



*Commonwealth of Virginia*

*Office of Governor Ralph S. Northam*

# **VIRGINIA COUNCIL ON ENVIRONMENTAL JUSTICE**

## **2021 ANNUAL REPORT**

Report prepared by members of the Virginia Council on Environmental Justice

## 2021 Virginia Council on Environmental Justice

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January 13, 2022

Governor-Elect Glenn Youngkin  
Office of the Governor  
P.O. Box 1475  
Richmond, VA 23218

Dear Governor-Elect Youngkin,

We congratulate you on behalf of the Virginia Council on Environmental Justice (VCEJ) and wish you a successful transition and governing administration. We have been privileged to make recommendations to the administrations of Governor McAuliffe and Governor Northam, and it is our sincere hope that you will also see this work as vital to achieving your commitment to serving Virginians as their 74th Governor.

The VCEJ is a body of diverse citizens with climate and environmental backgrounds concerned for their marginalized neighbors, many of whom are vulnerable to disproportionate impacts from pollution and environmental hazards in poor and minority communities, as well as protecting Virginia's air, water, and soil. Recommending ways for reducing carbon and other greenhouse gas emissions and achieving environmental justice for communities are central to our mission. As a codified Advisory Board, we have heard and responded to environmental justice concerns from Virginians from across the state and have learned how critical our work has been for various communities seeking information.

While the Council continues to work on these important issues, we wanted to take this opportunity to share a few recommendations for your consideration. The VCEJ recommends:

1. Virginia should remain a member of the Regional Greenhouse Gas Initiative.
2. The Commonwealth should continue to build its clean energy economy, prioritizing clean energy sources such as offshore wind and solar, with a focus on energy efficiency, transportation pollution solutions and equitable transition practices.
3. The Council strongly supports the continuation of Governor Northam's Executive Order 82: "Consultation with Federally Recognized Tribal Nations For Environmental And Historic Permits And Reviews" and the continued meaning of environment and engagement with Virginia Tribal nations.
4. The Council recommends that the General Assembly update FOIA and public meeting requirements to reflect the ability for modern technology and enable increased access using available technology.
5. The Council strongly supports the continuation of the Environmental Justice Interagency Working group environmental justice issues throughout the Commonwealth, encouraging inter-agency collaboration and communication.
6. The Office of the Governor and Secretary of Natural and Historic Resources, along with support from state agencies, shall continue to staff and provide support to the Virginia Council on Environmental Justice.
7. Virginia must continue to prioritize and consider environmental justice in environmental laws, regulations and policy decisions.

Serving as a member of the VCEJ has been an inspiring but weighty responsibility and privilege. To share this work with members of the Secretary of Historic and Natural Resources and other agencies tasked with administering Virginia's resources has been and continues to be an honor. We look forward to meeting with you and members of your administration in the new year. We would like an opportunity to formally present to you and your staff the recommendations we have prepared from our work in 2021 since the VCEJ was established as a continuing body. This is a tradition that previous administrations have afforded to Councils such as ours to provide a forum for receiving and discussing the annual report. Also, if we can help your transition in any way, please do not hesitate to contact either co-chair.

Again, congratulations! We look forward to working with you and your administration to protect Virginia's environment.

Sincerely,

Faith Harris, MDiv., S.T.M., DMin., Co-Chair  
fharris@vaip.org  
Janet Phoenix, MD, MPH, MS, Co-Chair  
jphoenix@gwu.edu

January 13, 2022

The Honorable Ralph S. Northam  
Office of the Governor  
P.O. Box 1475  
Richmond, VA 23218

Dear Governor Northam,

On behalf of the Virginia Council on Environmental Justice, it is with heart-felt gratitude and appreciation that we write to congratulate you on your historic accomplishments as Governor the past four years.

Together, we have made historic strides forward on environmental justice in Virginia. Among them are:

- Codification of EJ Council- working with advocates and legislators
- EO 6 (among others)
- Signing the EJ Act
- Joining Virginia in the Regional Greenhouse Gas Initiatives
- Establishing the DEQ Environmental Justice Office

You leave a legacy of strong leadership for achieving equity in policy and governance across state agencies. While no administration will go unchallenged by critics and friends, you navigated even the most difficult crisis of the COVID pandemic with decisive, practical, and balanced leadership solutions. No doubt many lives were saved due to your actions.

Thank you for your support and we wish you, Pam and your family well in your next chapter.

Sincerely,

Faith Harris, MDiv., S.T.M., DMin., Co-Chair  
fharris@vaip.org  
Janet Phoenix, MD, MPH, MS, Co-Chair  
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## **2021 Meetings & Actions Summary**

The Virginia Council on Environmental Justice met a total of 8 times during 2021, its first year as a newly codified gubernatorial board. The Council elected Dr. Janet Phoenix and Dr. Faith Harris as co-chairs for the 2020-2021 term. Council membership includes representation of Virginia Tribal Nations, non-governmental organizations, and civil rights organizations, among other interests.

The Council elected to form three subcommittees including: Just Transition, Emerging Issues, and Planning and Community Health. The Council held public comment at each of their meetings, listening to proposals and various community concerns from across the Commonwealth including coastal resilience, landfills, fossil fuels, environmental health and other concerns.

Some of the presentations made to the council included Virginia Energy on Carbon Modeling, 2021 Gold Study. The Council also made a site visit to Wise County Virginia, which was led and planned by the Emerging Issues committee.

The Council was represented by Kendyl Crawford and Taysha DeVaughn on the Interagency Environmental Justice Working Group, led by the Department of Environmental Quality. As representatives, Ms. Crawford and Ms. DeVaughn participated in a total of three working group meetings and provided recommendations to the Interagency Working Group from the Council included as part of this yearly report (see appendix I).

COVID-19 and restrictions around meeting requirements led to challenges with meeting quorum and attendance.

# Section 1. Infrastructure & Just Transition

## (1) Clean Energy: Regional Greenhouse Gas Initiative

### Introduction and Justification

The Regional Greenhouse Gas Initiative (RGGI) is a multi-state carbon trading market that puts a market-based price on carbon emissions coming from large power plants. Virginia joined this program through both legislation and state citizen board rulemaking in 2020. The program has generated \$228M in revenue in one year: half of that money will be used to fund energy efficiency programs for low-income Virginians, 45% of that money will be used for flooding mitigation, and the remaining 5% will cover operating costs and allow for the Department of Environmental Quality (DEQ) to hire more staff to work on climate mitigation.

As Virginians face a higher-than-average energy burden and the growing threat of sea level rise with over one million people living in coastal Virginia, the need for the revenue from the program has never been greater. Also, the program will highlight the elevated social cost of carbon emissions, making way for cleaner sources of energy to penetrate the market and create healthier and more sustainable communities.

EPA released a report (Sep 2021) documenting that “Socially vulnerable populations suffer disproportionate impacts of climate change in the U.S.”<sup>1</sup> Specifically: Black and African American citizens are 34% more likely to suffer childhood asthma and 40% more likely to die from extreme temperature. Hispanics and Latinos are 43% more likely to work in weather-exposed industries. A study published by the National Academy of Sciences (March 2019) on fine particle pollution documented that Hispanics are exposed to 63% more air pollution than they create, and African Americans are exposed to 56% more air pollution than they create; whereas whites are exposed to 17% less air pollution than they create. These social costs are too high for Virginia’s residents.

The stated goal to drop out of RGGI (will only save VA ratepayers \$2.50/month) glosses over the regional reality of climate change and the need for collaborative multi-dimensional solutions. In the context of addressing this existential global phenomenon, it is unproductive to adopt piecemeal state-by-state solutions. Climate knows no political boundaries. In this case, for the sake of future generations, real leadership by our Commonwealth necessitates regional collaboration.

### Recommendation

The Council recommends continued and active participation in the RGGI and that the allocations for the revenue generated from the program remain the same as written in the Clean Energy and Community Flood Preparedness Act of 2020.

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<sup>1</sup> Environmental Protection Agency. *Climate Change and Social Vulnerability in the United States: A Focus on Six Impacts*. Sep 2021. <https://www.epa.gov/cira/social-vulnerability-report>



## **(2) A Clean and Equitable Energy System**

### **Introduction and Justification**

A cleaner energy system will provide important public health, environmental, quality of life, and economic benefits for Virginia's most vulnerable communities, including communities of color, low-income, and other historically underserved communities. However, energy affordability remains a significant burden for many Virginians.

As New Virginia Majority recently noted in their comments to the Virginia Department of Energy, the percentage of household income spent on home energy bills varies widely from region-to-region, by race and income, and is a significant barrier to greater economic justice. The hardship imposed by energy affordability has been further exacerbated by the COVID-19 pandemic and associated economic dislocation.

In our 2020 VCEJ report, we cited a study by the Virginia Poverty Law Center called the Affordable Clean Energy Project, found that "on average Virginia households experience an already higher than average electricity burden of 3.1% compared to the national average of 2.9%. Low-income households spend an average of 8.8% of their income on electricity. Virginia's higher than average electricity burden is unaffordable for over 75% of Virginians. "Energy Poverty," a term for households who have to choose between paying energy bills or buying food at least one time per year, experience "Energy Poverty." Statewide, some 60% of Virginians experience "Energy Poverty" each year.

### ***Distributed Energy Generation***

To help Virginia achieve its decarbonization goals and reduce emissions, distributed energy generation (DER) programs including multifamily, and community solar programs can assist those with the highest energy burdens and costs. Development of distributed generation is also critical for utilities to equitably meet the VCEA's requirements for citing renewable energy facilities in Historically Economically Disadvantaged Communities (HEDCs).

A white paper<sup>2</sup> by the Virginia Conservation Network (VCN) noted that in recent years, the General Assembly has taken action to support investments in utility-scale solar facilities. However, Virginia offers none of the financial incentives that are available in states that deploy the most distributed solar. Virginia law also imposes limitations, conditions and penalties on the solar industry and customers. Together these barriers add up to millions of dollars of lost revenue growth for Virginia. The General Assembly can and should embrace the opportunity to address carbon pollution and grow the economy by supporting small-scale solar programs in the Commonwealth that allow consumers to sell the power they generate back to the electric grid. Supporting new incentives, removing barriers, and protecting customers' rights to access renewable energy can create a robust market for local, clean energy.

Additionally, increasing the amount of distributed generation in Virginia will contribute to building a more resilient grid and support a larger transition to renewable energy.

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<sup>2</sup> Virginia Conservation Network. *Breaking Down Barriers to Solar in Our Communities*. Aug 2019. <https://vcnva.org/wp-content/uploads/2019/08/BREAKING-DOWN-BARRIERS-TO-SOLAR-IN-OUR-COMMUNITIES.pdf>

## ***Energy Storage***

Renewable energies, such as solar and wind, produce intermittent energy which requires an energy storage solution. Cheaper and more efficient storage will make it easier to capture and store renewable clean energy for use when energy generation is unavailable or lower than demand – for instance, so renewable sources generated during the daytime like solar-generated power can be used at night.

Federally, the Biden Administration has launched an effort to push down costs of long-duration energy storage by 90 percent by 2030 as part of its Energy Earthshot Initiative. "We're going to bring hundreds of gigawatts of clean energy onto the grid over the next few years, and we need to be able to use that energy wherever and whenever it's needed," Secretary of Energy Jennifer Granholm said in a statement. "That's why DOE is working aggressively toward cheaper, longer-duration energy storage to reach President [Joe] Biden's goal of 100 percent clean electricity by 2035."

In 2021, the Virginia Energy Storage Task Force issued findings and recommendations on energy storage to help Virginia meet its clean energy goals.<sup>3</sup> While the VCEJ continues to review these recommendations, we recognize this is an important part of the solution to accelerate effective clean energy deployment.

## ***Offshore Wind***

Offshore wind will provide economic, employment, and clean energy opportunities for Virginians across the Commonwealth over the next decade. With the passage of the Virginia Clean Economy Act in 2020, Virginia made offshore wind energy a priority by declaring 5,200 megawatts of the energy source in the public interest, making it nearly inevitable that turbines will be built off of the coast of Hampton Roads. The bill also requires Dominion Energy to prioritize local workers as they build out the infrastructure and to submit plans to provide apprenticeship opportunities. However, the bill did not go as far as to mandate a local workforce or support unionized labor. Overall, this project has the potential to power over 600,000 homes and employ thousands of workers in an area that is heavily dependent on the federal government for employment and investments.

There is a lot to be excited about as Virginia's transition to renewable energy kicks into a higher gear off our coast, but we must be vigilant of costs and the workforce that builds this new future. Hampton Roads is an area with large populations of color, especially in Portsmouth (52% Black), where Siemens Gamesa is building a wind turbine blade factory.

## **Recommendations**

1. Several policies and actions should be adopted that would lead to a cleaner power generation while alleviating the economic burden for those energy costs and creating new opportunities for more communities to benefit in the clean energy economy.
2. The General Assembly should support distributed solar through incentives such as tax credits, rebates, or low-interest loans; remove barriers that limit customers' access to distributed solar; allow local governments to use electricity from a solar project on one property to serve buildings on nearby properties; and implement specific programs to expand access to distributed energy for

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<sup>3</sup> Virginia Energy Storage Task Force. *Energy Storage Task Force: Final Report*. Oct 1, 2021.  
<https://www.scc.virginia.gov/getattachment/7414bf55-7570-4b3a-bd55-cddc9812e976/Va-Energy-Storage-Task-Force-Report.pdf>

low- and moderate-income customers.

3. Policymakers should reject any changes to the net metering compensation structure, unless those changes, at a minimum grandfather all existing net-metering customers, mandate that any changes to net metering do not take effect for at least five years, and ensure the economic incentives are as good as or better for customers than the current net metering system.
4. The General Assembly can help to increase state funding for research, development, demonstration, and pilot projects for energy storage technologies and stand up consumer energy storage education programs.
5. The administration and the General Assembly should give the State Corporation Commission the authority to reign in the costs of offshore wind and strengthen guidelines for local workforce recruitment from communities of color in the Hampton Roads region to build wind turbines.

### **(3) Energy Efficiency Programs and Jobs**

#### **Introduction and Justification**

Innovative state and local actions for a just and equitable clean energy transition will be critical to transition to a sustainable economy with less racial and economic inequality and greater public control. Rapidly creating energy efficiency programs and jobs in the energy efficiency sector will be a key driver for a just and equitable clean energy transition for Virginia.

Almost one-third of Americans face energy insecurity, and the shares are much higher for people of color and low-income people.<sup>4</sup> At the same time, the very people who cannot afford the benefits of our energy system are paying a disproportionate share of its costs, as evidenced by their higher exposure to pollution and higher rates of pollution-related illnesses such as asthma.<sup>5 6</sup> Energy efficiency addresses these inequalities at both ends, by making energy bills more affordable for vulnerable people, while also reducing the need for energy production (and therefore, reducing the associated pollution).<sup>7 8</sup>

The American Council on an Energy-Efficient Economy estimates that 35% of the energy cost burden experienced by low-income households could be alleviated if low-income housing were brought up to efficiency levels of the average U.S. home.<sup>9</sup> The benefits of energy efficiency include reduced vulnerability to energy price fluctuations, money saved for other needs, improved comfort, indoor air quality, health and well-being, and reduced greenhouse gases.

A recent study by the Virginia Poverty Law Center called the *Affordable Clean Energy Project*, found that "on average, Virginia households experience an already higher than average electricity burden of 3.1% compared to the national average of 2.7%."<sup>10</sup> Low-income households spend an average of 8.8% of

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<sup>4</sup> <https://ips-dc.org/report-energy-efficiency-with-justice/>

<sup>5</sup> <https://ips-dc.org/wp-content/uploads/2017/04/RPS-Report.pdf>

<sup>6</sup> <https://grist.org/article/energy-efficiency-is-leaving-low-income-americans-behind/>

<sup>7</sup> <https://inequality.org/research/stimulus-energy-efficiency/>

<sup>8</sup> [https://www.epa.gov/sites/production/files/2015-08/documents/affordable\\_housing.pdf](https://www.epa.gov/sites/production/files/2015-08/documents/affordable_housing.pdf)

<sup>9</sup> <https://aceee.org/blog/2019/04/efficiency-reduces-energy-burdens-low>

<sup>10</sup> <https://vplc.org/affordable-clean-energy-project/>

their income on electricity. Virginia's higher than average electricity burden is unaffordable for over 75% of Virginians. Energy poverty is a term for households who have to choose between paying energy bills or buying food at least one time per year suffers from energy poverty. Statewide, some 60% of Virginians experience energy poverty each year.

Energy efficiency is also an important driver of job creation. With the right policy tools, people from marginalized communities facing the double burdens of energy insecurity and energy-related pollution can gain access to energy efficiency careers.

The resources directed to industries to build a clean energy transition should instead be directed to the most impacted communities including communities of color, indigenous communities, and low-income communities. A significant component of these resources must go to create energy efficiency jobs with funds going to cities, counties, tribal communities, and nonprofit organizations to fund major energy efficiency retrofits for the most vulnerable residents, schools, and small businesses.<sup>11</sup> Here are a few reasons why energy efficiency is a key component for a just, equitable, and clean energy transition:

1. **Energy efficiency creates lots of good jobs.** Energy efficiency jobs numbered 2.18 million in 2016, about twice the total of fossil fuel jobs. This in addition is based on a very expansive definition of fossil fuel jobs, encompassing extraction, power plants, and the supply chain for coal mining and oil and gas drilling equipment manufacture. In addition, energy efficacy jobs are growing much faster. A Department of Energy report showed that employment in manufacturing of energy efficient Energy Star appliances grew 59 percent between 2015 and 2016, while employment in fossil fuel burning power generation grew only 9 percent. Every million dollars invested in building retrofits for energy efficiency creates 11.9 jobs, compared to only 3.7 jobs in oil and gas according to a University of Massachusetts study (PERI, The Economic Benefits of Investing in Clean Energy).<sup>12</sup>
2. **Energy efficiency jobs are well paid.** The median hourly wage for electricians is \$26.53, HVAC workers, and roofers are \$22.89 and \$19.22 according to recent Bureau of Labor Statistics. These are key occupations in energy efficiency work. In comparison, the median wage for all occupations is \$18.58.<sup>13</sup>
3. **Energy efficiency jobs are shovel ready.** For projects to provide an economic stimulus, they need to be operationalized as soon as possible, so the jobs get created and the money starts flowing. Retrofitting any one building - even a large public school or apartment building - represents a low capital investment as compared to, say, building a new airport. With a focus on energy efficiency, is it easy to start small right away and scale up as more funding becomes available.

