if known, to appear before a general district court at a specified time. The summons shall advise the owner of the nature of the proceeding and the matters at issue. If a law-enforcement officer successfully makes an application for the issuance of a summons, he shall contact the local animal control officer and inform him of the location of the companion animal and the relevant facts pertaining to his belief that the animal is a nuisance. The animal control officer shall confine the animal until such time as evidence shall be heard and a verdict rendered. The court, through its contempt powers, may compel the owner, custodian, or harbinger of the animal to produce the animal. If, after hearing the evidence, the court finds that the animal is in violation of a court order, the court shall order that the animal

be confined and disposed of in accordance with subsection D of §3.2-6546 by the public animal shelter for the locality. If the court determines that the violation of the order was not due to any negligence by the owner or custodian of the animal it may order continued abatement of the nuisance at its discretion.

§ 3.2-6543. Governing body of any locality may adopt certain ordinances.

A. The governing body of any locality of the Commonwealth may adopt, and make more stringent, ordinances that parallel §§ 3.2-6521 through 3.2-6539, 3.2-6539.3, 3.2-6546 through 3.2-6555, 3.2-6562, 3.2-6569, 3.2-6570, 3.2-6574 through 3.2-6580, and 3.2-6585 through 3.2-6590. Any town may choose to adopt by reference any ordinance of the surrounding county adopted under this section to be applied within its town limits, in lieu of adopting an ordinance of its own.

Any funds collected pursuant to the enforcement of ordinances adopted pursuant to the provisions of this section may be used for the purpose of defraying the costs of local animal control, including efforts to promote sterilization of cats and dogs.

B. Any locality may, by ordinance, establish uniform schedules of civil penalties for violations of specific provisions of ordinances adopted pursuant to this section. Civil penalties may not be imposed for violations of ordinances that parallel § 3.2-6570. Designation of a particular violation for a civil penalty shall be in lieu of criminal sanctions and preclude prosecution of such violation as a criminal misdemeanor. The schedule for civil penalties shall be uniform for each type of specified violation and the penalty for any one violation shall not be more than \$150. Imposition of civil penalties shall not preclude an action for injunctive, declaratory or other equitable relief. Moneys raised pursuant to this subsection shall be placed in the locality's general fund.

An animal control officer or law-enforcement officer may issue a summons for a violation. Any person summoned or issued a ticket for a scheduled violation may make an appearance in person or in writing by mail to the department of finance or the treasurer of the locality issuing the summons or ticket prior to the date fixed for trial in court. Any person so appearing may enter a waiver of trial, admit liability, and pay the civil penalty established for the offense charged.

§ 3.2-6546. County or city public animal shelters; confinement and disposition of animals; affiliation with foster care providers; penalties; injunctive relief.

A. For purposes of this section:

"Animal" shall not include agricultural animals.

"Rightful owner" means a person with a right of property in the animal.

B. The governing body of each county or city shall maintain or cause to be maintained a public

animal shelter and shall require dogs running at large without the tag required by § 3.2-6531, ~~or~~ dogs in violation of an ordinance passed pursuant to § 3.2-6538, cats requiring confinement and disposition per an ordinance enacted pursuant to § 3.2-6539.1, cats requiring confinement and disposition per § 3.2-6539.2, and companion animals requiring confinement per § 3.2-6539.3 or § 3.2-6551 to be confined therein. Nothing in this section shall be construed to prohibit confinement of other companion animals in such a shelter. The governing body of any county or city need not own the facility required by this section but may contract for its establishment with a private group or in conjunction with one or more other local governing bodies. The governing body shall require that:

1. The public animal shelter shall be accessible to the public at reasonable hours during the week;
2. The public animal shelter shall obtain a signed statement from each of its directors, operators, staff, or animal caregivers specifying that each individual has never been convicted of animal cruelty, neglect, or abandonment, and each shelter shall update such statement as changes occur;
3. If a person contacts the public animal shelter inquiring about a lost companion animal, the shelter shall advise the person if the companion animal is confined at the shelter or if a companion animal of similar description is confined at the shelter;
4. The public animal shelter shall maintain a written record of the information on each companion animal submitted to the shelter by a private animal shelter in accordance with subsection D of § 3.2-6548 for a period of 30 days from the date the information is received by the shelter. If a person contacts the shelter inquiring about a lost companion animal, the shelter shall check its records and make available to such person any information submitted by a private animal shelter or allow such person inquiring about a lost animal to view the written records;
5. The public animal shelter shall maintain a written record of the information on each companion animal submitted to the shelter by a releasing agency other than a public or private animal shelter in accordance with subdivision F 2 of § 3.2-6549 for a period of 30 days from the date the information is received by the shelter. If a person contacts the shelter inquiring about a lost companion animal, the shelter shall check its records and make available to such person any information submitted by such releasing agency or allow such person inquiring about a lost companion animal to view the written records; and
6. The public animal shelter shall maintain a written record of the information on each companion animal submitted to the shelter by an individual in accordance with subdivision A 2 of § 3.2-6551 for a period of 30 days from the date the information is received by the shelter. If a person contacts the shelter inquiring about a lost companion animal, the shelter shall check its records and make available to such person any information submitted by the individual or allow such person inquiring about a lost companion animal to view the written records.

C. An animal confined pursuant to this section shall be kept for a period of not less than five days, such period to commence on the day immediately following the day the animal is initially confined in the facility, unless sooner claimed by the rightful owner thereof.

The operator or custodian of the public animal shelter shall make a reasonable effort to ascertain whether the animal has a collar, tag, license, tattoo, or other form of identification. If such identification is found on the animal, the animal shall be held for an additional five days, unless sooner claimed by the rightful owner. If the rightful owner of the animal can be readily identified, the operator or custodian of the shelter shall make a reasonable effort to notify the owner of the animal's confinement within the next 48 hours following its confinement.

If any animal confined pursuant to this section is claimed by its rightful owner, such owner may be charged with the actual expenses incurred in keeping the animal impounded. In addition to this and any other fees that might be levied, the locality may, after a public hearing, adopt an ordinance to charge the owner of an animal a fee for impoundment and increased fees for subsequent impoundments of the same animal.

D. If an animal confined pursuant to this section has not been claimed upon expiration of the appropriate holding period as provided by subsection C, it shall be deemed abandoned and become the property of the public animal shelter.

Such animal may be euthanized in accordance with the methods approved by the State Veterinarian or disposed of by the methods set forth in subdivisions 1 through 5. No shelter shall release more than two animals or a family of animals during any 30-day period to any one person under subdivisions 2, 3, or 4.

1. Release to any humane society, public or private animal shelter, or other releasing agency within the Commonwealth, provided that each humane society, animal shelter, or other releasing agency obtains a signed statement from each of its directors, operators, staff, or animal caregivers specifying that each individual has never been convicted of animal cruelty, neglect, or abandonment and updates such statements as changes occur;
2. Adoption by a resident of the county or city where the shelter is operated and who will pay the required license fee, if any, on such animal, provided that such resident has read and signed a statement specifying that he has never been convicted of animal cruelty, neglect, or abandonment;
3. Adoption by a resident of an adjacent political subdivision of the Commonwealth, if the resident has read and signed a statement specifying that he has never been convicted of animal cruelty, neglect, or abandonment;
4. Adoption by any other person, provided that such person has read and signed a statement specifying that he has never been convicted of animal cruelty, neglect, or abandonment and provided

that no dog or cat may be adopted by any person who is not a resident of the county or city where the shelter is operated, or of an adjacent political subdivision, unless the dog or cat is first sterilized, and the shelter may require that the sterilization be done at the expense of the person adopting the dog or cat; or

5. Release for the purposes of adoption or euthanasia only, to an animal shelter, or any other releasing agency located in and lawfully operating under the laws of another state, provided that such animal shelter, or other releasing agency: (i) maintains records that would comply with § 3.2-6557; (ii) requires that adopted dogs and cats be sterilized; (iii) obtains a signed statement from each of its directors, operators, staff, and animal caregivers specifying that each individual has never been convicted of animal cruelty, neglect, or abandonment, and updates such statement as changes occur; and (iv) has provided to the public or private animal shelter or other releasing agency within the Commonwealth a statement signed by an authorized representative specifying the entity's compliance with clauses (i) through (iii), and the provisions of adequate care and performance of humane euthanasia, as necessary in accordance with the provisions of this chapter.