A focus on energy efficiency for a just transition will create jobs, stimulate the economy, address racial and economic justice, while reducing greenhouse gas emission and other pollutants, and improve community health.<sup>14</sup>

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<sup>11</sup> <https://rmi.org/energy-and-affordability-in-housing-finance/>

<sup>12</sup> [https://peri.umass.edu/fileadmin/pdf/other\\_publication\\_types/green\\_economics/economic\\_benefits/economic\\_benefits.PDF](https://peri.umass.edu/fileadmin/pdf/other_publication_types/green_economics/economic_benefits/economic_benefits.PDF)

<sup>13</sup> [www.bls.gov/oes/2020/may/oesrcst.htm](http://www.bls.gov/oes/2020/may/oesrcst.htm)

<sup>14</sup> <https://newbuildings.org/energy-efficiency-and-equity/>

## Recommendations

1. Create an Office of Just and Equitable Clean Energy Transition to identify impacted communities and work with local stakeholders to develop transition plans. The Office would advise the state legislature and regulators on energy efficiency policies and programs.
2. Develop incentives and programs to stimulate job growth in energy efficiency with and for communities of color, indigenous communities, and low-income communities. This sector has proven job creation, lots of good jobs, rapid job growth, and creates more jobs for every dollar invested.
3. Development and streamline current economic development plans to coordinate federal aid and workforce training in energy efficiency jobs focused in vulnerable communities.
4. Create state funding sources for energy efficiency upgrades and solar electric systems for low-income households, renters, seniors, and people who are disabled throughout the Commonwealth. Grant funding could include Home Insulation Rebates of \$3,000 per household, Water Heater Rebates up to \$750, and free high-efficiency water heaters, LED lighting, and efficient showerheads and water aerators. Funding sources would be both direct grant monies and On-Bill Recovery Loans programs. On-Bill Recovery Loans provide initial funds to low-income households for installation of energy efficiency upgrades or solar electric systems and then are paid off on monthly users' bills at a rate lower than users the previous bill prior to energy efficiency upgrades or solar installation. An additional "At-Meter" On-Bill Recovery Loan program would apply for renters who will benefit from energy efficiency upgrades.
5. Create a high energy efficiency building code mandate throughout the commonwealth including construction and renovation for public and private buildings. While upfront construction costs may be higher, a study will be needed to explore offsetting costs for low-income households through lower energy operating costs. This mandate could include stringent building envelope standards, upgraded lighting, appliances, and solar-ready design. See Green Construction code of Washington DC and California building code for the highest standards to date.
6. Create a liaison position to assist the DMME and the DEQ with regulatory enforcement.

## (4) Sustainable, Clean, and Equitable Transportation for Virginia

### Introduction and Justification

This document proposes specific recommendations to solve multiple transportation issues including sustainability, reduced emissions, and equity through *Clean Active Accessible Transportation Modes*, including walking, biking, electric micro mobility (electric bikes, wheelchairs, scooters, etc.), and high-quality public transit. Although electric automobiles may reduce greenhouse gasses, they still do not solve a myriad of chronic transportation problems such as increased urban sprawl, traffic congestion, obesity, public health and safety, high infrastructure costs, and transportation inequity. Clean Active Accessible

Transportation Modes are “*Clean*” through reduced or zero emissions, “*Active*” with potential for physical movement, and “*Accessible*” regardless of income or physical ability. These modes are implemented effectively through mobility management strategies (also known as transportation demand strategies) that improve transportation options, incentivize reduced driving, and improve land use and zoning patterns. See links listed under recommendations.

In the United States, transportation accounts for approximately “29 percent of total U.S. greenhouse gas emissions.”<sup>15</sup> In Virginia, roughly 48% of CO<sub>2</sub> emissions are from transportation alone.<sup>16</sup> In the United States, transportation is the second largest average household expenditure after housing.<sup>17</sup> Populations most burdened by transportation barriers are low-income, disabled, elderly, rural and minorities, including immigrant populations.<sup>18 19 20</sup> Thus, when transportation is not clean, equitable, healthy or accessible, these communities bear the greatest burden. While some initiatives in Virginia do exist to shift current transportation practices to cleaner sources, such as Richmond’s goal to phase in electric buses by 2030<sup>21</sup>, transportation improvements in Virginia need to keep equity at the center of their initiatives.

According to the Principles for Sustainable, Clean, and Equitable Transportation, transportation improvements should:

- 1) Provide access to transportation regardless of income-level, race, gender, age, gender-identity, sexual identity, national origin, disability or religion;
- 2) Include an equitable distribution of benefits and burdens;<sup>22</sup>
- 3) Prioritize resources towards historically marginalized communities;
- 4) Not allocate resources for improvements by disproportionately focusing on communities with higher tax-revenue levels;<sup>23</sup>
- 5) Be made with input from all members of a community; and
- 6) Not solely be focused on reducing carbon emissions; By focusing on Active Accessible Transportation Modes through Mobility Management Strategies multiple transportation problems can be solved, including equity.

### ***Impact of Auto-Centric Transportation***

The last seventy years have been devoted to developed infrastructure based on the notion that the automobile was the best way to get around. This not only encourages driving but, in some cases, even requires that every trip is performed by the car. Building infrastructure for cars in cities is costly, creating more sprawl and thus incentivizing more driving (see Appendix C).<sup>24</sup> As the cycle of car dependency increases, transportation options and equity decrease. On average, U.S. communities spend \$25 annually per capita on walking facilities, \$40 per capita on bicycling facilities, \$200 per capita on public transit services, \$1,000 per capita on roads and traffic services, plus more than \$2,000 per capita on government-

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<sup>15</sup> <https://www.epa.gov/transportation-air-pollution-and-climate-change/carbon-pollution-transportation>

<sup>16</sup> Virginia Clean Cities. <https://vacleancities.org/taking-on-transportation-emissions/>

<sup>17</sup> Bureau of Labor Statistics. (2019). *Consumer Expenditures in 2018: BLS Reports: U.S. Bureau of Labor Statistics*. <https://www.bls.gov/opub/reports/consumer-expenditures/2018/home.htm>

<sup>18</sup> Hacker, K., Chu, J., Leung, C., Marra, R., Pirie, A., Brahim, M., English, M., Beckmann, J., Acevedo-Garcia, D., & Marlin, R. P. (2011). The impact of Immigration and Customs Enforcement on immigrant health: Perceptions of immigrants in Everett, Massachusetts, USA. *Social Science & Medicine* (1982), 73(4), 586–594. <https://doi.org/10.1016/j.socscimed.2011.06.007>

<sup>19</sup> Jansuwan, S., Christensen, K. M., & Chen, A. (2013). Assessing the Transportation Needs of Low-Mobility Individuals: Case Study of a Small Urban Community in Utah. *Journal of Urban Planning and Development*, 139(2), 104–114. [https://doi.org/10.1061/\(ASCE\)UP.1943-5444.0000142](https://doi.org/10.1061/(ASCE)UP.1943-5444.0000142)

<sup>20</sup> Wallace, R., Hughes-Cromwick, P., Mull, H., & Khasnabis, S. (2005). Access to Health Care and Non Emergency Medical Transportation: Two Missing Links. *Transportation Research Record*. <https://doi.org/10.1177/0361198105192400110>

<sup>21</sup> <http://richmondfreepress.com/news/2019/sep/27/state-backs-dominion-energy-plan-electric-school-b/>

<sup>22</sup> Virginia Transit Equity, <https://www.vatransitequity.com/>

<sup>23</sup> Transportation Equity Network, <https://www.cnt.org/sites/default/files/publications/Equity-in-Practice.pdf>

<sup>24</sup> Emily Badger (March 2014) *America’s Cities Are Still Too Afraid to Make Driving Unappealing*

mandated off-street parking facilities. Automobiles receive 91% of infrastructure investments while transit receives 7%, bicycling 1.2% and walking 0.8%.<sup>25 26 27 28</sup> In a recent study, driving was found to have a cost to society of 18 U.S. cents per mile due to associated pollution, land use, collisions, and infrastructure and maintenance costs. Cycling by contrast generated a net benefit to society of 32 U.S. cents per mile, primarily due to the health benefits of physical activity.<sup>29</sup> As Clean Active Accessible Transportation increases, greater affordable options and equity increases, referred to as *transportation sovereignty* (see Appendix A and B Figures. 1, 2 and 3).

### ***Limitations of Electric Vehicles***

A massive replacement of oil-fueled individual vehicles to electric ones alone cannot reduce greenhouse gasses consistent with climate stabilization and could result in the scarcity of some key minerals, such as lithium and magnesium. The only strategy that can achieve the objectives globally follows a degrowth paradigm, combining a quick and radical shift to lighter electric vehicles and non-motorized modes with a drastic reduction in total transportation demand.<sup>30</sup> Despite the gains of efficiency and reduced emissions from electric vehicles, because of lower fuel costs, owners typically drive 10 to 30% more annual miles than equivalent users of fossil fuel vehicles thus increasing many problems associated with transportation.<sup>31</sup> Clean Accessible Alternative Modes like walking, biking, transit, and light rail provide far greater benefits while also reducing pollution and greenhouse gasses. Clean Accessible Alternative Modes can better provide: equitable access to transportation, reduced congestion and urban sprawl, reduced infrastructure and facility costs, consumer savings, investment fairness between drivers and non-drivers, traffic safety, public health and community wellbeing, improved mobility for non-drivers, energy conservation and emissions reductions.<sup>32</sup>

While a part of the transportation network, the automobile and the electric vehicle must take a back seat to Clean Active Accessible Transportation Modes to truly create a sustainable transportation system.

### ***Transportation Equity***

Automobile transportation is expensive and often unaffordable to many lower-income households. As a result, planning decisions that favor automobile travel over lower-cost modes tend to be inequitable; they are regressive and fail to serve many lower-income households' needs. In a study<sup>33</sup> of upward mobility based at Harvard "commuting time has emerged as the single strongest factor in the odds of escaping poverty."<sup>34</sup> Motor vehicle travel imposes large external costs. Vehicle travel increases with income and wealthier, higher annual vehicle-mile households tend to impose significant external costs on lower-income households that travel fewer annual vehicle-miles. For example, minimum parking requirements in zoning codes force many low-income, car-free households to subsidize parking facilities used by

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<sup>25</sup> APTA (2020), Transit Fact Book, American Public Transportation Association ([www.apta.com](http://www.apta.com)).

<sup>26</sup> FHWA (2018), Highway Statistics, Federal Highway Administration ([www.fhwa.dot.gov](http://www.fhwa.dot.gov)); at [www.fhwa.dot.gov/policyinformation/statistics.cfm](http://www.fhwa.dot.gov/policyinformation/statistics.cfm)

<sup>27</sup> LAB (2018), Benchmarking Report, League of American Bicyclists (<https://bikeleague.org>); at <https://bikeleague.org/benchmarking-report>

<sup>28</sup> Todd Litman (2019), Transportation Cost and Benefit Analysis Guidebook: Techniques, Estimates and Implications, VTPI ([www.vtpi.org](http://www.vtpi.org)).

<sup>29</sup> Stefan Gössling, Andy Choi, Kaely Dekker Daniel Metzler (April 2019), Pages 65-74 Volume 158, *Analysis. The Social Cost of Automobility, Cycling and Walking in the European Union*

<sup>30</sup> Ignacio de Blas, Margarita Mediavilla, Iñigo Capellán-Pérez, Carmen Ducea, (Volume 32, November 2020,) *Energy Strategy Reviews. The limits of transport decarbonization under the current growth paradigm.*

<sup>31</sup> Todd Litman (November 2021) Are Vehicle Travel Reduction Targets Justified? Evaluating Mobility Management Policy Objectives Such as Targets to Reduce VMT and Increase Use of Alternative Modes.

<sup>32</sup> Todd Litman (June 3, 2019), Breaking the Cycle of Automobile Dependency.

<sup>33</sup> [http://www.equality-of-opportunity.org/images/nbhds\\_exec\\_summary.pdf](http://www.equality-of-opportunity.org/images/nbhds_exec_summary.pdf)

<sup>34</sup> <https://www.nytimes.com/2015/05/07/upshot/transportation-emerges-as-crucial-to-escaping-poverty.html>

wealthier motorists. In addition, bus passengers, who require minimal road space, are delayed by congestion caused by automobile commuters, and walkers and bicyclists bear crash risk and pollution costs imposed by motorists.<sup>35</sup> A sustainable transportation hierarchy model can favor affordable and resource-efficient modes over more expensive and resource-intensive modes (see Appendix C). A useful way to incorporate equity into planning is to define various equity goals both horizontally and vertically. Specific transportation policies and projects can then be evaluated based on the degree that they support or contradict these goals, and their design can be adjusted to better achieve these goals. Table 1 summarizes examples of these goals.<sup>36</sup>

**Table 1** Typical Equity Goals: This table reflects various equity goals that can be used to evaluate specific transport policies and projects. (WRT = With Respect To)

Horizontal	Vertical WRT Income	Vertical WRT Ability and Need
<p>All groups receive comparable shares of public investment and resources.</p> <p>External costs are minimized and compensated.</p> <p>All groups are effectively involved in decision-making.</p>	<p>Affordable modes are favored over expensive modes.</p> <p>Low-income residents can access basic services and activities.</p> <p>Low-income travelers receive price discounts or exemptions.</p>	<p>Universal design (transport system accommodates people with disabilities and other special needs).</p> <p>Basic accessibility (disadvantaged groups can access basic services and activities).</p> <p>Special policies and programs support and protect disadvantaged groups (women, youths, minorities, etc.).</p>

<sup>35</sup> Todd Litman (2021), Evaluating Transportation Equity “Guidance for Incorporating Distributional Impacts in Transportation Planning”

<sup>36</sup> Todd Litman (2021), Evaluating Transportation Equity “Guidance for Incorporating Distributional Impacts in Transportation Planning”



## *Mobility Management Strategies*

To transition Virginia to Clean Active Accessible Transportation Modes *mobility management strategies* are key and will solve many other transportation problems. Planning must be based on improved accessibility through mobility management strategies rather than focusing only on increased mobility. Conventional planning tends to evaluate transport based on mobility (e.g., physical travel) alone, using indicators such as traffic speed, roadway level-of-service, and vehicle miles traveled (VMT). However, mobility is seldom an end in itself because the ultimate goal of most transport activity is accessibility, which refers to people's ability to reach desired services and activities.<sup>37</sup> Mobility-based planning tends to favor faster modes and longer trips over slower modes and shorter trips, and therefore, motorists over non-drivers. For example, evaluating transport system performance based on roadway level-of-service tends to justify roadway expansion projects even though wider roads and increased traffic speeds tend to degrade walking and cycling conditions (called the barrier effect), and since most public transit trips include walking links, to reduce transit access. Accessibility-based evaluation can consider such tradeoffs and their equity impacts.<sup>38 39</sup>

To increase Clean Active Accessible Transportation Modes, both incentives and disincentives are required through mobility management strategies. Many current emission reduction planning efforts ignore mobility management strategies or only mention them incidentally. As a result, currently proposed emission reduction efforts that fail to implement mobility management strategies miss the opportunity to help address other planning objectives such as congestion reduction, urban sprawl, traffic safety, consumer savings and improved mobility for non-drivers.<sup>40</sup>

Development planners looked at four cities that won grants each worth \$25 million to increase biking and walking as part of a federal Nonmotorized Transportation Pilot Program<sup>41</sup> yet very few gains to increase the percentage of biking and walking occurred despite decades of investment. Researchers found that only through incentivizing reduced driving, do transit, biking, and pedestrian modes increase significantly.<sup>42</sup> Programs such as Cash-Out parking cash allowances for employees opting to not park at work, elimination of minimum parking requirements, pay as you drive insurance, congestion pricing, or increased parking fees, creates significant mode shifts.<sup>43 44</sup> See Appendix D for jurisdictions reducing personal VMT.

Creating land use and zoning policies through mobility management strategies is also key to a clean and equitable transportation system. Designs such as Smart Growth, 15 Minute City Design, Transit Oriented Development, and Car Free Planning strategies means striving for an urban model that allows everyone, in every neighborhood, to meet most of their daily needs within a short walk or bike ride of their home. It creates a 'human-scale' city composed of vibrant, people-friendly, 'complete' neighborhoods, connected by quality public transport and cycling infrastructure for the longer trips that residents want or need to make. Decentralizing services and activities usually focused in small downtown areas and injecting more economic activity into neighborhoods across the urban and suburban landscape. Equity and inclusivity are at the heart of a successful design. When transportation design is done in close collaboration with

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<sup>37</sup> Todd Litman (2003a), "Measuring Transportation: Traffic, Mobility and Accessibility," ITE Journal (www.ite.org), Vol. 73, No. 10, October 2003, pp. 28-32, [www.vtpi.org/measure.pdf](http://www.vtpi.org/measure.pdf).

<sup>38</sup> Todd Litman (2003), "Measuring Transportation: Traffic, Mobility and Accessibility," ITE Journal (www.ite.org), Vol. 73, No. 10, October 2003, pp. 28-32; at [www.vtpi.org/measure.pdf](http://www.vtpi.org/measure.pdf).

<sup>39</sup> Chris McCahill, Matt Pettit and Chris Sinclair (2017), Access Scores – Measuring the Why, Where and How of Accessibility, Citilabs (www.citilabs.com); at <https://bit.ly/2p2ueHY>.

<sup>40</sup> Cynthia Burbank (2008), *Global Climate Change: Transportation's Role in Reducing Greenhouse Gas Emissions*, AASHTO Annual Meeting

<sup>41</sup> [https://www.fhwa.dot.gov/environment/bicycle\\_pedestrian/ntpp/](https://www.fhwa.dot.gov/environment/bicycle_pedestrian/ntpp/)

<sup>42</sup> Emily Badger (March 2014) *America's Cities Are Still Too Afraid to Make Driving Unappealing*

<sup>43</sup> Cynthia Burbank (2008), *Global Climate Change: Transportation's Role in Reducing Greenhouse Gas Emissions*, AASHTO Annual Meeting

<sup>44</sup> Todd Litman (June 2009) VMT Reductions: An Excellent Idea When Correctly Evaluated

local residents and underserved populations, the outcome is more mixed public spaces where people can gather to socialize and support neighborhood businesses, enabling people to spend more time with loved ones and the things they enjoy.<sup>45 46</sup>

Mobility management should be about more than individual solutions to individual problems, such as road pricing to reduce congestion and transit improvements to reduce pollution; it is most effective if implemented as an integrated program that includes improved transport options and incentives to use the most efficient option for each trip. Mobility management strategies are supported by professional organizations such as the Institute of Transportation Engineers and the Federal Highway Administration.<sup>47</sup>

## Recommendations

The following recommendations are designed to best meet the needs of marginalized communities, reduce carbon emissions, and solve multiple transportation issues for Virginia.

1. Conduct research within jurisdictions across the state to gain insight and recommendations from local communities on improvements they hope to see in public transit systems and other alternative clean transportation modes; focus specifically on dialogue with marginalized and education around the benefits of mobility management strategies.
2. Create a Virginia state Clean Active Accessible Transportation Task Force of diverse stakeholders and communities most impacted by transportation inequity to study, design and create mobility management strategies (also called transportation demand management, or “TDM”).
3. Implement mobility management strategies (See Appendix E) to improve transportation options, encourage use of more efficient modes, create more accessible land use patterns, and reform biased planning practices to create equity.
4. Review and implement the more than three dozen strategies contained in the *Mobility Management Encyclopedia* for in depth information.<sup>48</sup> For a pdf download see footnotes.<sup>49 50 51</sup>
5. Use mobility management revenue sources to fund infrastructure for Clean Active Accessible Transportation Modes, which in turn will increase transportation equity.
6. Mobility management strategies for initial consideration:
  - a. Ensure that low-income communities have access to a form of transportation within two blocks walking distance from their place of residence.
  - b. Allocate funding to the public transit sector in Virginia to remove fares across the state.

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<sup>45</sup> Implementation Guides (May 2021), 15-minute cities: How to ensure a place for everyone.

<sup>46</sup> Todd Litman, GTZ Transport and Mobility Group, (2003), Module 2b: Mobility Management By (Victoria Transport Policy Institute), Editor: Karl Fjellstrom Manager: Manfred Breithaupt.

<sup>47</sup> Sam Staley and Adrian Moore (2008), *Mobility First: A New Vision for Transportation in a Globally Competitive Twenty- First Century*, Rowman & Littlefield.

<sup>48</sup> <https://www.vtpi.org/tdm/index.php#strategies>

<sup>49</sup> [www.academia.edu/27864139/The\\_Online\\_TDM\\_Encyclopedia\\_mobility\\_management\\_i%20nformation\\_gateway](http://www.academia.edu/27864139/The_Online_TDM_Encyclopedia_mobility_management_i%20nformation_gateway)

<sup>50</sup> [https://www.vtpi.org/gtz\\_module.pdf](https://www.vtpi.org/gtz_module.pdf)

<sup>51</sup> Todd Litman Victoria Transport Policy Institute *Are Vehicle Travel Reduction Targets Justified? Evaluating Mobility Management Policy Objectives*, November 19, 2021 [https://www.vtpi.org/vmt\\_red.pdf](https://www.vtpi.org/vmt_red.pdf)

- c. Create higher vehicle tax on automobiles valued above \$20K and on second vehicle ownership. These funds are then used to increase Active Accessible Transportation Modes.
- d. Eliminate minimum parking requirements.
- e. Upcoming and clustered land use near transit stops to increase affordable housing and more people accessing transit.
- f. Implement Pay-As-You-Drive insurance.
- g. Implement Cash-Out-Free Parking programs
- h. Provide Employee Active Transportation benefits.
- i. Eliminate single family zoning in areas within walking distance of transit stops to encourage commercial spaces to benefit residents and those near enough to access via transit. Upzoning near transit also means homeowners can add detached housing units on a lot and help situate middle and low-income people near transit easing the housing crisis and putting more people in walkable and transit access communities.
- j. Allocate more attention to creating infrastructure in Virginia that serves non-drivers;
- k. Implement incentives to decrease the use of the automobile and break the cycle of automobile dependency;
- l. Implement land use policies including Smart Growth, Car-Free Planning, New Urbanism, and, 15 Minute Cities<sup>52</sup> across the state in order to decrease the high need for cars and ensure that all citizens of Virginia have easy access to cultural, social, economic opportunities, and access to basic necessities such as food and medical centers.
- m. Shift current oil-based buses and trains to electric, focusing specifically on making this transition in communities that currently face the highest pollution burdens from public transportation first.
- n. Make state government buildings, especially Department of Motor Vehicles (DMV) offices, schools, and medical clinics, accessible by transit, bicycle, or walking.

In summary, we recommend:

- Creating a Virginia Clean Active Accessible Transportation Task Force and implementing programs through diverse community participation that lead to a more equitable, inclusive, healthier, and stronger sense of community through transportation options, and infrastructure planning;
- Evaluating transportation through Mobility Management strategies for both urban and rural communities, for increased access rather than increased mobility to achieve transportation equity and reduced emissions;
- Allocating more attention to creating infrastructure in Virginia that serves non-drivers through a focus on Clean Active Accessible Transportation Modes;
- Implementing incentives to decrease the use of the automobile and break the cycle of automobile dependency;

## **(5) Water Infrastructure and Safety**

### **Introduction and Justification**

Water infrastructure and water safety is essential for public health, and in its absence the overall social and economic success of a community is impossible. Virginia has in the last decade been able to provide great improvements through state and federal funding and prioritization, but there are still many communities who are still at risk. The disaster that happened in Flint MI, is one that could happen in any

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<sup>52</sup> <https://www.15minutecity.com/about>

town or city who is facing a continuous economic downturn and looks to cut costs at the expense of public health. The failed response from local, state, and federal governments aggravated the crisis because they did not treat this issue with the gravity it deserved. Virginia is on the right track here due to its prioritization of water infrastructure in allocating federal and state funding, these investments should continue moving forward to ensure we don't suffer a similar catastrophe and we continue to strive to create opportunities for success for all communities across the Commonwealth.

### ***Fully Fund Water Infrastructure Improvements***

The federal American Rescue Plan (ARP) funding is essential to ensuring public health and upgrading the aging water systems and improving drinking water, wastewater, and stormwater infrastructure. This funding is part of the greater ARP funding that totaled \$4.3 billion that was available to the Commonwealth. We urge this administration to continue making water infrastructure a priority in how it allocates Federal Funding through similar legislation, and to work with EPA, and other agencies to maximize public and environmental health for Virginians.

By ensuring this funding, we have a tremendous opportunity to rebuild our aging water systems and ensure every Virginia family has reliable access to safe, clean drinking water. In addition to modernizing water and sewer infrastructure across the Commonwealth, these investments will go a long way towards restoring the health of our waterways and reducing pollution in our communities, especially in low-income areas where there is an increase in lead contamination. The proposal includes millions of dollars in wastewater treatment and nutrient removal, sewer overflow projects in Richmond, Alexandria, and Lynchburg, and enhancing water systems in small and disadvantaged communities.

These proposed investments supplement more than \$300 million in ARP funding that the Commonwealth sent to towns in June and \$2.3 billion made available to Virginia's 133 counties and cities directly from the federal government to meet local response and recovery needs, which include improving access to clean drinking water and to supporting vital wastewater and stormwater infrastructure.

### ***Eliminating Lead from Drinking Water***

Lead can be inhaled or ingested. Small amounts of lead can poison a child or an adult. In small children, the mechanism of exposure is hand to mouth. Lead dust adheres to the hand and the normal hand to mouth activity results in ingestion of small particles of lead leading to elevated blood lead levels. Lead pipes in the water distribution system and lead in fixtures inside buildings is an additional source of exposure.

Children are exposed to lead through hand to mouth contact when they touch. Lead disrupts the normal neurological developmental process in children, resulting in loss of IQ, learning and attention deficits, changes in information processing and on a population basis, lowered rates of graduation from school and higher rates of incarceration.<sup>53</sup>

The before mentioned investments are critical in ensuring that lead related illnesses and harm are eliminated. In Virginia there are cities and counties where the number of children with elevated blood lead levels are significantly higher. Examples include counties of Accomack, Chesterfield, Chesapeake, Fairfax, Henrico, Loudoun and Prince William and the cities of Alexandria, Charlottesville, Chesapeake, Newport News, Norfolk, Richmond, and Roanoke.

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<sup>53</sup> Chen, 2011, Health Impact Project, 2017

### ***Water Infrastructure Finance and Innovation Act (WIFIA) Loans***

The WIFIA program accelerates investment in our nation's water infrastructure by providing long-term, low-cost supplemental loans for regionally and nationally significant projects. Here are some examples of localities that have received these loans, and how they have helped galvanized water infrastructure improvements. On February 19th, 2021, U.S. Environmental Protection Agency (EPA) announced a new \$321 million Water Infrastructure Finance and Innovation Act (WIFIA) to Alexandria Renew Enterprises for its River Renew Tunnel System project. This project will benefit public health and the environment by significantly reducing discharges of untreated wastewater to Hooffs Run, Hunting Creek, and the Potomac River. On September 21, 2021, EPA announced a \$477 million Water Infrastructure Finance and Innovation Act (WIFIA) loan to the Hampton Roads Sanitation District (HRSD). This loan is the second installment of a total of \$1 billion in WIFIA assistance for HRSD. The WIFIA funding will help retire an 80-year-old wastewater treatment plant in an economically challenged community and replenish groundwater supplies that are threatened by sea level rise.

### ***Distributing Drinking Water State Revolving (DWSR) Funds***

These investments are critical to ensure that water systems are maintained to not put Virginians at risk. The Virginia ODW supervises and controls all water supplies and waterworks in the Commonwealth insofar as the bacteriological, chemical, radiological, and physical quality of waters furnished for human consumption may affect the public health and welfare. ODW receives annual funding from EPA (\$18.1 million in 2020) through the Drinking Water State Revolving Fund (DWSRF). ODW uses the EPA funding to provide subsidized, low interest loans to waterworks owners, helping them build, maintain, and expand their systems.

The DWSRF Program recognizes the additional challenges small, economically disadvantaged, low-income communities face, so it provides low-interest, extended loan terms (up to 30 years) and grant funding (up to 100%) to help ease the financial strain of infrastructure investment. Waterworks that propose to use DWSRF loans/grants to address public health issues and those that serve disadvantaged communities, meaning water rates are greater than 1% of the median household income, receive prioritization for funding.

### **Recommendations**

1. Continue to use the allocated \$411.5 million in federal American Rescue Plan (ARP) funding to reduce water pollution and increase access to clean water across the Commonwealth.
2. The Administration should encourage localities and have state agencies support in accessing Water Infrastructure Finance and Innovation Act (WIFIA) loans so that needed infrastructure improvements are made.
3. Virginia should maximize its use of Distributing Drinking Water State Revolving (DWSR) Funds and all Federal opportunities to maximize water infrastructure improvements and ensure the public safety of Virginians. Low-income communities should continue to be prioritized in DWSR funds.

## **(6) Office of Just Transition**

### **Introduction and Justification**

The Virginia Clean Economy Act mandates that the Commonwealth transition away from carbon-emitting electric generation, putting further downward pressure on fossil-fuel industries already facing decline as the electricity sector decarbonizes. As Virginia and the country rely less on fossil fuels, workers and communities historically reliant on fossil fuel production and infrastructure will lose jobs and tax revenue, further exacerbating the economic hardships faced in these areas.

Coalfield communities have been experiencing the harsh reality of the declining coal industry for decades, and now more workers and communities across the entire Commonwealth will begin to experience this challenging economic transition. As we change the way we produce energy, Virginia has a responsibility to ensure that vulnerable communities are not left behind during the transition.

Creating an Office of Just Energy Transition will increase the capacity of the Commonwealth to steward an equitable and just transition in communities negatively impacted by the downturn in the coal economy. The Office could:

1. Develop a community of practice that facilitates preparation, during which the groundwork is laid for a successful transition by planning and beginning to implement strategies to assist communities and workers.
2. Provide assistance during closure, during which Virginia's remaining power plants and coal mines close down. This will be the period of maximum negative impact to workers and local economies.
3. Steward a recovery, during which workers and communities complete their transitions to a future after fossil fuels and other carbon-emitting economies. For Southwest Virginia, recovery must begin immediately to address decades of coal industry decline; for other communities, recovery can begin now as communities get a head-start on diversifying their economies and workers start planning early to take charge of their own futures.

The Virginia Clean Economy Act mandates that the Commonwealth transition away from carbon-emitting electric generation, putting further downward pressure on fossil-fuel industries already facing decline as the electricity sector decarbonizes. As Virginia and the country rely less on fossil fuels, workers and communities historically reliant on fossil fuel production and infrastructure will lose jobs and tax revenue, further exacerbating the economic hardships faced in these areas. Coalfield communities have been experiencing the harsh reality of the declining coal industry for decades, and now more workers and communities across the entire Commonwealth will begin to experience this challenging economic transition. As we change the way we produce energy, Virginia has a responsibility to ensure that vulnerable communities are not left behind during the transition.

The purpose of the Office is to (1) aid workers in the transition to new, high-quality, jobs, and (2) help communities continue to thrive by expanding and attracting diverse businesses, replacing lost revenues, and repairing the environmental damage of extractive industries. The Office of Just Energy Transition will collaborate with the Just Energy Transition Advisory Board and create a Just Energy Transition Action Plan. The Office will commission a study regarding the effects of power plant and mine closures to inform the Action Plan in order to better assist workers and communities that will be adversely affected by the loss of jobs and revenues due to the closure of coal-fired power plants. The

Advisory Board should include representatives of coal communities, labor unions, regional nonprofits, issue experts, and members appointed by the Governor. The Advisory Board should lead the drafting of the Action Plan, which must be developed in consultation with stakeholders in impacted communities, within two years after the establishment of the Office, and must be updated every three years. The Action Plan will address the Office's plans for each bullet listed below. Additional responsibilities of the Office of Just Transition can be found in Appendix F.

## **Recommendations**

1. Create the Office of Just Energy Transition. The Office of Just Energy Transition will increase the capacity of the Commonwealth to steward an equitable and just transition in communities negatively impacted by the downturn in the coal economy.

The purpose of the Office is to (1) aid workers in the transition to new, high-quality, jobs, and (2) help communities continue to thrive by expanding and attracting diverse businesses, replacing lost revenues, and repairing the environmental damage of extractive industries. The Office of Just Energy Transition will collaborate with the Just Energy Transition Advisory Board and create a Just Energy Transition Action Plan. The Office will commission a study regarding the effects of power plant and mine closures to inform the Action Plan in order to better assist workers and communities that will be adversely affected by the loss of jobs and revenues due to the closure of coal-fired power plants. The Advisory Board should include representatives of coal communities, labor unions, regional nonprofits, issue experts, and members appointed by the Governor. The Advisory Board should lead the drafting of the Action Plan, which must be developed in consultation with stakeholders in impacted communities, within two years after the establishment of the Office and must be updated every three years. The Action Plan will address the Office's plans for each bullet listed below.

The Office will:

- a) Develop a community of practice that facilitates preparation, during which the groundwork is laid for a successful transition by planning and beginning to implement strategies to assist communities and workers.
- b) Provide assistance during closure, during which Virginia's remaining power plants and coal mines close down. This will be the period of maximum negative impact to workers and local economies.
- c) Steward a recovery, during which workers and communities complete their transitions to a future after fossil fuels and other carbon-emitting economies. For Southwest Virginia, recovery must begin immediately to address decades of coal industry decline; for other communities, recovery can begin now as communities get a head-start on diversifying their economies and workers start planning early to take charge of their own futures.

## Section 2. Planning and Community Health

### (7) Planning and Public Participation

#### Introduction and Justification

The Council consistently hears from the public about barriers to participation in the current system for environmental decision making by state agencies. First, it is important to note, public participation related to environmental decisions by state agencies applies to both rulemaking and permit decisions.

#### *Environmental Justice Mapping Tools*

Maps are powerful communication tools and careful consideration should be put into the purpose and content of an environmental justice (EJ) mapping tool. The first step in making any tool is clearly identifying its intended purpose. As the Commonwealth begins the process of developing its own EJ mapping tool the following questions arise regarding the tool's purpose:

- At what scale is the tool intended for use? Is this a tool for delving into local communities and specific permit applications, making locality level decisions, or looking at regional and statewide trends?
- Is this a tool to help communities advocate for their own environmental interests? Is this tool intended to help agency staff identify and target resources to communities? Is this a tool to help businesses plan the siting of their operations and/or to help businesses comply with EJ-related requirements?
- Will this tool help the user identify EJ communities as defined by the Virginia Environmental Justice Act? If so, how will individual racial and ethnic groups be represented? How will small communities like Native American Tribes and unique ethnic groups within the larger categories of "Hispanic" and "Asian" be represented?
- Is this tool intended to help the user assess the need for enhanced outreach? Will it identify sensitive receptors like schools, post offices and churches? Will it provide contact information for regional DEQ EJ staff or other stakeholders within local communities?
- Is this tool intended as a data repository and viewer? Will the tool include some level of multivariate spatial modeling so as to calculate a unique output score and visual layer?

Environmental justice is a complex intersectional issue, one that requires the depiction of many different layers of social, health, economic and environmental data from many different sources, and perhaps even requires consideration of how these factors have changed in one place over time. Building an EJ mapping tool that goes beyond viewing spatial information to representations or conclusions about the relationships between these factors is a scientific exercise, the output of which will be determined by the chosen input factors and the way relationships among those factors are understood and constructed within the model by the people building it. Using geographic information systems (GIS) to compile and curate spatial data is an exercise that requires careful planning and robust stakeholder consultation.

#### Recommendations

The Council offers the following recommendations in regard to the development of an EJ mapping tool:



1. The Commonwealth of Virginia should have one centralized mapping tool or data center for identifying environmental justice communities. This tool should, as a first step, clearly identify all the distinct geographic areas in the Commonwealth that meet the definitions for communities of color, low-income communities, and fence-line communities according to the definitions provided by the Virginia Environmental Justice Act.
2. The Commonwealth's environmental justice mapping tool should provide clear representation for each population of color afforded consideration by the Virginia Environmental Justice Act. Existing mapping tools intended to support environmental justice considerations often provide racial and ethnic data in a cumulative category called "total population of color" or "total minority population". The definition for community of color provided by the VEJA requires that each of the racial and ethnic groups listed in the definition of "populations of color" be compared individually to the state average. Therefore, any tool developed should provide clear representation for each population of color afforded consideration by the law.
3. The Virginia Environmental Justice Act definition for "EJ Communities" is based solely on demographic characteristics, race/ethnicity and income, and does not account for existing environmental burden, it is recommended that an effort take place to use the mapping tool to highlight several key groups of EJ Communities: those most at risk from poor air quality, those most at risk from poor water quality, those most at risk from solid waste related impacts, and those most at risk from climate-related impacts. These categories relate to Pollution Control Boards and climate-related initiatives and could help support decision making and resource allocation.
4. A series of state-wide public listening sessions should be undertaken to achieve meaningful involvement in the mapping tool's development. Developing a tool like this without a robust and meaningful stakeholder engagement process would be anathema to the core principles of environmental justice.
5. Quantitative scoring schemes, which are created via spatial modeling exercises, should be approached with caution. Quantitative scores are created by assigning subjective scores to define the relative importance of the various kinds of spatial information included in the model that calculates the score. Not only can scoring schemes introduce observer bias, they can also obscure detail, erasing the highs and lows of any data range, and decrease the visibility of small populations and the true scope of environmental impacts.
6. Mapping tools are not an endpoint, rather, they are a starting point for planning and conversations with environmental justice as the goal. This principle should guide the development of the tool.

## **(8) Data, Definitions, and the Virginia Environmental Justice Act**

### **Introduction and Justification**

Definitions for low wealth communities vary between the Virginia Environmental Justice Act (VEJA) and the Virginia Clean Economy Act (VCEA) definition for a "historically economically disadvantaged community" (Va. Code § 56-576). For the sake of agencies and industries operating under both of these laws, and the general understanding of the public, these definitions should be brought into alignment.

The VEJA provides the following definition:

"Low income" means an area having an annual household income equal to or less than the greater of (i) an amount equal to 80 percent of the median income of the area in which the household is located, as reported by the Department of Housing and Urban Development, and (ii) 200 percent of the Federal Poverty Level.

The VCEA, as part of defining "historically economically disadvantaged community" provides the following supporting definition:

"Low-income geographic area" means any locality, or community within a locality, that has a median household income that is not greater than 80 percent of the local median household income, or any area in the Commonwealth designated as a qualified opportunity zone by the U.S. Secretary of the Treasury via his delegation of authority to the Internal Revenue Service.

## **Recommendations**

The Council offers the following recommendations on how to improve or amend each definition:

1. Part (i) of the VEJA definition requires comparison of a small geographic area median income to that of the HUD designated area. HUD only publishes a median family income value for metropolitan statistical areas and non-metropolitan counties; it does not publish corresponding data for smaller areas (like U.S. Census designated tracts or block groups) commonly used when screening for EJ communities using EJ mapping tools. This lack of HUD data at the smaller resolution forces the analyst to combine median income data from multiple datasets, which is not ideal because different datasets aren't always comparable. For example, HUD only publishes median family income, whereas other sources commonly publish median household income. The difference is related to who counts as a "household" versus a "family" and many sources publish both, but again, HUD only publishes limited median income data curated for specific housing purposes. There are other comparable sources of reliable income data with more flexibility; this definition's specificity puts a burden on the public and regulated community to understand and comply with the law.
2. Part (ii) of the VEJA definition is relatively straightforward and aligns with EPA's EJ Screen. It could be clarified, since federal poverty thresholds are only published according to household size and number of children. A commonly used standard is a four-person household, with two adults and two children, but that is not specific by the law and so left open to interpretation.
3. The benefit of including opportunity zones in the definition is unclear. Opportunity zones are intended to encourage economic development, which can be good or bad for an EJ community depending on many factors. There are ways to define low income without including economic incentive zones. Unless there is a compelling reason to define low income through these zones, their presence as part of the definition adds unnecessary complexity to the VCEA.