For purposes of recordkeeping, release of an animal by a public animal shelter to a public or private animal shelter or other releasing agency shall be considered a transfer and not an adoption. If the animal is not first sterilized, the responsibility for sterilizing the animal transfers to the receiving entity.

Any proceeds deriving from the gift, sale, or delivery of such animals shall be paid directly to the treasurer of the locality. Any proceeds deriving from the gift, sale, or delivery of such animals by a public or private animal shelter or other releasing agency shall be paid directly to the clerk or treasurer of the animal shelter or other releasing agency for the expenses of the society and expenses incident to any agreement concerning the disposing of such animal. No part of the proceeds shall accrue to any individual except for the aforementioned purposes.

E. Nothing in this section shall prohibit the immediate euthanasia of a critically injured, critically ill, or unweaned animal for humane purposes. Any animal euthanized pursuant to the provisions of this chapter shall be euthanized by one of the methods prescribed or approved by the State Veterinarian.

F. Nothing in this section shall prohibit the immediate euthanasia or disposal by the methods listed in subdivisions 1 through 5 of subsection D of an animal that has been released to a public or private animal shelter, other releasing agency, or animal control officer by the animal's rightful owner after the rightful owner has read and signed a statement: (i) surrendering all property rights in such animal; (ii) stating that no other person has a right of property in the animal; and (iii) acknowledging that the animal may be immediately euthanized or disposed of in accordance with subdivisions 1 through 5 of subsection D.

G. Nothing in this section shall prohibit any feral dog or feral cat not bearing a collar, tag, tattoo, or other form of identification that, based on the written statement of a disinterested person, ex-

hibits behavior that poses a risk of physical injury to any person confining the animal, from being euthanized after being kept for a period of not less than three days, at least one of which shall be a full business day, such period to commence on the day the animal is initially confined in the facility, unless sooner claimed by the rightful owner. The statement of the disinterested person shall be kept with the animal as required by § 3.2-6557. For purposes of this subsection, a disinterested person shall not include a person releasing or reporting the animal.

H. No public animal shelter shall place a companion animal in a foster home with a foster care provider unless the foster care provider has read and signed a statement specifying that he has never been convicted of animal cruelty, neglect, or abandonment, and each shelter shall update such statement as changes occur. The shelter shall maintain the original statement and any updates to such statement in accordance with this chapter and for at least so long as the shelter has an affiliation with the foster care provider.

I. A public animal shelter that places a companion animal in a foster home with a foster care provider shall ensure that the foster care provider complies with § 3.2-6503.

J. If a public animal shelter finds a direct and immediate threat to a companion animal placed with a foster care provider, it shall report its findings to the animal control agency in the locality where the foster care provider is located.

K. The governing body shall require that the public animal shelter be operated in accordance with regulations issued by the Board. If this chapter or such regulations are violated, the locality may be assessed a civil penalty by the Board or its designee in an amount that does not exceed \$1,000 per violation. Each day of the violation is a separate offense. In determining the amount of any civil penalty, the Board or its designee shall consider: (i) the history of previous violations at the shelter; (ii) whether the violation has caused injury to, death or suffering of, an animal; and (iii) the demonstrated good faith of the locality to achieve compliance after notification of the violation. All civil penalties assessed under this section shall be recovered in a civil action brought by the Attorney General in the name of the Commonwealth. Such civil penalties shall be paid into a special fund in the state treasury to the credit of the Department to be used in carrying out the purposes of this chapter.

l. If this chapter or any laws governing public animal shelters are violated, the Commissioner may bring an action to enjoin the violation or threatened violation of this chapter or the regulations pursuant thereto regarding public animal shelters, in the circuit court where the shelter is located. The Commissioner may request the Attorney General to bring such an action, when appropriate.

§ 3.2-6551. ~~Notification by individuals~~ *Individuals* finding companion animals; penalty.

A. Any individual who finds a companion animal and (i) provides care or safekeeping or (ii) retains the companion animal in such a manner as to control its activities shall within 48 hours:

1. Make a reasonable attempt to notify the owner of the companion animal if the owner can be ascertained from any tag, license, collar, tattoo, or other form of identification or markings or if the owner of the animal is otherwise known to the individual; and

2. Notify the public animal shelter that serves the locality where the companion animal was found and provide to the shelter contact information, including at least a name and a contact telephone number, a description of the animal, including information from any tag, license, collar, tattoo, or other identification or markings, and the location where the companion animal was found.

B. If an animal control officer determines that the companion animal was not subject to a violation of this chapter or a pursuant ordinance when confined they may affect or order the release of the animal or return it to its rightful owner if known. Such release shall not constitute a violation of this chapter.

C. If an animal control officer determines that the companion animal is subject to a violation of this chapter or a pursuant regulation the animal shall be confined and disposed of by the public animal shelter for the locality per § 3.2-6546 provided that the individual finding the companion animal, if eligible, may serve as a foster care provider and adopt the animal once any holding period is satisfied.

BD. If an individual finds a companion animal and (i) provides care or safekeeping or (ii) retains the companion animal in such a manner as to control its activities, the individual shall comply with the provisions of § 3.2-6503.

CE. Any individual who violates this section may be subject to a civil penalty not to exceed \$50 per companion animal.

§ 54.1-3801. Exceptions.

This chapter shall not apply to:

1. The owner of an animal and the owner's full-time, regular employee caring for and treating the animal belonging to such owner, except where the ownership of the animal was transferred for the purpose of circumventing the requirements of this chapter;

2. Veterinarians licensed in other states called in actual consultation or to attend a case in this Commonwealth who do not open an office or appoint a place to practice within this Commonwealth;

3. Veterinarians employed by the United States or by this Commonwealth while actually engaged in the performance of their official duties;

4. Veterinarians providing free care in underserved areas of Virginia who (i) do not regularly practice veterinary medicine in Virginia, (ii) hold a current valid license or certificate to practice veterinary medicine in another state, territory, district or possession of the United States, (iii) volunteer to provide free care in an underserved area of this Commonwealth under the auspices of a publicly supported all volunteer, nonprofit organization that sponsors the provision of health care to populations of underserved people, (iv) file copies of their licenses or certificates issued in such other jurisdiction with the Board, (v) notify the Board at least five business days prior to the voluntary provision of services of the dates and location of such service, and (vi) acknowledge, in writing, that such licensure exemption shall only be valid, in compliance with the Board's regulations, during the limited period that such free health care is made available through the volunteer, nonprofit organization on the dates and at the location filed with the Board. The Board may deny the right to practice in Virginia to any veterinarian whose license has been previously suspended or revoked, who has been convicted of a felony or who is otherwise found to be in violation of applicable laws or regulations. However, the Board shall allow a veterinarian who meets the above criteria to provide volunteer services without prior notice for a period of up to three days, provided the nonprofit organization verifies that the practitioner has a valid, unrestricted license in another state; or

5. Persons purchasing, possessing, and administering drugs in a public or private shelter as defined in § 3.2-6500 or acting under §3.2-6539.2, provided that such purchase, possession, and administration is in compliance with § 54.1-3423.

Appendix D. Official advisory opinion – Attorney General Kenneth Cuccinelli, II



COMMONWEALTH of VIRGINIA

Office of the Attorney General

Kenneth T. Cuccinelli, II
Attorney General

July 12, 2013

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Douglas W. Napier, Esquire
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Dear Mr. Napier:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issues Presented

You inquire generally whether a town and county legally may operate a Trap-Neuter-Release (“TNR”) program, and specifically as to:

1. Whether it is legal to trap feral cats in a humane fashion;
2. Whether such trapped cats may be neutered by a licensed veterinarian and released back to the location from which they were trapped; and
3. Whether persons who trap feral cats in accordance with a locality’s TNR program become the *de facto* or *de jure* owners of such cats.

Response

It is my opinion that a locality lawfully may operate a capture and sterilization program for the purpose of controlling a population of feral cats. The feral cats may be captured in a humane fashion, and such captured cats may be sterilized by a licensed veterinarian. The feral cats, however, may not be released by the locality back to the location from whence they came or some other location in the wild. Finally, it is my opinion that persons who capture feral cats while acting as agents of or in conjunction with a locality as part of its trap and sterilize program are companion animal finders and do not become the *de facto* or *de jure* owners of such cats.