## **(9) Public Participation**

### **Introduction and Justification**

The Council consistently hears from the public about obstacles within the public participation system used for environmental decision making by several agencies, primarily DEQ and the state pollution control boards. First, it is important to note, public participation related to environmental decisions by

state agency decisions applies to both the rule making process and permitting decisions. While permit decisions by pollution control boards or DEQ often get intense focus, the regulatory rulemaking process is foundational to permit decision making and proactively seeking the inclusion of diverse perspectives in determining how a law is to be applied is equally important, maybe more so even, than any one permit decision. Likewise, the local zoning and economic development processes need more attention in the ongoing conversation around how to promote environmental justice. Localities need to be held accountable for their role in ensuring robust diverse public participation and equitable outcomes in their planning, zoning, and conditional use permit decisions. This section will focus on public participation in state-level environmental decision-making by DEQ, but the limited scope should not be interpreted to mean DEQ has control of all the public participation processes that need reform in order to achieve environmental justice.

## **Recommendations**

The following recommendations are intended to guide the development of public participation standards that promote meaningful involvement in environmental decision making:

1. In regard to the Administrative Process Act, the Council recommends that § 2.2-4012 be amended to include “meaningful involvement” as a purpose of the regulatory process.
2. Introduce a budget amendment to fund technology and personnel enhancements to ensure there can be a hybrid option at public hearings.
3. Conduct public hearings in the closest feasible location to the site of the proposed project.
4. Prioritize publicly owned spaces for hearings & events.
5. Develop guidance on using a respectful approach to security during public hearings. It is essential this guidance is developed in collaboration with communities of color, and with acknowledgment of the historical and ongoing trauma of disproportionate police violence against communities of color.
6. Align public notice and comment period lengths among various state agency actions and between the Agency and Applicant to ensure ample time for public participation.
  - a. The current required notice for a public hearing or open meeting by DEQ or the pollution control boards is seven (7) days. It is not reasonable to assume a citizen could receive a notification and plan to attend a public meeting within a week’s time. Consider the challenges of rearranging work schedules, childcare routines, elder care routines, and all of life’s other responsibilities in less than a week, and how this challenge is amplified for low-income households. The length of time notice is required to be posted to the Virginia Regulatory Town Hall and Commonwealth Calendar should be extended to at least 30 days prior to the date of a public hearing, and at least 10 days in advance of an open meeting.
  - b. The current regulatory rule-making process switches among 21, 30, and 60 days for various steps in the process from a Petition for Rulemaking through a Final Regulation. Considering also that SB 1317 suggests a 60-day notice requirement for permit applicants, some attempt should be made to standardize these timelines allowing for as much time for public participation as feasible.
7. Proactively notify and engage with affected communities on decisions, early in the process.

- a. State agencies or responsible parties should screen for EJ communities before planning any public hearing. While convenient for preliminary screening, demographic and environmental databases have limitations and require “on-the-ground” confirmation of screening results.
- b. State agencies or responsible parties should conduct enhanced or targeted outreach to notify local residents of public hearings or rulemakings when the issue under consideration takes place in or potentially impacts a specific EJ community. Phone calls and emails should supplement physical mailings. The specific steps taken in such an outreach effort should be informed by knowledge of the local community. Perhaps it will be possible to leverage new Department of Environmental Justice staff for knowledge about and outreach to the local community. Local community leaders and advocacy organizations can help confirm screening results and can help target outreach to the potentially effected EJ community.
- c. Require posting public notices in print and virtual/social media platforms for all public hearings (currently optional). Print media should include publications targeted to EJ communities identified in the screening stage. Online communications don’t have to mean targeted ad, these notices could simply be posted on agency social media pages and efforts could be made to expand engagement with these pages within diverse communities.
- d. Website materials about public participation should be developed at a 7th grade reading level and include visual aids and process flow charts to aid in understanding the public participation process. Right now, there is no process flow chart to be found anywhere on DEQ’s website that explains the environmental decision-making process and public participation.
- e. The agency should plan so that an average citizen, with no prior knowledge of DEQ or how it is organized, can navigate to the agency home page and immediately recognize where they need to click “next” in order to sign up for or submit public comments. This could be done by raising the visibility of active public notice periods, public participation process information, and the Virginia Regulatory Townhall website link on the home page.

## **(10) Capacity Building for Historically Disadvantaged Communities**

### **Introduction and Justification**

Additionally, the Council has heard testimony concerning the lack of capacity in communities across the state that are suffering from increased pollution and other dynamics of environmental burdens. The consistent issues of reduced political and economic capital, lack of knowledge, etc. have underscored the importance of building capacity in historically disadvantage communities.

### **Recommendations**

The following recommendations are intended to increase the capacity of the public, especially those persons or communities considered historically disadvantaged, to advocate for a clean, healthy, and safe environment:

1. Disadvantaged and overburdened communities need support and education to build capacity and

equity so all citizens of the Commonwealth are empowered to advocate for themselves on environmental decisions.

2. All citizens need a strong foundational education in topics relevant to the environment, their health, and how different levels of government make decisions that affect both. A review of the state's standards of learning (SOLs) and the Virginia Community College System (VCCS) General Education Certificate and Arts & Sciences curriculum is recommended. This review should determine if, when, and to what degree students are afforded an opportunity to learn about the environmental decision-making process and opportunities for public participation.
3. State agencies should look for opportunities to partner with EJ communities to seek support from federal agencies to attain grants and technical assistance. In South Carolina, in 2009, the state environmental agency was granted U.S. Environmental Protection Agency (EPA) funding to work with environmental justice communities identified in each of four regions within the state to conduct projects uniquely tailored to needs identified by that community. As the DEQ's new EJ Office hires and establishes regional staff, a similar approach could be taken to establish regional pilot projects for the promotion of environmental justice. Regional projects for environmental justice could and should address urgent environmental needs, however, such work could also provide relationship building opportunities for state agencies and environmental justice communities. By working with local community members and hiring local contractors, addressing environmental inequity can also bring environmental leadership capacity and economic development to the communities where it is needed most.
4. Expect, plan for, and have patience for the time that consensus building requires. Fully empowering a community to identify their own priorities through education and robust public engagement, building leadership from within the affected community, and providing appropriate oversight of funds are crucial elements for the success of any plans to provide support to communities in need.

## **(11) Tribal Nations and Native American Populations**

### **Introduction and Justification**

Sovereign indigenous Tribal Nations have existed in what is now called the Commonwealth of Virginia since long before the first Europeans arrived on the shores of this continent in the 16th and 17th centuries. These Tribal Nations, their governments and their people, have survived over 500 years of European, and later, American, attempts to uproot and destroy them. Yet they are still here, and many are still honoring the treaty agreements that have governed the relationship between Tribes and the Commonwealth of Virginia since before its independence from England. Tribes have kept the peace, remained on their designated lands when they could, provided tribute to the Governor of the Commonwealth on a yearly basis, and provided military support to the Commonwealth and United States. In fact, Tribal Nations in Virginia have sent warriors into battle for the Commonwealth in every major conflict since the American Revolution and even before, in colonial conflicts. It is unfortunate that the Commonwealth has not likewise upheld the promises enshrined in the Treaty of Middle Plantation, signed in 1677, to provide permanent ownership of land to Tribal Nations, along with hunting and fishing rights, and civil rights for Tribal citizens.

The Commonwealth has not kept its most important promise “the said Indian Kings and Queens and their

Subjects, shall hold their Lands, and have the same Confirmed to them and their Posterity”<sup>54</sup>. Land held by Tribal Nations has been drastically reduced since the 18th century, such that in modern times, the majority of recognized Tribal Nations have no designated tribal lands remaining, and those that do, the Pamunkey and Mattaponi, hold less than 2,000 acres combined (e.g., the Pamunkey and Mattaponi Reservations). This remaining acreage is a small shred of the original land holding promised by treaty to these two Tribes alone. The other Tribes, both federally and state recognized, if they hold land collectively, they own it as private citizens or organizations, with no special state trust status to protect it into perpetuity. The two remaining reservations and many tribal communities who live on private lands are also imminently threatened by sea level rise associated with climate change. And at least along the Pamunkey and Mattaponi rivers, bordering the two remaining reservations, coastal land loss is being exacerbated by shoreline erosion caused primarily by motorized recreational boating and increased storm frequency.

Land is a critical resource that communities need to thrive; this idea is foundational to the notion of environmental justice. If the Commonwealth’s relatively newfound commitment to improving relations with sovereign Tribal Nations is to be fully realized, enough land must be restored to the control of each Tribal Nation so that each might reasonably provide a place for their citizens to live together and carry on their culture into the future. In most cases, restoration of land to Tribal Nations would be an exercise in returning that which was already promised and which rightfully, by Treaty, already belongs to each Nation. There can be no consideration of environmental justice if a community has been deprived of a space, an environment, in which to exist.

Furthermore, the Commonwealth has not kept its promise to allow Tribal citizens access to “their wonted conveniences of Oystering, Fishing, and gathering Tuckahoe, Curtenemons, Wild Oats, Rushes, Puckoone, or anything else (for their natural support)” (Articles of Peace, 1677). This part of the treaty outlines the responsibility of the Commonwealth to protect natural resources for use by citizens of Tribal Nations, specifically those resources critical to indigenous lifestyles, like wild game and fishes, or even locally harvested clay for pottery making. The amount of damage to the water, the soil, ecosystems, plant and animal species, even mountains themselves, since Europeans arrived in what is now the Commonwealth cannot be overstated. From an indigenous perspective, it’s hard to put into words. One of the first resources English colonists targeted was timber. Clearing forest had the added benefit of making room for agriculture, and by the 18th century, settler colonists had drained marshes and chopped down virgin forests on most lands that weren’t too steep to plow or graze.<sup>55</sup> Keystone terrestrial species like Red Wolves, Eastern Elk and Bison were driven to extinction.<sup>56</sup> <sup>57</sup> Likewise, the region’s fish and shellfish stocks were destroyed by water pollution, damaged habitats, and overharvesting.<sup>58</sup> Most populations have not recovered; ongoing overharvesting, habitat loss, shoreline hardening, water quality impairments associated with industrial agriculture, invasive species introductions, and the stressors of climate change continue to threaten marine environments. This reckless disregard for the environment hurts not only indigenous people, but all people who share respect for and recognize their dependence on the natural world for survival and good health. Another foundational requirement to promoting environmental justice for indigenous people and Tribal Nations in Virginia is a strong commitment to biological conservation and the preservation of wild lands and critical habitats.

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<sup>54</sup> Articles of Peace, 1677. Retrieved from: <https://encyclopediavirginia.org/entries/articles-of-peace-1677/>

<sup>55</sup> Virginia Department of Forestry. Virginia’s Forest History. <https://dof.virginia.gov/forest-markets-sustainability/learn-about-forest-markets-sustainability/virginias-forest-history/>

<sup>56</sup> [https://www.washingtonpost.com/opinions/local-opinions/bring-the-red-wolves-back-to-virginia/2020/11/19/14621f4a-2905-11eb-92b7-6ef17b3fe3b4\\_story.html](https://www.washingtonpost.com/opinions/local-opinions/bring-the-red-wolves-back-to-virginia/2020/11/19/14621f4a-2905-11eb-92b7-6ef17b3fe3b4_story.html)

<sup>57</sup> <https://www.williamhfunk.com/return-of-a-native-the-virginia-elk.html>

<sup>58</sup> <https://www.cbf.org/issues/fisheries/>

Finally, the Treaty of Middle Plantation shows the intention of the English Crown, later adopted by the Commonwealth, to provide civil rights protections to tribal citizens. In the 17th century, allowing tribal citizens access to the due process afforded in English courts was a form of protection against acts of violence by colonists, a guarantee of safety for laying down arms. Today, the modern challenge is balancing hard-won tribal sovereignty with affording due process and civil rights protections to tribal citizens, who are also citizens of the Commonwealth and the United States.

Federally recognized Tribal Nations have a status known as “nested sovereignty” which means they have sovereignty, technically, but it exists within certain boundaries established by treaty, practice, or legal precedent. Typically, Tribal Nations have their own constitution, laws, or traditional government structure and generally have control over anything that federal law does not deny them. Typically, this includes tribal citizen enrollment, land use and land access, property rights, taxation, economic development, civil law, and criminal jurisdiction over tribal members who commit crimes within the boundaries of their designated lands.<sup>59</sup> To what degree a tribal citizen is subject to tribal law or regulation depends primarily on whether or not the citizen resides on or is taking action on designated tribal lands. Only tribal citizens residing on or doing business on designated tribal lands would be subject to tribal jurisdiction over their property rights, for example. Here again, we come to the reason why access to designated tribal lands for each recognized Tribal Nation is essential to justice – because having legal jurisdiction over the activities discussed here, however limited by the “nested sovereignty” concept, is still absolutely central to realized tribal sovereignty.

One power of tribal governments that does not depend on land or location is tribal enrollment. The issue of tribal enrollment, or membership, is a deeply sensitive one. American Indian and Alaska Native people are one of the few, if only, peoples in the world that have to show paperwork to verify their racial or ethnic identity. The federal recognition requires Tribes to create enrollment lists, laying down finite boundaries to membership backed up by primary historical documents of family lineage, where before, for centuries, presence on tribal lands and membership in tribal communities was based on community connections and participation. In the Commonwealth, vital statistic paperwork verifying indigenous identity is limited; in part due to the lack of paperwork from the early colonial and American periods, but also due to loss of documents and purposeful paper genocide in the 20th century<sup>60</sup>. But inasmuch as federal and state recognition confers specific rights or benefits to tribal citizens, access to those rights and benefits is at stake for those who are unable to document their lineage or otherwise are denied enrollment or recognition. Even though tribal membership is primarily a political association, it continues to be viewed through the construct of race, or lineal descent.<sup>61</sup>

Regardless of proven ancestry and prior enrollment, Tribal Nations can and do disenroll members for a host of reasons, with very little, if any, due process afforded to the tribal citizen. The official reasons given may vary, but frequently political or economic motives are involved.<sup>62</sup> <sup>63</sup>

Tribal sovereignty should, in theory, allow Tribal Nations to establish their citizenry regardless of race or

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<sup>59</sup> Federal Bar Association. *Understanding Tribal Sovereignty*. <https://www.fedbar.org/blog/understanding-tribal-sovereignty/>

<sup>60</sup> Washington Post. *How a long-dead white supremacist still threatens the future of Virginia's Indian tribes*. Jul 1, 2015. [https://www.washingtonpost.com/local/how-a-long-dead-white-supremacist-still-threatens-the-future-of-virginias-indian-tribes/2015/06/30/81be95f8-0fa4-11e5-aded-e82f8395c032\\_story.html](https://www.washingtonpost.com/local/how-a-long-dead-white-supremacist-still-threatens-the-future-of-virginias-indian-tribes/2015/06/30/81be95f8-0fa4-11e5-aded-e82f8395c032_story.html)

<sup>61</sup> NPR Code Switch. *So What Exactly is 'Blood Quantum'?* Feb 9, 2018. <https://www.npr.org/sections/codeswitch/2018/02/09/583987261/so-what-exactly-is-blood-quantum>

<sup>62</sup> USA Today. *Native American tribe's eviction plan raises civil rights concerns. Should US Government intervene?* Jan 22, 2022. <https://www.usatoday.com/story/news/nation/2022/01/22/tribal-eviction-plan-pits-native-american-authority-vs-civil-rights/6513014001/?gnt-cfr=1>

<sup>63</sup> Coleman, Arica L. *That the Blood Stay Pure: African Americans, Native Americans, and the Predicament of Race and Identity in Virginia*. Indiana University Press. October 2013.

ancestry, as all other nations in the world are allowed to do. That said, given the confines of the current U.S. tribal system, there needs to be a middle ground where Tribes retain the right to define their own citizenry but tribal citizens are also afforded some level of third-party oversight or intervention when issues of discrimination and unfair practices are concerned. 64 65

Similarly, the mechanisms of tribal governments should be a matter left up to the Tribal Nation to decide, except in cases where clear violations of basic civil rights are the issue at hand. Issues around women's rights and anti-blackness exist in tribal communities, just like any other community, but when those issues become tribal government policies and deny citizens civil rights, there needs to be some course for the issue to be addressed.<sup>66</sup>

And all of this is relevant to environmental justice because when indigenous people do not have a voice or due process within their own Tribal Nation, they are severely limited in their ability to participate in environmental decision making. Tribal consultation policies require U.S. and state agency interactions with tribal governments, and tribal governments are akin to state or local governments. But the Commonwealth of Virginia, through VEJA, also has a responsibility to meaningfully engage underrepresented communities, and that means ensuring that their communications with Tribal Nations reaches past the elected leaders to the tribal citizens, and Native American communities of all kinds.

## Recommendations

1. Support Executive Order 82 "Consultation with Federally Recognized Tribal Nations for Environmental and Historic Permits and Reviews".<sup>32</sup>
2. Identify pathways for meaningful engagement with tribal citizens and members of Native American populations that are not part of a recognized Virginia Tribe. Tribal governments are akin to state or local governments, so logically, community engagement cannot stop at the Chief or Council, but must include tribal citizens as well. State agencies can help promote such engagement by working with tribal leaders and other members of tribal communities to establish practices that respect tribal sovereignty but also allow for tribal members and residents of state reservations to be notified and engage directly with state agencies, just like any other citizen of the Commonwealth.
3. Develop a state guide to tribal areas of interest when it comes to environmental and/or cultural concerns. Tribal consultation and notification requirements should be based on jurisdictional geographic areas (e.g., counties, cities, incorporated areas) or other delineated areas of interest, self-identified by each Tribe recognized by the Commonwealth. The 5-mile radius suggested in recent legislation is too small an area to adequately capture Tribal interests for public participation purposes, which often range far from the location of the modern community or designated tribal lands, to historical homelands and places of migration or cultural importance.
4. Establish a Native American Advisory Board modeled after existing boards that solicit feedback from various populations of color in the Commonwealth.

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<sup>64</sup> VOA. *Native American Tribal Disenrollment Reaching Epidemic Levels*. <https://www.voanews.com/a/native-american-tribal-disenrollment-reaching-epidemic-levels/3748192.html>

<sup>65</sup> High Country News. *One woman took a stand against tribal disenrollment and paid for it*. Feb 1, 2020.

<https://www.hcn.org/issues/52.2/indigenous-affairs-one-woman-took-a-stand-against-tribal-disenrollment-and-paid-for-it-nooksack>

<sup>66</sup> ABC News. *Mattaponi tribal members demand women's rights, elections within tribe: 'I do not have a voice or vote'*. Nov 24, 2021. <https://www.wric.com/news/local-news/richmond/mattaponi-tribal-members-demand-womens-rights-elections-within-tribe-i-do-not-have-a-voice-or-a-vote/>



5. Allow tribal grant access to the Virginia Land Conservation Foundation (VLCF).

## Section 3. Emerging Issues

In addition to holding public meetings where council members hear directly from Virginia residents who are seeking information or to make recommendations and requests regarding environmental issues they experience, Virginians living in regions distant from Richmond deserve to have the same opportunities to address the council as those living in or near Richmond (see Appendix I).

A visit to the far southwest portion of the state has been on the agenda for the past two years. In 2021 several members of the Virginia Council on Environmental Justice made a site visit to the far southwest region of the state to Wise County and the city of Bristol. The council heard from several residents and coalitions. Clinch River Coalition recommendations can be found in Appendix G. The site visit agenda is available online.<sup>67</sup>

The following section are proposals and summaries from those who testified.

### (12) Bristol Landfill

#### Introduction and Justification

A coalition of faith leaders and residents from twin cities Bristol, Virginia and Bristol, Tennessee areas gave testimony about the noxious gases and fumes coming from the Bristol City Landfill. The following links are letters and requests from the group requesting DEQ immediately revoke the operating permit. Members of the council visited the quarry landfill and the residential areas surrounding it. We heard testimony from family members who have had to flee their homes to escape breathing gases, asthma attacks, and to find rest overnight detailed in Appendix H. In addition to the residences inundated with these gases the landfill is within one quarter mile of a juvenile detention facility. The youth detained therein have no escape from the gases and fumes.

The footnotes are a letter and an analysis report of air quality and volatile components for April 2021.<sup>68</sup>  
<sup>69</sup>

#### Recommendations

1. The request by Bristol residents for DEQ to immediately revoke the operating permit should be approved.
2. The request for air filters or some appropriate mitigation measures be distributed to residents of both the detention facility and those who are being impacted daily.
3. Launch an investigation for how a landfill was permitted and how it failed.

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<sup>67</sup> <https://docs.google.com/document/d/1fTO5tu9eDP23m7Efqwk96CpkNiOEMmaxg2zVUnSlhLw/edit?us+p=sharing>

<sup>68</sup> <https://drive.google.com/file/d/17YTknNAVBLasnsp8Cjg2RZBYbrqkXYvE/view>

<sup>69</sup> <https://drive.google.com/file/d/1Or7urFla0owVUzuvJSHja2zAg-kIvqNU/view>

## **(13) Big Stone Gap Electric Line**

### **Introduction and Justification**

There is a potential electric line requiring destruction of the cultural and environmental landscape. It is unneeded and redundant. The electric line risks the local economy of a struggling coalfield town pursuing tourism to replace the lost revenues of the coal industry.

### **Recommendations**

1. The utility company should work with the town to identify alternate options.

## 2021 VCEJ Recommendations Summary and List

### Summary

1. Virginia should remain a member of the Regional Greenhouse Gas Initiative.
2. The Commonwealth should continue to build its clean energy economy, prioritizing clean energy sources such as offshore wind and solar, with a focus on energy efficiency, transportation pollution solutions and equitable transition practices.
3. The Council strongly supports the continuation of Governor Northam’s Executive Order 82: “Consultation with Federally Recognized Tribal Nations for Environmental And Historic Permits and Reviews” and the continued engagement with Virginia Tribal nations.
4. The Council recommends that the General Assembly update FOIA and public meeting requirements to reflect the ability for modern technology, and enable increased access using available technology.
5. The Council strongly supports the continuation of the Environmental Justice Interagency Working group environmental justice issues throughout the Commonwealth, encouraging inter-agency collaboration and communication.
6. The Office of the Governor and Secretary of Natural and Historic Resources, along with support from state agencies, shall continue to staff and provide support to the Virginia Council on Environmental Justice.
7. Virginia must continue to prioritize and consider environmental justice in environmental laws, regulations and policy decisions.

### List of All Recommendations

1. Regional Greenhouse Gas Initiative
  - The Council recommends continued and active participation in the RGGI and that the allocations for the revenue generated from the program remain the same as written in the Clean Energy and Community Flood Preparedness Act of 2020.
2. A Clean and Equitable Energy System
  - Several policies and actions should be adopted that would lead to a cleaner power generation while alleviating the economic burden for those energy costs and creating new opportunities for more communities to benefit in the clean energy economy.
  - The General Assembly should support distributed solar through incentives such as tax credits, rebates, or low-interest loans; remove barriers that limit customers’ access to distributed solar; allow local governments to use electricity from a solar project on one property to serve buildings on nearby properties; and implement specific programs to expand access to distributed energy for low- and moderate-income customers.

- Policymakers should reject any changes to the net metering compensation structure, unless those changes, at a minimum grandfather all existing net-metering customers, mandate that any changes to net metering do not take effect for at least five years, and ensure the economic incentives are as good as or better for customers than the current net metering system.
  - The General Assembly can help to increase state funding for research, development, demonstration, and pilot projects for energy storage technologies and stand up consumer energy storage education programs.
  - The administration and the General Assembly should give the State Corporation Commission the authority to reign in the costs of offshore wind and strengthen guidelines for local workforce recruitment from communities of color in the Hampton Roads region to build wind turbines.
3. Energy Efficiency Programs and Jobs
- Create an Office of Just and Equitable Clean Energy Transition to identify impacted communities and work with local stakeholders to develop transition plans. The Office would advise the state legislature and regulators on energy efficiency policies and programs.
  - Develop incentives and programs to stimulate job growth in energy efficiency with and for communities of color, indigenous communities, and low-income communities. This sector has proven job creation, lots of good jobs, rapid job growth, and creates more jobs for every dollar invested.
  - Development and streamline current economic development plans to coordinate federal aid and workforce training in energy efficiency jobs focused in vulnerable communities.
  - Create state funding sources for energy efficiency upgrades and solar electric systems for low-income households, renters, seniors, and people who are disabled throughout the Commonwealth.
  - Create a high energy efficiency building code mandate throughout the commonwealth including construction and renovation for public and private buildings. While upfront construction costs may be higher, a study will be needed to explore offsetting costs for low-income households through lower energy operating costs.
  - Create a liaison position to assist the DMME and the DEQ with regulatory enforcement.
4. Sustainable, Clean, and Equitable Transportation
- Conduct research within jurisdictions across the state to gain insight and recommendations from local communities on improvements they hope to see in public transit systems and other alternative clean transportation modes; focus specifically on dialogue with marginalized and education around the benefits of mobility management strategies.
  - Create a Virginia state Clean Active Accessible Transportation Task Force of diverse stakeholders and communities most impacted by transportation inequity to study, design and create mobility management strategies (also called transportation demand management, or “TDM”).
  - Implement mobility management strategies (See Appendix E) to improve transportation options, encourage use of more efficient modes, create more accessible land use patterns, and reform biased planning practices to create equity.
  - Use mobility management revenue sources to fund infrastructure for Clean Active

- Accessible Transportation Modes, which in turn will increase transportation equity.
  - Review and implement mobility management strategies.
5. Water Infrastructure and Safety
    - Continue to use the allocated \$411.5 million in federal American Rescue Plan (ARP) funding to reduce water pollution and increase access to clean water across the Commonwealth.
    - The Administration should encourage localities, and have state agencies support in accessing Water Infrastructure Finance and Innovation Act (WIFIA) loans so that needed infrastructure improvements are made.
    - Virginia should maximize its use of Distributing Drinking Water State Revolving (DWSR) Funds and all Federal opportunities to maximize water infrastructure improvements and ensure the public safety of Virginians. Low-income communities should continue to be prioritized in DWSR funds.
  6. Office of Just Transition
    - Create the Office of Just Energy Transition. The Office of Just Energy Transition will increase the capacity of the Commonwealth to steward an equitable and just transition in communities negatively impacted by the downturn in the coal economy.
  7. Planning and Public Participation
    - The Commonwealth of Virginia should have one centralized mapping tool or data center for identifying environmental justice communities. This tool should, as a first step, clearly identify all the distinct geographic areas in the Commonwealth that meet the definitions for communities of color, low-income communities, and fenceline communities according to the definitions provided by the Virginia Environmental Justice Act.
    - The Commonwealth’s environmental justice mapping tool should provide clear representation for each population of color afforded consideration by the Virginia Environmental Justice Act.
    - The Virginia Environmental Justice Act definition for “EJ Communities” is based solely on demographic characteristics, race/ethnicity and income, and does not account for existing environmental burden, it is recommended that an effort take place to use the mapping tool to highlight several key groups of EJ Communities: those most at risk from poor air quality, those most at risk from poor water quality, those most at risk from solid waste related impacts, and those most at risk from climate-related impacts. These categories relate to Pollution Control Boards and climate-related initiatives, and could help support decision making and resource allocation.
    - A series of state-wide public listening sessions should be undertaken to achieve meaningful involvement in the mapping tool’s development. Developing a tool like this without a robust and meaningful stakeholder engagement process would be anathema to the core principles of environmental justice.
    - Quantitative scoring schemes, which are created via spatial modeling exercises, should be approached with caution.
    - Mapping tools are not an endpoint, rather, they are a starting point for planning and conversations with environmental justice as the goal. This principle should guide the development of the tool.
  8. Data, Definitions, and the Virginia Environmental Justice Act
    - Part (i) of the VEJA definition requires comparison of a small geographic area median income to that of the HUD designated area. HUD only publishes a median

family income value for metropolitan statistical areas and non-metropolitan counties; it does not publish corresponding data for smaller areas (like U.S. Census designated tracts or block groups) commonly used when screening for EJ communities using EJ mapping tools. This lack of HUD data at the smaller resolution forces the analyst to combine median income data from multiple datasets, which is not ideal because different datasets aren't always comparable. For example, HUD only publishes median family income, whereas other sources commonly publish median household income. The difference is related to who counts as a "household" versus a "family" and many sources publish both, but again, HUD only publishes limited median income data curated for specific housing purposes. There are other comparable sources of reliable income data with more flexibility; this definition's specificity puts a burden on the public and regulated community to understand and comply with the law. Part (ii) of the VEJA definition is relatively straightforward and aligns with EPA's EJ Screen. It could be clarified, since federal poverty thresholds are only published according to household size and number of children. A commonly used standard is a four-person household, with two adults and two children, but that is not specific by the law and so left open to interpretation.

- Unless there is a compelling reason to define low income through opportunity zones, the presence of opportunity zones as part of the definition of historically economically disadvantaged communities adds unnecessary complexity to the VCEA.

#### 9. Public Participation

- In regard to the Administrative Process Act, the Council recommends that § 2.2-4012 be amended to include "meaningful involvement" as a purpose of the regulatory process.
- Introduce a budget amendment to fund technology and personnel enhancements to ensure there can be a hybrid option at public hearings.
- Conduct public hearings in the closest feasible location to the site of the proposed project.
- Prioritize publicly owned spaces for hearings & events.
- Develop guidance on using a respectful approach to security during public hearings. It is essential this guidance is developed in collaboration with communities of color, and with acknowledgment of the historical and ongoing trauma of disproportionate police violence against communities of color.
- Align public notice and comment period lengths among various state agency actions and between the Agency and Applicant to ensure ample time for public participation.
- Proactively notify and engage with affected communities on decisions, early in the process.

#### 10. Capacity Building for Historically Disadvantaged Communities

- Disadvantaged and overburdened communities need support and education to build capacity and equity so all citizens of the Commonwealth are empowered to advocate for themselves on environmental decisions.
- All citizens need a strong foundational education in topics relevant to the environment, their health, and how different levels of government make decisions that affect both. A review of the state's standards of learning (SOLs) and the Virginia Community College System (VCCS) General Education Certificate and

Arts & Sciences curriculum is recommended.

- State agencies should look for opportunities to partner with EJ communities to seek support from federal agencies to attain grants and technical assistance. By working with local community members and hiring local contractors, addressing environmental inequity can also bring environmental leadership capacity and economic development to the communities where it is needed most.
- Expect, plan for, and have patience for the time that consensus building requires. Fully empowering a community to identify their own priorities through education and robust public engagement, building leadership from within the affected community, and providing appropriate oversight of funds are crucial elements for the success of any plans to provide support to communities in need.

#### 11. Tribal Nations and Native American Populations

- Support Executive Order 82 “Consultation with Federally Recognized Tribal Nations for Environmental And Historic Permits And Reviews”.
- Identify pathways for meaningful engagement with tribal citizens and members of Native American populations that are not part of a recognized Virginia Tribe.
- Develop a state guide to tribal areas of interest when it comes to environmental and/or cultural concerns.
- Establish a Native American Advisory Board modeled after existing boards that solicit feedback from various populations of color in the Commonwealth.
- Allow tribal grant access to the Virginia Land Conservation Foundation (VLCF).

#### 12. Bristol Landfill

- The request by Bristol residents for DEQ to immediately revoke the operating permit should be approved.
- The request for air filters or some appropriate mitigation measures be distributed to residents of both the detention facility and those who are being impacted daily.
- Launch an investigation for how a landfill was permitted and how it failed.

#### 13. Big Stone Gap Electric Line

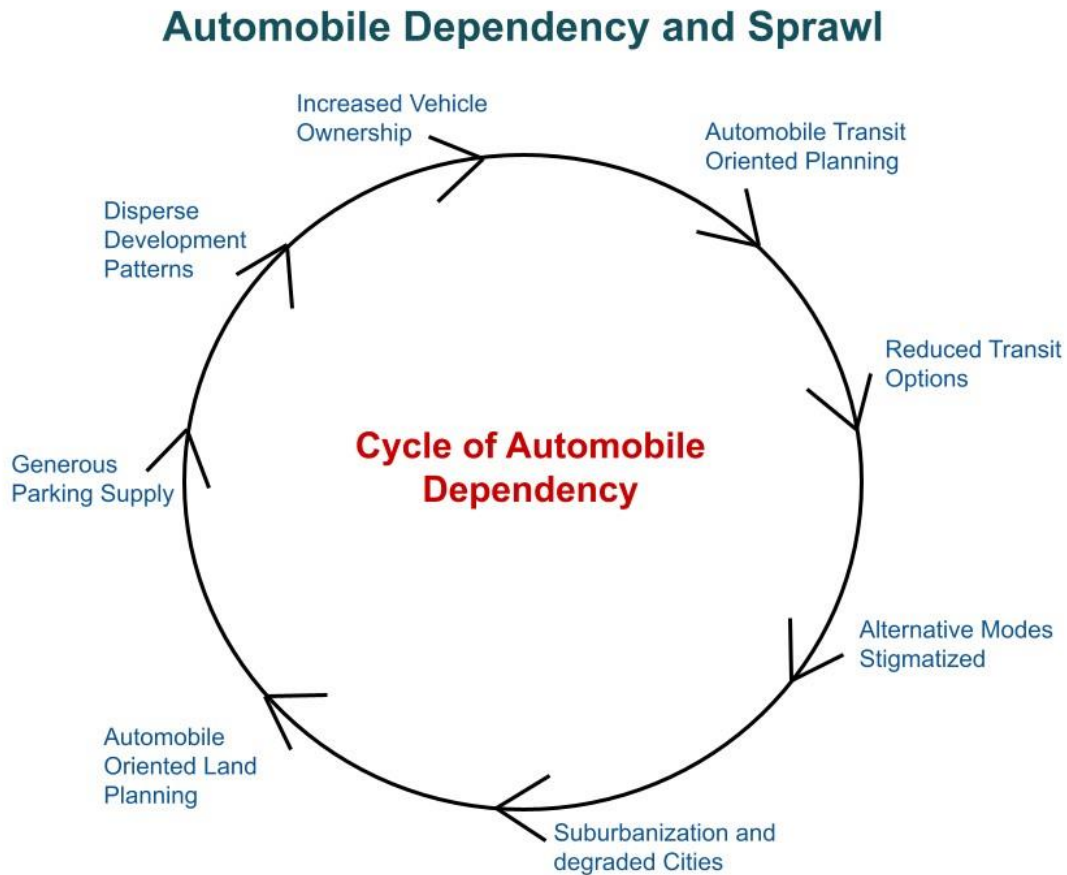
- The utility company should work with the town to identify alternate options.

## APPENDIX A: Automobile Dependency Figures

**Figure 1**

Cycle of Automobile Dependency

*Policy and Practice*, 1(4), 9–16. <https://doi.org/10.1108/13527619510101981>



Note. Diagram displays the impact of current infrastructure practices that contribute to a reinforcing cycle of automobile dependency. In order to break this cycle, the Victoria Transport Policy Institute

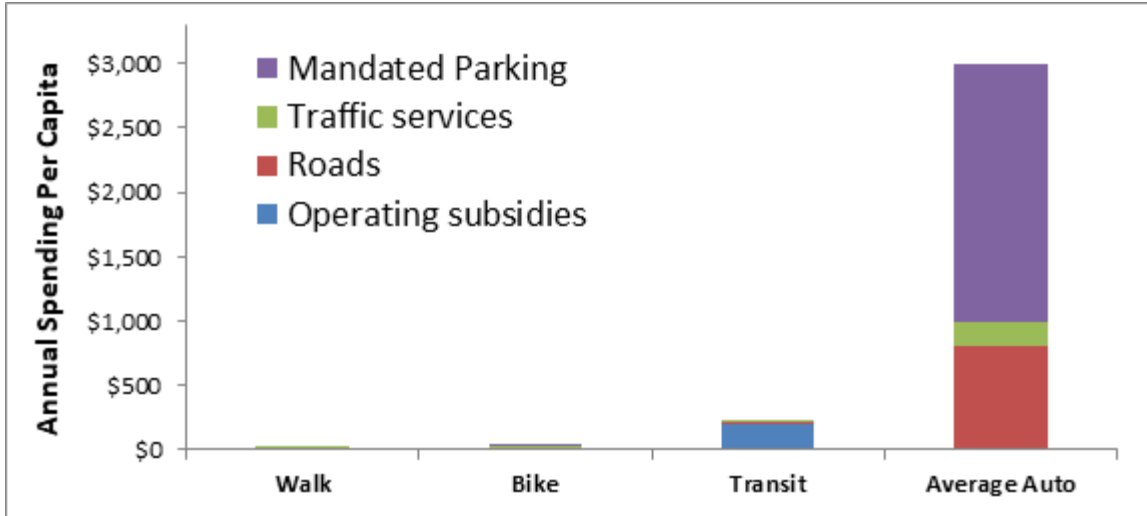
Diagram retrieved from: Litman, T. (1995). Land use impact costs of transportation. *World Transport*



## APPENDIX B: Transportation Cost Figures

Figure 1

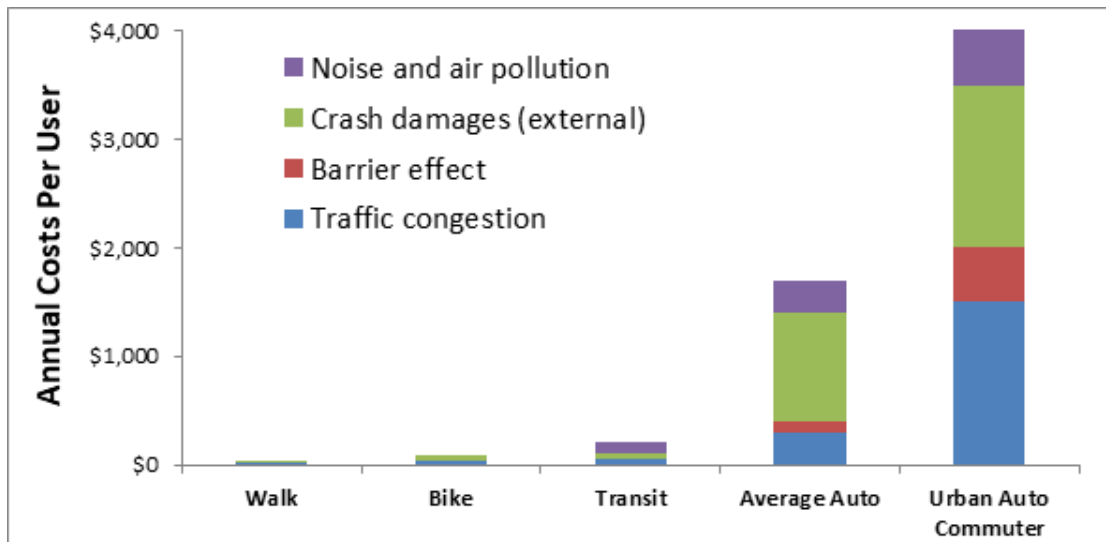
Annual Spending per Capita



Note. This graph compares infrastructure investments for various modes. Auto investments receive 91% of annual spending per capita.