Background

You indicate that TNR programs seek to trap feral cats humanely, neuter or spay them, and return them to the place from which they were trapped or “some other more suitable place in the wild.” The proposed program would involve the participation of the Warren County Animal Control and the Humane Society of Warren County.

Applicable Law and Discussion

You first inquire whether a Virginia locality lawfully may implement a program to trap feral cats.

Both feral and domestic cats are “companion animals” as defined by statute.¹ The term “trap” is not used in Title 3.2 of the *Code of Virginia* in connection with feral cats or other companion animals.² Rather, it is used in connection with “trapping” of wildlife as regulated under other titles.³

Although the term “trapping” is not used for the companion animals included in Title 3.2, certain local officials may capture feral cats. In fact, § 3.2-6562 provides that it is the duty of animal control officers “to capture and confine any companion animal of unknown ownership found running at large on which the license fee has not been paid.”⁴ Similarly:

Any humane investigator, law-enforcement officer or animal control officer may lawfully seize and impound any animal that has been abandoned, has been cruelly treated, or is suffering from an apparent violation of this chapter that has rendered the animal in such a condition as to constitute a direct and immediate threat to its life, safety or health.⁵

Section 3.2-6543 provides that a local governing body may adopt and “make more stringent” ordinances that parallel many sections of Title 3.2.⁶ Thus, it is my opinion that a locality could adopt ordinances that would allow for the capture and confinement of feral cats, because they would parallel § 3.2-6562.⁷

Turning to your inquiry regarding sterilization, a locality has the authority to adopt local ordinances for animal control programs so long as they will “conform to and not be in conflict with the public policy of the State as embodied in its statutes.”⁸ Section 3.2-6574(A) provides, in part, that “[e]very new owner of a . . . cat adopted from a releasing agency shall cause to be sterilized the . . . cat.” Section 3.2-6548(E) transfers the responsibility for documenting such sterilization from an animal shelter to any other “releasing agency.”⁹ Further, § 3.2-6534 requires that a locality’s proceeds from dog and cat license taxes be spent on six specified purposes, one of which is “[e]fforts to promote sterilization of dogs

¹ VA. CODE ANN. § 3.2-6500 (Supp. 2013).

² An implied authority to trap companion animals was recognized in a previous opinion of the Attorney General, which concluded that Virginia Code §§ 15.1-510 and 29-196 allowed for a county to order and arrange for the trapping of wild dogs. 1968-69 Op. Va. Att’y Gen. 10A. These sections have been repealed and replaced in part by Title 3.2.

³ See § 3.2-6570(D) (Supp. 2013) (“This section shall not prohibit authorized wildlife management activities or hunting, fishing or trapping as regulated under other titles of the Code of Virginia, including Title 29.1 . . .”); and § 3.2-6571 (2008).

⁴ Section 3.2-6562 (2008) (emphasis added).

⁵ Section 3.2-6569(A) (Supp. 2013) (emphasis added).

⁶ Section 3.2-6543 (Supp. 2013).

⁷ See also VA. CODE ANN. §§ 15.2-1102 (2012) (towns and cities) and 15.2-1200 (2012) (counties) (granting, among other powers, general powers relating to securing and promoting the health, safety and general welfare of such jurisdictions’ inhabitants).

⁸ King v. Arlington Cnty., 195 Va. 1084, 1090, 81 S.E.2d 587, 591 (1954).

⁹ Section 3.2-6500 defines “releasing agency” as, “a pound, animal shelter, humane society, animal welfare organization, society for the prevention of cruelty of animals, or other similar entity or home-based rescue, that releases companion animals for adoption.”

and cats.¹⁰ Pursuant to § 3.2-6500, “sterilization” means a surgical or chemical procedure performed by a licensed veterinarian that renders a dog or cat permanently incapable of reproducing.” The General Assembly recognizes the existence of localities’ sterilization programs in two other provisions that discuss how funds and penalties collected may be spent. One requires that penalties paid by veterinarians for not providing localities with information on vaccination certificates “be placed in the locality’s general fund for the purpose of animal control activities *including spay or neuter programs*.”¹¹ The other authorizes that “[a]ny funds collected pursuant to the enforcement of ordinances adopted pursuant to the provisions of this section may be used for the purpose of defraying the costs of local animal control, *including efforts to promote sterilization of cats and dogs*.”¹² However, no statute specifies how localities should promote such sterilization.