Figure 2

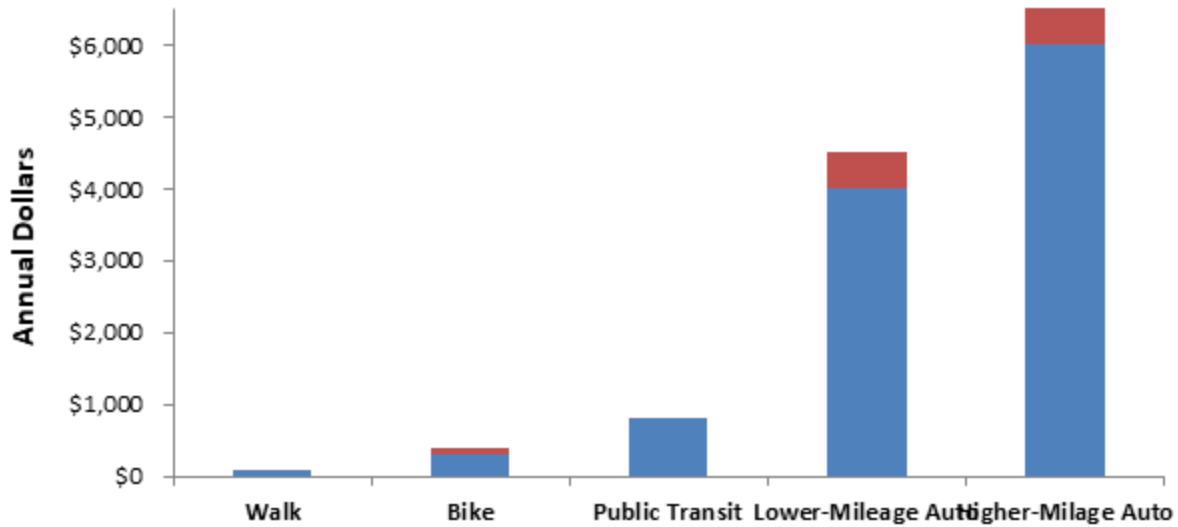
Annual Costs per Transportation User



Note. As stated by the Victoria Policy Institute, “Transportation imposes various external costs on other people. (“Barrier effect” refers to the delay and risk that wide roads and vehicle traffic impose on walking and bicycling.)” (2021). This graph displays these external costs.

**Figure 3**

Annual Expenditure per Transportation Type



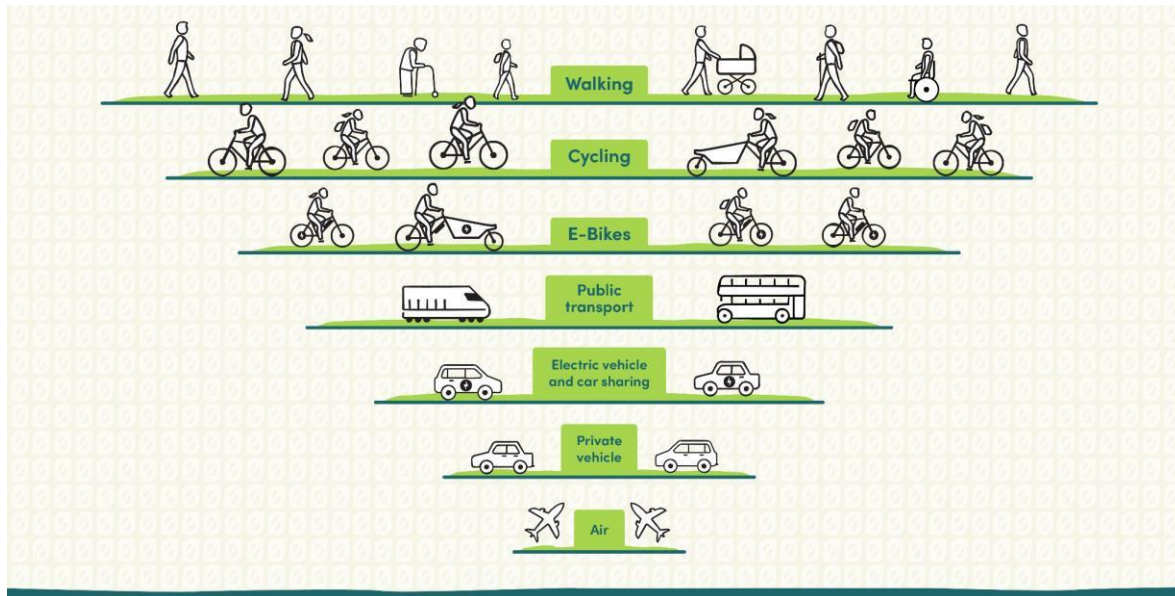
Note. This graph displays the costs associated with each transportation mode. Walking, bicycling and public transit are significantly more cost-efficient while automobiles are far more costly. The Victoria Policy Institute finds that automobiles “impose large, unpredictable costs” (2021).

Figures 1, 2 and 3 retrieved from: Litman, T. (April 21, 2021). *Evaluating Transportation Equity*. Victoria Transport Policy Institute. <http://www.vtpi.org/equity.pdf>

## APPENDIX C: Hierarchy of Transportation Modes

Figure 1

Hierarchy of Transportation Modes



Note. Diagram displays the “Transportation Hierarchy Model” (Action Net Zero, 2021). The model provides individuals and city planners with a visual way of ranking the cleanest and most cost-effective transportation methods.

Diagram retrieved from: Action Net Zero. *What are my sustainable transport options?* (2021). <https://www.actionnetzero.org/guides-and-tools/sustainable-travel-options-transport-hierarchy/>

## **APPENDIX D: Targets to Reduce Personal Vehicle Miles Traveled (VMT)**

Many jurisdictions have targets to reduce personal vehicle miles of travel (VMT) and increase use of non- auto modes (walking, bicycling, public transit, etc.) in order to achieve various economic, social and environmental goals. For example, Washington State requires 30% reductions by 2035 and 50% by 2050 (WSL 2008). British Columbia's target is to reduce light-duty vehicle travel 25% between 2020 and 2030, and approximately double the share of trips made by walking, bicycling and public transit to 50% by 2050 (Clean BC 2021). Minnesota's goal is to reduce state vehicle travel by 20% by 2050 (Bellis 2021). The United Kingdom has a goal that by 2030, half of all urban journeys will be by bicycle or walking (DfT 2020). Scotland has a target to reduce vehicle travel by 20% by 2030

## APPENDIX E:

**Figure 1**

Overview of Mobility Management Strategies

Improves Transport Options	Incentives for Efficiency and Reduced Driving	Land Use Management	Policy & Planning Reforms
Transit improvements  Traffic Calming  Walking and cycling improvements  Bike/Transit Integration  Rideshare programs  Flextime/Compressed workweek  Carsharing	Employee Active Transportation benefits  Cash-out Free Parking Program  Increased parking pricing  Pay-as-you-drive vehicle insurance incentives  Congestion pricing  Distance-based fees	Eliminate Minimum Parking Requirements  Car-Free Districts  Pedestrianized Streets  Smart growth  New urbanism  15-minute Neighborhoods Zoning and Planning	Commuter Trip Reduction Programs  Access Management  Carfree Planning  School and Campus Transport Management  Market Reforms  Context Sensitive Design

<p>Telework</p> <p>Guaranteed ride home</p>	<p>Vehicle Tax increase on Vehicles Valued Above \$15K and Second Vehicles</p> <p>Road Pricing</p> <p>Speed Reductions</p> <p>HOV (High Occupancy Vehicle) Priority</p> <p>Fuel tax increases</p>	<p>Upzoning and Clustered Land Use near transit stops</p> <p>Location-efficient development</p> <p>Parking Management and Shared Parking</p> <p>Bike Corral Parking</p> <p>Smart Growth</p> <p>Transit Oriented Development</p> <p>Car free planning</p> <p>Road Diets</p> <p>Traffic calming</p>	<p>Freight Transport Management</p> <p>Tourist Transport Management</p> <p>Transit Marketing</p> <p>Non Motorized Encouragement Programs</p>
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## **APPENDIX F: Office of Just Transition Proposal Summary**

The Office of Just Transition is responsible for:

### **Administrative**

- Administering the Just Energy Transition program and the development and implementation of the Just Energy Transition Action Plan for Virginia.
- In coordination with the Department of Energy, monitoring the timing and location of facility closures and job layoffs in fossil-fuel-related industries and making recommendations for how to most effectively respond to these economic dislocations.
- Engaging in administrative proceedings that are relevant to the purposes of the Office, including matters before the State Corporation Commission and Department of Environmental Quality.
- Developing realistic options for further state support of just transition strategies. Recommending to the General Assembly and Governor legislative changes that would allow the Office to better achieve its purpose.
- Administering a mitigation fund to provide assistance for communities facing closures, including assistance with loss tax revenues and wages, in coordination with the Department of Social Services, the Employment Commission, the Department of Labor and Industry, the Department of Professional and Occupational Regulation, the Department for Aging and Rehabilitative Service, the Economic Development Partnership, the Community College System, and the Department of Education.

### **Local Engagement**

- Working with stakeholders in each impacted community to develop local plans and to inform the statewide Action Plan.
- Supporting the Just Transition Advisory Board.
- Targeting early successes in business start-ups, expansions, retention, and attraction.
- Empowering communities with resources to drive their own economic transitions.

### **Increasing Funding & Improving Programs**

- Identifying funding sources and aligning regional, state, and federal programs, grants, and investments to assist local infrastructure projects and revitalization strategies.
- Identifying and funding environmental remediation efforts necessary to improving community health and attracting economic development.
- Working with state lawmakers, utilities, and mining companies to increase transition funding.
- Ensuring impacted communities have adequate health and social services to support a just economic transition, including access to education, transportation, health care, child care, mental health care, and addiction recovery care.

## **APPENDIX G: Clinch River Coalition Recommendations**

**Recommendations by The Clinch Coalition to the Virginia Council on Environmental Justice, October 25, 2021:**

### Recommendations for Stronger Logging Regulations

- An application and permit process could be put into place.
- A NEPA-type process could be put in place to ensure state and federal listed endangered species be protected.
- Best Management Practices (BMPs) should be requirements, not recommendations.
- Loggers should have to follow more environmental laws other than the Clean Water Act.
- Logging impact on neighbors and communities need to be assessed.
- The Commonwealth should look into Forest Banking for forest management.

### Recommendations for Transparency of the Southwest Regional Recreational Authority (SRRA) and Enforcement of Environmental Regulations

- Core Issue: Many state authorities' operations in SWVA are shielded from public view and exclude citizens from decision-making processes
- SRRA does not routinely seek public comment for proposed projects, make trail development plans available for public review, or even publicly disclose the identity of its board
  - Clear guidelines are needed from the General Assembly establishing mechanisms for public input and requiring transparency in state authority operations
- Regulatory agencies are hesitant to enforce Virginia's environmental laws on state-funded projects, even when violations are discovered, since doing so would amount to the state engaging in enforcement action against itself.
  - The Commonwealth should clarify that environmental regulations apply to all public entities and ensure that enforcement for violations is consistently applied

### Recommendations for Addressing Public Health

- Provide funding for research to advance the knowledge base related to the effects of the environment on the health of citizens of Southwest Virginia.
- Provide adequate funding and resources to regulatory agencies to address current and long-standing deficiencies in enforcement of environmental policies and laws.
- Bring environmental justice to Southwest Virginia!



## **APPENDIX H: Bristol Letter to Department of Environmental Quality**

The following quote is a portion of a follow-up letter written to DEQ, David Palor on November 5, 2021:

We are asking that VADEQ, in coordination with Virginia Department of Emergency Management (VDEM), and the city of Bristol declare an emergency and help the distressed residents of Bristol. We would hope that the Tennessee Department of Environment and Conservation (TDEC), the Tennessee Emergency Management Agency (TEMA), the City of Bristol, TN, and any and all associated federal agencies that could help coordinate with this effort and bring relief to citizens.

There are three concrete steps we would like to see as part of this emergency response. The first is that we would like air purifiers and other technologies with washable activated carbon filters (capable of handling the VOCs emanating from the landfill) be purchased for residents inundated with these gases on a near nightly basis. The second is that we would like vouchers for residents who have to flee their homes due to the gases, covering their stay in a reasonably priced accommodation outside the cloud of toxic gases. Thirdly, we ask that the appropriate monitoring equipment be given to local first responders so that they can adequately assess any emergency calls resulting from this disaster.

We have made these requests of the Bristol, VA City Council on several occasions, but have been denied. In a meeting this past Wednesday open only to business leaders and closed to the general public, the City Manager and Attorney, Randy Eads, was asked about this specific issue. His response was, “the city is not prepared to give financial assistance to those that have been impacted at this time.” (See <https://youtu.be/1KOEXR-A-Us>, time stamp 51:41)

We cannot overstate how much more intense the gases have become, and individuals’ reactions to them. In the past two weeks, many of our neighborhoods have had the worst nights on record in terms of gas intensity. Last night was probably the worst in the Fairmount district, and this morning, the smell lingers at a pretty heightened levels many miles away from the landfill.

The following is a “taste” of what people experienced. Resident Shawnta Helton recorded at 7am this morning, “I’ve been woken up 3 times since about 1:00 am. I have a headache, I’m nauseous, my chest hurts its really tight I feel like I’m carrying a couple hundred lbs. on my chest. I’ve also had nightmares all night and my arms and hands are tingling.” Resident Lori June reiterated this sentiment: “I never call in sick and I just had to. My head is throbbing, my throat is burning, my eyes won’t stop watering and the nausea won’t go away. My head is so foggy I don’t trust myself to even drive to work. I

don't care how cold it is as soon as the stench lifts today (if it does), I have to open the windows."

## **APPENDIX I: Interagency Environmental Justice Working Group**

The following section was sent as a recommendation to the Interagency Environmental Justice Working Group from the VEJC.

### **Introduction**

#### **Background and Goal**

Addressing environmental injustice has been a focus of Governor Ralph Northam's administration. Establishing a Virginia state advisory council on environmental justice (EJ) was part of his campaign platform in 2017. Because this issue is essential, Governor Northam continued Governor McAuliffe's Environmental Justice Council through his first term. Governor Northam issued EO-29 establishing the Virginia Council on Environmental Justice (VCEJ) on January 22, 2019. After passing through the General Assembly, he signed the Virginia Council on Environmental Justice (VCEJ) into law in March 2020.

The 2020 Environmental Justice Act defined environmental justice in the VA Code as the fair treatment and meaningful involvement of every person, regardless of race, color, national origin, income, faith, or disability, regarding the development, implementation, or enforcement of any environmental law, regulation, or policy.

The Environmental Justice Interagency Working Group was established in a 2020 budget amendment to advance environmental justice within the executive branch and its state agencies. To build on the report released by the body in March 2021,<sup>70</sup> Governor Northam has directed the working group members to continue meeting. The group now has the goals of:

- Maximizing state resources, research, and technical assistance to further environmental justice (EJ);
- Coordinating with any other governmental body that is working on similar issues;
- Soliciting and reviewing public comments; and
- Assessing processes and resources required to advance agency-specific EJ policies and update such assessments annually with regards to ensuring EJ is meaningfully considered through agency regulations, to identify EJ and fenceline communities, to identify how agency actions are affecting those communities, to consider economic development and infrastructure needs of those communities and to further public participation of those communities.

Recommendations to ensure that environmental justice concerns are understood and that a framework is in place to address these concerns are extremely valuable. While some state agencies incorporate environmental justice into their review process, there is currently no

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<sup>70</sup> [https://www.governor.virginia.gov/media/governorvirginiagov/secretary-of-natural-resources/pdf/2020-Environmental-Justice-Interagency-Report\\_Final.pdf](https://www.governor.virginia.gov/media/governorvirginiagov/secretary-of-natural-resources/pdf/2020-Environmental-Justice-Interagency-Report_Final.pdf)

consistency in how these issues are evaluated, much less resolved. The purpose of this document is to provide recommendations from the VCEJ to the Environmental Justice Interagency Working Group. The VCEJ offers proposals for consistent approaches to evaluate environmental justice as well as in a few cases agency-specific guidance.

VCEJ has heard from many frustrated members of EJ communities who have taken the time to submit comments on EJ issues to the governor's office and agencies just to find only the status quo coupled with another comment period asking for public input on a similar topic. It is the hope of the VCEJ that the Environmental Justice Interagency Working Group will acknowledge this frustration and will not only listen but also urgently incorporate recommendations from those who live in EJ communities throughout the state and the VCEJ.

### **Existing Authorities under Federal and State Law**

In order to give weight to the urgency and underlying necessity for action on EJ by state agencies, some existing authorities are reviewed. These authorities make the case that comprehensive action, as well as a framework for action on EJ in the Commonwealth of Virginia, is long past due.

In October of 2020, the Virginia Department of Environmental Quality (DEQ) released a report, "Environmental Justice Study for the Virginia Department of Environmental Quality" written by Skeo Solutions, Inc. and Metropolitan Group (hereafter, "Skeo Report").<sup>71</sup> Chapter 4 of the Skeo Report discusses DEQ's existing legal authority to address Environmental Justice in DEQ Programs. Rather than repeat what is contained in that report, below is a discussion of Title VI of the Civil Rights Act of 1964,<sup>72</sup> since that law applies to all state agencies that receive federal funds or are "recipients".

Generally, Title VI requires recipients of federal funds to operate all of their respective programs and activities, including those not funded with federal funds, in a manner that does not discriminate against individuals or groups of individuals on the basis of race, color or national origin. Discrimination includes actions that are taken with the intent to discriminate, or that have the effect of discriminating against individuals on the basis of race, color or national origin. When a recipient takes any action with the intent to discriminate, an individual or group of individuals can file suit in federal court. When a recipient takes any action having the effect of discriminating (also referred to as having a discriminatory impact), an individual or group of individuals can file an administrative complaint with the federal agency or agencies that provide the federal funds to the recipient. When a recipient receives funds from multiple federal agencies, a complaint can be filed with each federal agency and/or with the U.S. Department of Justice.

Since Title VI applies to all of a recipient's programs and activities, state agencies should examine whether any aspects of their programs or activities are discriminatory. This includes activities such as issuing permits, developing policies or guidance, providing translation to non-English-speaking persons so they can access the recipient's services and participate in the

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<sup>71</sup> <https://www.deq.virginia.gov/home/showpublisheddocument/8624/637557216750470000>

<sup>72</sup> <https://www.archives.gov/milestone-documents/civil-rights-act>

recipient's activities (such as providing testimony or comment at public hearings or during public comment periods), the recipient's hiring and promotion practices, and the recipient's selection of individuals to participate in any advisory body to the recipient.

In the closing days of the Obama Administration, the Environmental Protection Agency (EPA) issued its External Civil Rights Compliance Office Compliance Toolkit.<sup>73</sup> Of the many significant changes made to EPA's Title VI program was the explicit abandonment of what was known as the "rebuttable presumption" that applied to permitting activities when the activity sought to be permitted complied with applicable environmental standards. The "rebuttable presumption" was that the activity was presumed to comply with Title VI, because absent any environmental standard compliance issue, the activity, presumptively did not cause any disparate impact on the basis of race, color or national origin. In abandoning the "rebuttable presumption" EPA made the following two observations:

1. The fact that the area is designated as in attainment with the National Ambient Air Quality Standards (NAAQS) and that the recent permitting record shows that emissions from the facility would not cause a violation of the NAAQS would be insufficient by themselves to find that no adverse impacts are occurring for purposes of Title VI and other federal civil rights laws. EPA's investigation would seek to ascertain the existence of such adverse impacts (e.g., violations of the NAAQS) in an area regardless of the area's designation and the prior permitting record. As stated previously, compliance with environmental laws does not necessarily constitute compliance with federal civil rights laws.
2. Complainants do not bear the burden of proving adversity. EPA recognizes that it is responsible for conducting an investigation of the allegations to determine if there is adverse impact.<sup>74</sup>

EPA's abandonment of the "rebuttable presumption" was endorsed by the Fourth Circuit Court of Appeals in the *Friends of Buckingham* case, which invalidated an air permit issued by the Air Pollution Control Board for the Atlantic Coast Pipeline. Although not a Title VI case, the Fourth Circuit, nonetheless, invalidated the permit because the Board failed to individually consider the potential degree of injury to the local population independent of NAAQS and state emission standards.

The Court ruled:

The Board's reliance on air quality standards led it to dismiss EJ concerns. Even if all pollutants within the county remain below state and national air quality standards, the Board failed to grapple with the likelihood that those living closest to the Compressor Station -- an overwhelmingly minority population according to the Friends of Buckingham Survey -- will be affected more than those living in other parts of the same county. The Board rejected the idea of disproportionate impact on the basis that air

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<sup>73</sup> [https://www.epa.gov/sites/default/files/2020-02/documents/toolkit\\_ecrco\\_chapter\\_1-letter-faqs\\_2017.01.18.pdf](https://www.epa.gov/sites/default/files/2020-02/documents/toolkit_ecrco_chapter_1-letter-faqs_2017.01.18.pdf)

<sup>74</sup> U.S. Environmental Protection Agency, External Civil Rights Compliance Office Compliance Toolkit, at 12-13 (Jan. 18, 2017)

quality standards were met. But environmental justice is not merely a box to be checked, and the Board's failure to consider the disproportionate impact on those closest to the Compressor Station resulted in a flawed analysis.<sup>75</sup>

In addition to existing authority at the federal level, some state-level authority includes the 2020 Environmental Justice Act which declares that it is the “policy of the Commonwealth to promote environmental justice and ensure that it is carried out throughout the Commonwealth, with a focus on environmental justice communities and fenceline communities” VA. Code § 2.2-235 and the Commonwealth Energy Policy that at least in the context of the energy sector “[e]nsure[s] that development of new, or expansion of existing, energy resources or facilities does not have a disproportionate adverse impact on economically disadvantaged or minority communities.” Va. Code Ann. § 67-102(A)(11)

## Overarching Framework

The following recommendations are those that can be integrated into an overarching framework of addressing EJ in the Commonwealth and thus should be incorporated into multiple agencies as well as guiding agencies' relationships with one another and throughout the executive branch.

### Recommendations

1. We recommend that the Virginia Interagency Working Group adopt the approach used in New Jersey’s guidelines *Furthering the Promise: A Guidance Document for Advancing Environmental Justice Across State Government*, which was released in September 2020.<sup>76</sup> What stands out about the New Jersey document is that it places environmental justice within the framework of the presence of “communities of concern,” “disproportionate environmental health stressors,” and the “absence of environmental and public health benefits.” The document also centers standardized criteria mapping to identify overburdened communities and Executive Branch action plans, which direct each agency’s work to implement EJ and to establish measurable outcomes to reduce burdens and increase benefits. It is important for Virginia to address the historic discrimination that has led to disproportionate adverse impacts in minority and low-income communities from all sources of toxic pollution, lack of equitable access to public resources like uncontaminated drinking water, to community parks, and trees. Furthermore, each agency should adopt EJ principles and an equity framework for its practices and procedures as is demonstrated by NJ in their discussion of principles for furthering the promise of EJ.
2. The agencies should use a standardized methodology to identify environmental justice communities and populations, with census information used for **initial screening purposes only** because of the acknowledged unreliability of census data, including undercounting of minority populations, in particular, minority children. The methodology

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<sup>75</sup> *Friends of Buckingham v. State Air Pollution Control Bd.*, 947 F.3d 68, 91–92 (4th Cir. 2020)

<sup>76</sup> <https://nj.gov/dep/ej/docs/furthering-the-promise.pdf>

should include community input and allowances for the unreliability of available data.

3. No agency should consider local zoning ordinances or local decisions regarding special use permits as wholly sufficient by themselves for a determination of site suitability for proposed facilities or projects.
4. All agencies should be required to meaningfully consider cumulative impacts in the administration of their basic law or regulations. A helpful definition of cumulative impacts comes from HB 2074 in the 2021 Special Session I.<sup>77</sup> It defines cumulative impacts as “the impact on human health or the environment that results from the incremental impact of a covered agency action when added to the effects of other past, present, and reasonably foreseeable future actions, regardless of what agency or person undertakes such other actions. ‘Cumulative impact’ can result from individually minor but collectively significant actions taking place over a period of time.”
5. Whenever a facility or project is proposed, there should be an environmental justice analysis required that includes the historic burden of pollution on the populations most impacted by its construction and activities. Therefore, this review should include the cumulative impacts of existing pollution sources along with all of the cumulative adverse impacts related to the construction and operations of the facility or project.
6. All agencies should communicate to ensure that community members understand how to participate and what constitutes participation in public engagement processes including what requirements community members must meet in order to have their voices heard. This should include a thorough explanation of the objective processes, requirements, and framework guiding agency actions and decisions.
7. The Executive Branch should work to ensure that localities do not retaliate against community members for participation in any public engagement activities with state agencies. Unfortunately, VCEJ has heard stories of community members being hesitant to express their opinions in agency proceedings because they are afraid of retaliation from the locality in which they live.
8. The Office of Just Energy Transition will increase the capacity of the Commonwealth to steward an equitable and just transition in communities negatively impacted by the downturn in the coal economy.

## **Funding Recommendation**

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<sup>77</sup> <https://lis.virginia.gov/cgi-bin/legp604.exe?212+sum+HB2074>

VCEJ recommends that EJ be a priority funded in the state budget. It is the hope of the VCEJ that overarching EJ principles and general guidelines and a framework such as those identified in the New Jersey *Furthering the Promise: A Guidance Document for Advancing Environmental Justice Across State Government* document<sup>78</sup> can be implemented within the Executive Branch right away rather than waiting for the full funding of all 34 FTEs in 24 agencies identified in the 2020 Environmental Justice Interagency Working Group Report. This would be important to efficiently use state resources, money, and time instead of replicating individual overlapping plans and assessments agency by agency. Funds identified from the HB 2074 fiscal impact statement<sup>79</sup> should urgently be included in the state budget and prioritized.

## Agency Specific Recommendations

Before recommendations are given for individual agencies, we wanted to highlight some particularly positive examples from a few agencies like the Virginia Department of Transportation (VDOT), which has developed agency-specific EJ guidelines as well as supporting resources.<sup>80</sup> The Virginia Department of Health (VDH) Office of Environmental Health Services (OEHS) is also a strong example. In the OEHS section of the 2020 EJ Interagency Working Group Report, structural racism and the aspiration to include EJ in “every permitting decision and agency action” are discussed, which made that section particularly robust. The Department of Historic Resources has made enormous strides in working closely with African American community groups on ensuring access to regional directors and GIS mapping resources to document historic cultural resources which are not present in state and national historic resource archives. This department has truly become a resource to some non-professional local cultural experts.

### **Secretary of Natural Resources and Historic Resources: Department of Environmental Quality (DEQ)**

One of the purposes of DEQ is to “further environmental justice and enhance public participation in the regulatory and permitting processes,” as defined in section §§ 10.1-1182 and 10.1-1183 of the Code of Virginia.<sup>81</sup> In the 2020 EJ Interagency Working Group Report, DEQ states, “Environmental justice at DEQ does not just depend on the work of a few. This statewide effort is supported by all staff within DEQ’s Central Office and six regional offices, with full engagement of the agency’s executive team.” Yet, later in the document, DEQ offers no concrete examples of changes in regulatory permit processes across statewide daily operations to implement the agency’s now adjudicated responsibilities under existing laws and statutes or the Skeo report recommendations for public engagement and inclusive participation.

In practice, DEQ has made few changes to practices on the ground in EJ communities where environmental burdens continue to be felt in the everyday operations of gas infrastructure

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<sup>78</sup> <https://nj.gov/dep/ej/docs/furthering-the-promise.pdf>

<sup>79</sup> <https://lis.virginia.gov/cgi-bin/legp604.exe?212+oth+HB2074FH2122+PDF>

<sup>80</sup> [https://www.virginiadot.org/business/civil\\_rights\\_environmental\\_justice.asp](https://www.virginiadot.org/business/civil_rights_environmental_justice.asp)

<sup>81</sup> <https://law.lis.virginia.gov/vacode/title10.1/chapter11.1/>



projects, mega-landfills, grocery distribution centers, etc. since the enactment of the EJ Act.<sup>82</sup>

DEQ must do accurate site review for population density, buildings, including churches, schools, homes, and household demography rather than to rely on census tract data, use of EJ screen, which is merely a pre-screening tool, or applicant-supplied data.

Additional EJ designated funding to DEQ would be helpful, but DEQ needs no additional funding for EJ implementation instead it needs a shift in expert staff priorities. DEQ's past and present funding from taxpayer revenues continue to be disproportionately spent in expert staff hours to work with applicants on their permits, sometimes for years. Yet, in reality, the same expert staff need no additional specialized expertise to conduct EJ site review demography without reliance on census tract data or EJ Screen, to review environmental health literature on specific toxic emissions, to follow Skeo recommendations, etc.

DEQ should stop creating scientifically unfounded limits on expert technical evidence given in public comment periods that will be considered by Boards in decision-making. DEQ's practice of cherry-picking public comment summaries to eliminate whole sets of site-related data by creating unscientifically proven limitations on what constitutes "allowed" permit evidence in decision-making -- was adjudicated against by the 4th Circuit decision in Friends of Buckingham. Despite being told by DEQ's Air Pollution division before the ACP compressor station air permit hearing that "any comments for the air permit that relate to environmental justice will not be read or summarized" for the Air Board, the EJ demographic and health data, the alternate source data, given in public comments were the bases for the lawsuit that overturned the air permit.

Nonetheless, recent DEQ's summaries of comments for water permits continue to create unscientific boundaries that do not exist for the impacts of air emissions on water. Or, in setting artificial boundary lines for project operations' toxic pollution sources DEQ deems allowed for Boards' decision-making as ending at building walls or beginning at mega-landfill driveways.

DEQ must not rely on locality permit decisions for the Board's requirements to investigate site-specific data and for EJ review. As was made clear in the 4th Circuit decision in Friends of Buckingham:<sup>83</sup>

"it is improper to rely upon a SUP as a substitute for an independent determination of site suitability under section 10.1-1307(E). See 9 Va. Admin. Code § 5- 80-1230 "[C]ompliance [with zoning ordinances] does not relieve the board of its duty under . . . § 10.1-1307[(J)] . . . to independently consider relevant facts and circumstances.)"(P. 46)

Whenever an EJ community is identified as the most impacted, DEQ and the Air Board must not simply rely on NAAQS. They should address any disproportionate impacts compared to others living in the same area, rather than comparing to the whole state. We also support the site suitability review process for air permits be also applicable to water permits.

### **Secretary of Natural Resources and Historic Resources: Department of Historic**

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<sup>82</sup> <https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+CHAP1257>

<sup>83</sup> <https://www.ca4.uscourts.gov/opinions/191152.P.pdf>

## Resources (DHR)

DHR should review its outreach and public engagement procedures to ensure that the parameters of being historically significant are clearly communicated to the public and easily accessible. In regards to the permit application process, DHR's compliance director should review federal and state historical cultural resource surveys and archaeological methods and data recovery to identify "inadequate methods and extent of data recovery" (Kirchner, Wegman's cultural resource survey, 2021) and to enforce the need for the EJ community expert archaeological site visit to identify historic cultural resources in the Area of Potential Effects well before any federal and state permits are granted.

The DHR recommendations for additional site-based historic research, whether archaeological, extant or standing resources, need to be sent to the Army Corps of Engineers, Federal Energy Regulatory Commission (FERC), etc. to be completed before federal permits and Virginia state permits are given public comment periods. This creates a process order that can withstand lawsuits for inadequate site review, giving months to be reviewed by experts in the community and historic preservation.

Project operations that will mitigate harm to the existing uses of historic cultural resources must be part of permit processes. As stated by John Eddins on behalf of the Advisory Council on Historic Preservation in the case of Brown Grove Rural Historic District:

"The Corps should consider how additional measures to resolve adverse effects could more meaningfully address the visual, audible, atmospheric, and physical intrusions into the setting, feeling and association of the historic district which is inextricably linked with everyday community life. To the extent that the effects to the setting and context of the historic district are not avoided and minimized, it is possible that the living historic district will be degraded to a static one and lose entirely its ability to convey its significance to anyone. Focusing solely on documentation of the resource does not address the potential for degradation of the historic district's dynamic connection to the community" (P. 4, Sept. 21, 2021).

The State Historic Preservation Officer (SHPO) must not approve Memorandums of Agreement with federal agencies without working closely with the historic experts in these communities who have been designated "consulting parties" under the Historic Preservation Act, Section 106.<sup>84</sup> MOAs are agreements by the developer to mitigate the "significant adverse effects" of the project on historic cultural resources and eligible EJ districts. These MOAs follow federal agencies, including FERC, Army Corps of Engineers, and other agencies' permit approvals. The SHPO then would be repairing an injustice in this MOA process that the consulting parties are not required signatories to MOAs. Thus, currently they have no power over the decisions made by agencies or departments without their agreement.

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<sup>84</sup> <https://www.achp.gov/sites/default/files/2018-06/nhpa.pdf>

## **Secretary of Natural Resources and Historic Resources: Department of Conservation and Recreation (DCR)**

DCR should pursue grant support to ensure increased outdoor access for all as well as to develop inclusive educational materials.

## **Secretary of Commerce and Trade: Virginia Energy \*Formerly Department of Mines, Minerals and Energy (DMME)**

DMME should articulate specific guidelines outlining how in keeping with the Virginia Clean Economy Act goals it will ensure economically disadvantaged or minority communities are not disproportionately adversely impacted. Oftentimes, EJ communities lack the resources to verify and check information coming from industry making it very difficult for the community themselves to predict potential impacts during permitting.

## **Secretary of Health and Human Resources: Virginia Department of Health (VDH)**

We recommend that VDH integrate the Childhood Lead Poisoning Prevention Program (CLPPP) and the Office of Epidemiology more into its EJ efforts, working more closely with OEHS to ensure the tracking of environmental health impacts. OEHS should have dedicated funding to expand its work and ability to investigate disparities. Increased capacity could be used for projects to improve well systems for low-income households, boost maternal health or investigate cancer clusters.

VDH needs to have additional funding to participate in regulatory permit processes by identifying the site-based environmental health issues to specific site's communities that will be most directly impacted. Because the VDH public health data is based in districts, often rural districts do not have accurate resident-based data because these are medically underserved. That is, most residents receive their medical care from medical providers' offices, hospitals, and skilled nursing facilities outside of the district in which they reside. Their data is then folded into that district's data and not their resident district's. Thus, site-specific health data needed to examine the adverse impacts of toxic pollution at a specific site can be unknown when depending on VDH records.

The household data used to uncover pre-existing health conditions in Union Hill for the Atlantic Coast Pipeline's air permit became significant to the 4th Circuit's decision. Unfortunately, too many times large data sets are inadequate to provide accurate site-specific community health assessments, which can result in adverse impacts being overlooked.

VDH is an agency that needs more dedicated funding, especially OEHS, to ensure the health impacts to environmental justice communities are studied by experts with site and community fieldwork. Without community-specific health data, largely rural EJ districts are being chosen by developers whose operations will bring disproportionate toxic pollutants to negatively impact the health of communities of color, vulnerable populations such as the elderly and children, and low-income communities.

## **Secretary of Transportation: Virginia Department of Transportation (VDOT)**

VDOT is the only agency that has created EJ guidance, which means that it already has much of the expertise to do site-based environmental justice reviews. VDOT should also focus on better enforcing their own EJ guidelines for all permitting decisions as well as agency actions.

VDOT's portion of the 2020 EJ Interagency Working Group report states, "When completing NEPA documents, the Federal Highways Administration (FHWA) and VDOT must determine if the proposed action results in a disproportionate and adverse impact(s) to minority or low-income populations. If analysis reveals that the project would have a disproportionate and adverse impact to one or more EJ communities, the first step is to evaluate the project to determine whether the project's schedule, implementation, and/or final design can be altered to avoid the disproportionate and adverse impact(s)."

Toxic air emissions from new or expanded transportation projects should be thoroughly analyzed for their health impacts and, if found to disproportionately impact identified EJ communities, alternate sites must be considered. Special attention should be paid to PM<sub>2.5</sub>, which has historically burdened and continues to burden communities of color no matter their income level.<sup>85</sup> Furthermore, the 4th Circuit decision for *Friends of Buckingham vs. DEQ and Air Control Board* cited the plaintiff's finding that "even EPA, when they established the standard back in 2013, stated that there's no lower limit for PM 2.5 exposure."

Additionally, VDOT states in the report that "VDOT's Environmental Division works with the EPA on how to assess/identify EJ populations through census data." Yet, the National Environmental Policy Act (NEPA) guidelines caution against using census tract data in EJ reviews, or to use for pre-screening purposes only, because census tract data can conceal smaller population clusters. Using both census tract and census block data can result in undercounting for communities of color, and especially of children. A methodologically more accurate method are site-based community studies. VDOT should urgently implement the finding of the 4th Circuit Court that relying on census tract data by itself is insufficient.

VDOT must consider the possibility of disproportionate impacts in all projects, especially pollution. Thus, the agency should do far better public engagement with community experts and stakeholders and include the findings in environmental justice reviews.

## **Secretary of Education: Virginia Department of Education (VDOE)**

VDOE should include the concept of EJ in the Earth Science curriculum for Grades 8 and 9. We recommend that VDOE reach out to the VCEJ for input during the next revision of the Standards of Learning. VDOE should also lead a review of all public school buildings throughout the state to ensure that all are in compliance with the latest Virginia Uniform Statewide Building Code as well as have good air quality standards. Through the COVID-19 crisis, we have learned the vital importance of inspections, regular testing, maintenance/repair as well as replacement, and upgrades to improve indoor air quality especially in schools. Some items that should be

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<sup>85</sup> <https://www.science.org/doi/10.1126/sciadv.abf4491>

considered in the review are filters, purifiers, fans as well as the repair or replacement of windows and doors.

### **State Corporation Commission (SCC)**

Although the SCC is not currently included in the Environmental Justice Interagency Working Group because it is an independent agency and not under the Executive Branch, it should be allowed to join. The impact of its decisions on EJ communities cannot be overstated.

## **Conclusion**

VCEJ hopes that the Environmental Justice Interagency Working Group finds the suggestions and recommendations helpful. For communities across the Commonwealth, especially those who have been facing disproportionate impacts and environmental burdens for generations, action is urgently needed to relieve burdens, to ensure benefits, and to repair environmental harm felt by communities. The VCEJ will continue to engage with the Environmental Justice Interagency Working Group and encourages communities and advocates to keep monitoring agency actions and stay involved in incorporating EJ actions throughout the Executive Branch.