Virginia follows the Dillon Rule of local government authority, whereby localities have only those powers expressly granted or necessarily implied by statute, as well as those powers that are essential and indispensable.¹³ Where a statute grants a power to a locality, but does not specifically direct the method of exercising that power, a local government’s choice regarding how to implement the power will be upheld “so long as the method selected is reasonable.”¹⁴ The Supreme Court of Virginia provided guidance for application of this “reasonableness” test in *City of Virginia Beach v. Hay*.¹⁵ The court stated that while the question of reasonableness is dependent on the circumstances of each case, a locality’s method is considered unreasonable only if it is “contrary to legislative intent or inappropriate for the ends sought to be accomplished by the grant of power.”¹⁶ If there is any doubt in the reasonableness of the method selected, it is “resolved in favor of the locality.”¹⁷

While §§ 3.2-6529, 3.2-6534, and 3.2-6543 provide an express grant of power for a locality to expend funds to promote the sterilization of companion animals, they are silent regarding the mode or manner of execution.¹⁸ Therefore, the “reasonable method of selection” rule applies.¹⁹ Because the statutes, by their own terms, seek to promote sterilization of companion animals and indicate that in certain circumstances an animal shelter, pound, or other receiving agency is responsible for documenting that it is done, it is reasonable for a locality to adopt an ordinance authorizing monies to be spent directly to arrange for the sterilization procedure. Thus, it is my opinion that a locality, by ordinance, may establish a program for and provide funding to have feral cats sterilized by a licensed veterinarian.

¹⁰ Section 3.2-6534 (2008) (sterilization of companion animals identified apart from “[t]he care and maintenance of a pound,” which is listed as a separate purpose). See also § 3.2-6535 (2008) (localities not limited to revenues derived solely from dog and cat license taxes to fund sterilization programs for dogs and cats under section which specifically authorizes localities to supplement dog and cat license funds “with other funds as they consider appropriate”).

¹¹ Section 3.2-6529 (2008) (emphasis added).

¹² Section 3.2-6543 (emphasis added).

¹³ See, e.g., *Commonwealth v. County Bd.*, 217 Va. 558, 573-74, 232 S.E.2d 30, 40 (1977); and *Virginia Beach v. Hay*, 258 Va. 217, 221, 518 S.E.2d 314, 316 (1999).

¹⁴ *Hay*, 258 Va. at 221, 518 S.E.2d at 316.

¹⁵ *Id.*, at 222, 528 S.E.2d at 316.

¹⁶ *Id.*

¹⁷ *Id.*, at 221, 528 S.E.2d at 316.

¹⁸ *County Bd.*, 217 Va. at 574-75, 232 S.E.2d at 40-41.

¹⁹ *Id.*

Your inquiry regarding whether such captured and sterilized feral cats may be released back to the location from which they were captured turns on the construction of terms found in § 3.2-6546.²⁰ Once such animals are captured, § 3.2-6546 provides the framework for the confinement and disposition of animals.²¹ Section 3.2-6546(D) specifically provides five methods by which an animal may be released or adopted by the county or city pounds or their designees.²² Two of the five methods allow for release to any humane society, animal shelter or other releasing agency, either within the Commonwealth, or in another state; the other three provide for adoption by a resident of the county, a resident of an adjacent county or other person.²³

Moreover, § 3.2-6504 provides: “No person shall abandon or dump any animal.”²⁴ The statute criminalizes a violation of that prohibition as a Class 3 misdemeanor.²⁵ “Abandon” is defined as “desert, forsake, or absolutely give up an animal without having secured another owner or custodian for the animal or by failing to provide the elements of basic care as set forth in § 3.2-6503 for a period of five consecutive days.”²⁶ “Dump” is defined as “knowingly desert, forsake, or absolutely give up without having secured another owner or custodian any dog, cat, or other companion animal in any public place including the right-of-way of any public highway, road or street or on the property of another.”²⁷ Even a person who “finds” an animal pursuant to § 3.2-6551 has certain duties, including attempting to notify an owner and complying with the provisions of § 3.2-6503 for adequate care.²⁸

Thus, given the current statutory requirements for the disposition of companion animals, including feral cats, and the statutory prohibition upon abandoning or dumping companion animals, it is my opinion that feral cats may not be released programmatically back to the location where they were captured or other location “in the wild.”²⁹

As to your final inquiry, it is my opinion that persons who capture feral cats while acting on behalf of a town-operated capture and sterilize program do not become the *de facto* or *de jure* owners of such cats. The *Code of Virginia* defines the term “owner” as “any person who: (i) has a right of property in an animal; (ii) keeps or harbors and animal; (iii) has an animal in his care; or (iv) acts as a custodian of

²⁰ Section 3.2-6546 (2008).

²¹ *Id.* Yet, § 3.2-6562 does provide that an animal control officer may deliver a companion animal to any person who will pay the required license fee for it as an alternative to the disposition methods found under § 3.2-6546.

²² Section 3.2-6546.

²³ *Id.* See also § 3.2-6548(A) (2008) (An animal shelter or releasing agency is also required to dispose of the animals it receives pursuant to § 3.2-6546).

²⁴ Section 3.2-6504 (2008).

²⁵ *Id.*

²⁶ Section 3.2-6500.

²⁷ *Id.*

²⁸ Section 3.2-6551 (2008). See also § 3.2-6503 (Supp. 2013) (care of a companion animal includes providing adequate food, water and shelter, among other items.)

²⁹ I express no opinion regarding the policy implications this conclusion may elicit. Localities will have to weigh for themselves whether maintaining a TNR program furthers their interests and what such a program’s potential effect on population numbers and adoption rates will be. In light of the *Code of Virginia*’s requirements regarding the disposition of companion animals, a locality could logically conclude that the neutering program served a beneficial purpose by increasing the likelihood that the animal would be adopted or could conclude that the additional expense of neutering should not be incurred given the manner of disposition that the law might eventually require.

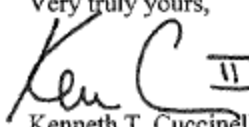
an animal.”³⁰ Conversely, a person acting on behalf of a town-operated capture and sterilize program, who is not an animal control officer or other officer under § 3.2-6562, would be acting as an individual who “finds” an animal pursuant to § 3.2-6551. That Section provides that any “individual who finds a companion animal and: (i) provides care or safekeeping; or (ii) retains a companion animal in such a manner as to control its activities” has certain responsibilities, including attempting to notify the owner and the pound within 48 hours, and complying with § 3.2-6503.³¹ The law therefore makes a distinction between an owner, who has a property interest in, cares for and/or shelters a companion animal, and someone who temporarily takes custody of and cares for and/or shelters such an animal while acting consistently with the above-noted statutory requirements respecting the animal. Thus, it is my opinion that a finder acting in conjunction with the locality-operated capture and sterilize program would not have a property right in a feral cat, nor would he become a *de facto* or *de jure* owner thereof through his actions of capturing and temporarily harboring, caring for, and otherwise taking temporary custody of the animal.³²

In reaching these conclusions, I make no judgment on the wisdom of the policy decisions underlying the statutory scheme regarding the disposition of companion animals, including feral cats. This opinion only addresses the law as it exists and makes no comment on what the law could or should be. As you note in your request, local jurisdictions are free to seek a legislative change if a different result is desired.

Conclusion

It is my opinion that a locality may lawfully operate a capture and sterilization program for the purpose of controlling the population of feral cats. The feral cats may be captured in a humane fashion, and such captured cats may be sterilized by a licensed veterinarian. The feral cats may not, however, be released by the locality back to the location from whence they came or some other location in the wild. Finally, it is my opinion that persons who capture feral cats while acting as agents of or in conjunction with a locality as part of its trap and sterilize program are companion animal finders and do not become the *de facto* or *de jure* owners of such cats.

With kindest regards, I am

Very truly yours,

Kenneth T. Cuccinelli, II
Attorney General

³⁰ Section 3.2-6500.

³¹ Section 3.2-6503 lists an owner’s duties to care for a companion animal.

³² See VA. CODE ANN. § 1-200 (2011) (relating to the applicability of common law principles, “except as altered by the General Assembly.”). Here, the above-referenced statutory analysis dictates the outcome of your ownership-related inquiry.

Appendix E. Preliminary research and monitoring proposal – Virginia Tech

Ideas for Monitoring/Research to further advance issues around Trap-Neuter-Vaccinate-Release (TNVR) and Free Roaming Cats in Virginia, in anticipation of future legislative proposals post-2021

Points of Contact: Dr. Sarah Karpanty (Department of Fish and Wildlife Conservation, Virginia Tech, karpanty@vt.edu) and Dr. Laura Hungerford (Department of Population Health Sciences and VT Public Health Program, Virginia Tech lhungerf@vt.edu)

Rationale: The Commonwealth of Virginia is proactively considering solutions to the multiple challenges posed by free-roaming cats on the landscape. A legislative committee spent significant effort in Fall 2021 advancing ideas towards reducing free roaming cats on the landscape. It appears that these efforts will continue to make progress in 2022 and beyond, with future legislative proposals likely. Whereas Virginia is poised to lead the country in proactively legislating on this issue, and whereas work still remains to reach a consensus, we suggest that there are needs for Virginia-specific data to help guide ongoing discussions and decisions by decision-makers at all levels. The efforts here will also lay the foundation for assessing the efficacy for any measures ultimately put in place by legislation. Further, it provides an opportunity for representatives of all stakeholders in this issue to have input into the goals of and outcomes of this research, thus increasing the likelihood of collaborative, adaptive management of the challenge of free-roaming cats on the landscape.

Initial Ideas for Collaboration: Note, these are initial ideas and others are welcome. We present these to begin the collaborative brainstorming of group members.

- Initiate efforts to develop programs to reduce or fund costs of TNVR activities at a larger scale across Virginia. We recognize that costs are a barrier to implementation, and there may be an opportunity for experts at Virginia-Maryland College of Veterinary Medicine and Virginia Veterinary Medical Association to participate to address this key point.
- In collaboration with Virginia Department of Wildlife Resources, Virginia Department of Health, and Virginia Department of Agriculture and Consumer Services, create maps of specific wildlife- and public-health sensitive areas.
- Map the location of animal shelters and their policies towards cat intakes, including but not solely focused on TNVR actions.
- Survey TNVR practitioners about the ideas developed in the Fall 2021 legislative committee to assess their support for ideas, other ideas that they may have, and areas where support is lacking.
- Carefully design surveys of the general public and key stakeholder groups on the issue of free-roaming cats in their localities to guide ideas for potential local ordinances on cat management. Identify barriers to implementation and support of policies and programs.
- In collaboration with Virginia Department of Wildlife Resources, Virginia Department of Health, and Virginia Department of Agriculture and Consumer Services, assess TNVR activities and demographic effects of TNVR and other activities on cat populations and interactions with wildlife populations and public health in specific sites. We are imagining that we could ask for initially 3-5 years of funding support to select a set

TNVR colonies with willing partners to conduct demographic monitoring and impacts monitoring, and who may represent a range of conditions and approaches to TNVR. Our initial ideas would include microchipping and tracking abundance and composition of cats, analyses of scat for diet, collection of any wildlife carcasses in colony for impacts, sampling cats for potential diseases.

- More generally, work with partners from the Free Roaming Cat working group to map the locations, sizes, other metrics of TNVR activities as they formally are recognized and developed in VA. We recognize that doing so will require trust and buy-in of all stakeholders. One possibility to secure trust is that data can be blinded through careful use of research protocols as approved by Virginia Tech's Institutional Review Board and Institutional Animal Care and Use Committee.

Next Steps:

- 1) Identify if members of the current legislative committee on free-roaming cats would like to work with Virginia Tech leads to develop detailed monitoring and research plans to submit to private and public funding sources. Identify other necessary partners not currently present on legislative committee.
- 2) Establish a timeline for developing ideas, identifying funders, and submitting proposals. Establish key roles and responsibilities of group members.