## **APPENDIX J: Public Comments Received**

### Public Comments

VCEJ Meeting, February 18, 2021

#### **Renada Harris**

804-503-0611

My name is Renada Harris, and I am here to confront the environmental injustice that threatens people who live in a predominantly African-American freedman community known as Brown Grove. As a Brown Grove native, I know the harms caused when elected, and appointed officials neglect the environmental issues that impact minority communities. As a child, I would ride my bike to my cousin's house down the street. But that's not the case anymore. Elders can't pass on generational wealth to their children because who wants to live next to a landfill? Wegmans grocery plans to build a 24 hr. distribution center in Brown Grove, which is already overburdened with a landfill, a truck stop, an airport, concrete and construction facility. Wegmans would mark the 6th industrial business planted in the middle of a family neighborhood.

Most Brown Grove residents have well water, and contaminated water, as we have seen in Flint, Michigan, can cause an abundance of health-related issues. The EPA celebrated Black History Month by publishing a report that finds black communities face dangerously high pollution levels. African Americans are more likely to live near landfills and industrial plants that pollute water and air. Because of this, more black Americans are three times more likely to die from exposure to air pollutants than their white counterparts.

Other impacts of the Wegmans distribution center include:

Disturbance of slave graves

Fumes from their fleet of trucks moving throughout the Brown Grove neighborhood daily

An estimated 2,864 additional vehicle trips per day

24-hour noise and lights from the distribution center and truck traffic

Potential increase in accidents on a residential road

Records show that this construction will be the largest destruction of wetlands outside of the Hampton Roads area if approved. Without protecting the surrounding wetlands, roads like Ashcake will face excess rainwater, potentially flooding residential houses and making driving conditions unsafe for the community.

The Dutton and associates cultural resource survey recommend this site be avoided and undergo further research because history and artifacts were found and deemed eligible for the national registry of historic places. Authentic artifacts from the merry oaks tavern, which Patrick Henry frequently visited, were found. During Reconstruction and jim crow, Brown Grove school was 1 of 8 African American schools in Hanover County This land is full of things that need to be discovered and protected.

With no help from our elected officials who are supposed to represent us and with the Department of Environmental Quality not concerned with the environment's quality, we, the community, with zero budget, have turned our careers from hairstylists, counselors, and retirees to surveyors, scientist, and lobbyist...during a pandemic. With our supporters, we are putting pressure on the DEQ and USACE to do their jobs with this 2.7 million dollar budget. For years, the Hanover County Board of Supervisors has ignored the community's concerns regarding this industrial gentrification and improper zoning so people can't build homes in the community. This historical community is overburdened with environmental degradation and one of the heaviest polluted neighborhoods in Hanover County.

Wegmans nor the DEQ have not met its burden to promote environmental justice through the Brown Grove community's meaningful involvement as required by Va. Code § 2.2-235. Meaningful involvement means that "affected and vulnerable community residents have access and opportunities to participate in the full cycle of the decision-making process about a proposed activity that will affect their environment. This is the true essence of environmental injustice.

Neither the Department of Environment Equality nor the US. The Army Corps of Engineers has conducted an appropriate environmental justice review to study the cumulative impacts of industrial encroachment on the community. Wegmans has minimized and devalued the oral history of Brown Grove elders, disregarding graves' existence on site. These activities are insufficient to meet Wegmans' EJ responsibilities, and the denial of Brown Grove's existence as an EJ community is ignorant of Hanover County's history, offensive and contrary to law. Even though Brown Grove is Mentioned in the African American Smithsonian Museum, we are still trying to prove our existence of 150 years to the DEQ.

Davis Paylor, director of DEQ, stated in a webinar, "It's clear that we haven't done as good of a job as we should have done with communicating and connecting with the public, and that's not OK, We need to learn how to listen better and how to include and connect with folks better."

Hanover County approved of the project in December 2019, with the groundbreaking projected for the spring of 2020. The County notified the "church" but did not inform Brown Grove residents, many of whom do not attend the church. FIOA requests show that the developer and supportive parties met in secret for nearly a year to plan out the development with no community input. The only chance the community had to comment was after the developers had secured promises from Hanover County to change the zoning. Companies that hold clout with legislators and agencies can exploit communities of color with limited political sway or other economic prospects.

In a statement, Northam stated that establishing the Virginia Council on Environmental Justice would "ensure communities are directly involved in the decisions that affect them most and will help prevent vulnerable Virginians from being disproportionately impacted by pollution, climate change, and environmental hazards." This all sounds good, but where does our Governor stand on this? Although Gov. Ralph Northam established the Council, he supports Wegmans coming into a residential community. Of course, it will bring 700 jobs under his belt. He says "environmental justice is important" but also said, "Wegmans will be a good neighbor."

However, I believe the Council is here to do what's right because you genuinely care and will not be just another smoke and mirrors agency.

We ask you to push the DEQ & U.S. Army Corps of Engineers to conduct a 3rd party Environment Justice study and Ask both DEQ and the State Water Control Board to defer any decision until the Corps of Engineers completes their upcoming NEPA Environmental Assessment review.

Brown Grove continues to organize and fight for the right to breathe clean air, drink safe water, and live our lives in the community our ancestors built without polluting industries knocking on our doors. With over 5000 signatures on our protect Brown Grove petition, it's clear the community opposes the project. It adds no value to the quality of life for the people that live here.

We are not willing to sacrifice our history and health for Wegmans or Hanover County profits.

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**Monica M. Esparza**  
804.363.3282

Thank you for your willingness to share.

[https://us02web.zoom.us/webinar/register/WN\\_li-FwAzaQbi3aog\\_-U66DA](https://us02web.zoom.us/webinar/register/WN_li-FwAzaQbi3aog_-U66DA)



[Welcome! You are invited to join a webinar: On Current Watch. After registering, you will receive a confirmation email about joining the webinar.](#)

The Virginia Environmental Justice Collaborative (VEJC), Virginia League of Conservation Voters (VALCV), and other partners present, "On Current Watch," a series of online discussions to help amplify community voices speaking out about how industry and public officials are treating our communities in 2021, as well as to highlight and elevate strategies that have helped protect communities thus far. Citizens are seeking greater protections for air, water, and land and are calling for a more rigorous review of the degradation of living environments in terms of environmental injustice. Join us to help raise awareness about threats our communities are facing and learn about the consequences of environmental injustice on public health, the economy, and our environment.

[us02web.zoom.us](https://us02web.zoom.us)



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**Katie Whitehead**

mkwhitehead@yahoo.com

I appreciate the Council's work and Virginia's recent efforts to ensure environmental justice. At the same time, I am fearful that a project in my area, Pittsylvania County, will slip through without a thorough environmental justice review and set a poor precedent.

You have probably heard of the Mountain Valley Pipeline – MVP, the large pipeline intended to deliver fracked gas to two Transco compressor stations in Pittsylvania County for distribution to the Southeastern U.S. Construction of this project in West Virginia and Virginia is currently halted, and essential federal permits have been revoked.

You may not know about the MVP Southgate Extension, intended to carry gas from Pittsylvania County to North Carolina. Despite great uncertainty as to whether the MVP mainline will ever be finished, the company wants an air permit now to build a third compressor station in Pittsylvania County, next to the Transco compressors, a project with no purpose if the MVP mainline is abandoned.

I hope you can advise DEQ:

1. Don't rush the air permit review.
2. Identify environmental justice communities affected over the sixty years that Transco has operated here and at risk from a new compressor station.
3. Don't tell us, as DEQ is doing now, that a new compressor station won't affect air quality.
4. Don't allow industry to shut people up with facile assurances and money.
5. Teach people - what they've been exposed to and will be exposed to.
6. Bring us into the process.

Thank you.

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Public Comments

VCEJ Meeting, March 26, 2021

Madam Co-Chairs and Members of the Virginia Council on Environmental Justice,

Thank you for giving me the opportunity to speak before you today. I have addressed the Council in the past about my objection to the proposed Green Ridge Landfill in Cumberland County. Since first hearing about the proposed landfill, I have learned much about Virginia's Solid Waste Regulations, Policies and Permitting procedures. I would like to ask the Council to urge the Governor to consider issuing an Executive Order to suspend permitting for the construction of new and the expansion of existing landfills.

The Virginia Department of Environmental Quality's 2020 Annual Solid Waste Report estimates that Virginia landfills have sufficient disposal capacity for the next 20 years. It should be noted that DEQ only requires that Virginia's Solid Waste Planning Units project disposal needs for *no longer than 20 years*. Virtually all of Virginia's 71 Regional Solid Waste Planning Units indicate sufficient disposal capacity to effectively manage each region's waste stream for the next 20 years. Some of the largest Planning Units indicate that reserve capacity is available beyond the 20 year window.

The Virginia General Assembly recently passed SB 1319 (Hashmi) directing DEQ to establish and continue the Waste Diversion and Recycling Task Force which is charged with recommending more socially responsible and environmentally sustainable solid waste management policies and practices. The primary charge of the Task Force is to identify waste management alternatives in an effort to divert waste from landfills thereby reducing the need for additional landfill capacity. The deadline for the Task Force's report to the GA is November 1, 2022.

On Tuesday March 23rd, Governor Northam signed Executive Order 77 (Virginia Leading by Example to Reduce Plastic Pollution and Solid Waste) which directed the Secretary of Natural Resources to develop recommendations to reduce plastic pollution and solid waste. In EO 77, the Governor states that "it is critical that the Commonwealth focus on reducing it's disposal of solid waste and diverting as much as possible from landfills..." He further states that the "Commonwealth must *significantly* reduce the amount of solid waste it sends to landfills..." The Plastic and Waste Reduction report from the Secretary of Natural Resources is due to the Governor by October 2021.

Given these two recent developments, it seems reasonable to ask that the Governor suspend the permitting of applications for the expansion or construction of new landfills in Virginia until such time as the General Assembly has had an opportunity to consider and act upon the recommendations of the Waste Diversion Task Force. I hope that members of the Council agree and request that the Governor issue an Executive Order to suspend the issuance of Solid Waste Permits until 2022 at which time the General Assembly will have had the time necessary to review and act upon the recommendations of the Waste Diversion and Recycling Task Force. Thank you for your consideration of my request.

Respectfully

Kevin Halligan  
Powhatan Va.

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Public Comments  
VCEJ Meeting, May 11, 2021

Good afternoon Council Members,

My name is Jessica Sims and I work for Appalachian Voices, working to stop harmful and unnecessary fossil fuel infrastructure in Virginia. I am deeply thankful for the Council's recent letter urging that Governor Northam declare a climate emergency, and to establish a moratorium on new fossil fuel permitting. That position clearly reflects the urgency of the climate crisis we are currently facing and speaks to the continued injustice of introducing projects that harm the air, water, physical and mental health, and futures of Virginians. I also am thankful for the comments from the previous speakers Emily, Shannon and Dhivya + the issues they shared today.

I want to highlight the Environmental injustice issue occurring in Chatham, VA in Pittsylvania County, with the proposed Lambert Compressor Station. I know that in previous meetings you heard from impacted residents of the area and that Mountain Valley Pipeline has also been front of mind for the Council and I am also very thankful for that.

As you know, the proposed station would connect the incomplete, unneeded and violation-riddled Mountain Valley Pipeline to its Southgate extension. MVP would then intend to route the Southgate extension through Indigenous communities in Rockingham and Alamance Counties, NC. The compressor station in Chatham, VA would be an environmental injustice, placing an unfair toxic burden on the Bannister community in the closely surrounding area in Chatham. The site of the proposed Station is already home to multiple Transco compressor stations and the surrounding community is already impacted by toxic air quality. The concentration of industrial sites in the area places community members' health and safety at higher risk, as recently highlighted by a March 30 chemical fire which produced a toxic cloud and required that residents to shelter in place. The injustices are those experienced by those living the impacts of projects - that is what is at stake, not a lack of regulatory or lobbying access for project applicants that participate in polluting industries.

What I'd like to also like to specifically raise today to the Council is that the Lambert Compressor Station air permit itself is procedurally unjust. I respectfully ask that the Council consider raising the issue of the purported urgency of permits that the DEQ places before Citizen Boards, in parallel with your request of a moratorium.

Specifically when there is ongoing litigation related to the project that precludes a full understanding of the viability of a project, or permitting for an interstate project is incomplete. The North Carolina DEQ has again denied a water permit for the Southgate extension. There is uncertainty that MVP mainline will ever be completed, and the VA DEQ has asked the Army Corps for a full year to provide adequate review of the recently requested Virginia Water Protection permit. This raises the issue of why Virginia is moving forward with asking a Board to review an air permit for a project that is not viable, disproportionately burdens communities, and conflicts with the decisions reached by neighboring states.

Thank you for any questions and concerns you can raise and continue to raise to the Administration, and thanks for the time to speak today.

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Jessica Sims (she/her)  
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Public Comments  
VCEJ Meeting, June 24, 2021

**Lauren Landis**  
757.634.9567

Dear Council:

My name is Lauren Landis and I am the Hampton Roads Grassroots Coordinator for the Chesapeake Climate Action Network. I appreciate the Council's work addressing climate justice issues to this point and for taking the time to hear from me both in the meeting.

Since tuning in a bit late, I hope I address things that were not fully covered earlier. I will be speaking to the issues with the July 7th Air Pollution Control Board Hearing for the Lambert Compressor Station Minor Source Air Permit.

The first issue is that of the location. Holding a public meeting at a private hotel is completely inappropriate. This allows for the discretion of the hotel owners to impose whatever rules, on food and gathering, on folks who already have travelled a long distance to be present. This, alongside the increased security presence, is a form of intimidation and might make some community members feel uncomfortable sharing their grievances.

Secondly, I would like to suggest that folks retain the ability to cede their time virtually. This will ensure that the voices that need to be heard for longer periods of time (including technical experts and affected landowners) have the space they need to make their case.

I thank you for your consideration.

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**Jolene Mafnas**

(703) 731-4907

My name is Jolene Mafnas and I am the Virginia Organizer for Food & Water Watch. FWW has around 28,000 members in the state, and so on behalf of my organization I wanted to highlight various environmental justice issues that we have been allies on. First is the Lambert Compressor Station in Pittsylvania county that will impact 4 environmental justice communities. Right now there is an air board meeting on July 7th which will be held at a private hotel and has been changed to only in-person participation when the expectation was virtual or a hybrid. These last minute changes require community members from Pittsylvania residents to take on the cost, time and stress of travel to a daytime meeting that is hours away. The Air Board Chair Roy Hoagland also wanted 2 days to allow for all testimonies to be heard but that has now been reduced to beginning at 1:00 on the agenda for this one day meeting. To make the public engagement process more fair for these communities, our organization urges DEQ allow remote participation and that these meetings be held in state facilities/public buildings closer to the impacted area.

Another environmental justice issue I wanted to highlight is the C4GT gas plant. C4GT has failed to fulfill its air permit requirement for continuous construction and almost 30 organizations and Senator McClellan have challenged DEQ's tolerance of C4GT's efforts to circumvent an air permit renewal process that could of garnered more public engagement. FWW recently submitted a FOIA request to see communication between C4GT and DEQ. From the documents and emails received, C4GT has violated their air permit multiple times through late report submissions and in fact DEQ drafted an invalidation citing all the powers they have to revoke this permit but went forward with a warning letter without disclosing as to why this option was more appropriate. In the final warning letter, DEQ asks C4GT to submit a plan to construct and if in the case they're unable to move forward with construction in the next 90 days that DEQ would help facilitate the process. Considering this plant was approved before impacted residents were aware of the project, DEQ must be answerable to the environmental justice standards of today and revoke C4GT's air permit.

Finally, organizations on behalf of the frontline grassroots group Concerned Citizens of Charles City County approached the Air Board chair to reopen a 2019 DEQ permit for the Chickahominy gas plant, which will be a mile away from C4GT, because the permitting and hearing notification/outreach process severely failed to engage the impacted community. DEQ's response was a shameless affirmation that the process included "a robust environmental justice analysis" and stated "we believe that the environmental justice review DEQ undertook in the Chickahominy PSD permit process would have met all of the requirements of SB 406 and HB 1162 had they been in effect in June 2019." Therefore our organization asks this process be opened up and actually include robust engagement with the impacted community which our organization believes will demonstrate that this project should not go forward. Thank you.

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**Elle De La Cancela**

(804) 723-0441

Dear Council:

My name is Elle De La Cancela and I am the Central Virginia Grassroots Organizer for the Chesapeake Climate Action Network. I would like to thank the Council again for the work they have done thus far and taking the time and space to hear from folks both in oral and written testimonial.

There are a few things I would like to bring to the Council's attention, echoing some of the comments that it has received already.

Firstly, there is the issue of July 7th Air Pollution Control Board Hearing for the Lambert Compressor Station Minor Source Air Permit. In addition to the fraught draft permit itself, which includes misleading and obscured information around both the delineation of the environmental justice communities and the cumulative impacts, the change in venue and type of hearing will limit the voices heard on the matter. The movement from a two day hybrid meeting to a one day in person hearing means that the burden of travel -- both time and money -- is unduly on those that would be impacted by the Lambert Compressor Station in Chatham. I have a few suggestions as to how to ameliorate these issues:

Have a hybrid option -- with DEQ livestreaming and the ability to call in by phone, similar to the process undertaken for the VA EJ Council meetings

Have the ability to comment after 5pm to accommodate those who work

Have the ability to submit written testimony and have it read by a DEQ official or a volunteer so it may be on the record

For future endeavors, I would suggest that the hearing is held in the proposed location

I would also like to highlight the Hazardous Waste Open Burn Permit awaiting decision for the Radford Army Arsenal Plant. An extension of the comment period was requested by several organizations but was denied, despite the fact that we are still in a state of emergency and extensions such as these are commonplace. Open burning is prohibited under Resource Conservation and Recovery Act and there have been studies done by both the National Academy of Scientists and the EPA that have outlined numerous alternatives for hazardous waste disposal. This proposed permit would expire in a decade, yet the public had only a few months to process the information. Additionally, folks have been told that a permit for an incinerator to accommodate the amount of hazardous waste will be submitted soon. How can the DEQ make a decision on open burning without all options accounted for? While an incinerator may not even

be the best available alternative, it would be preferable to open burning. A study and a prohibition of open burning until that point would be helpful.

I appreciate your attention to these matters. Thank you for your consideration.

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**Jessica Sims**

(804) 356-1228

Good afternoon Council Members. My name is Jessica Sims and I work for Appalachian Voices and I'm based in Richmond, Council members, thank you for your work, and for the opportunity to speak briefly today. I appreciate the accomplishments listed at the start of the meeting, but want to speak on an issue that needs significant improvement - meaningful engagement with and greater accessibility for public participation for communities impacted by fossil fuel projects within the Commonwealth. This is specifically reflected in the creation of y'all's Public Participation and Identifying EJ communities subcommittee, or where that may be housed, in the Emerging Issues Committee.

Specific to the part of the Environmental Justice act that grants access through the full cycle of decision-making processes, I wanted to flag for the Council, an upcoming Air Board meeting and its inaccessibility for the public.

As in previous meetings, speakers have talked about the proposed Lambert Compressor Station for the violation-riddled Mountain Valley Pipeline. The station is intended to connect to the Southgate extension. The compressor station in Chatham, VA would place an unfair toxic burden on the Bannister community in the closely surrounding area in Chatham. The site of the proposed Station is already home to multiple Transco compressor stations and the surrounding community is already impacted by toxic air quality. The concentration of industrial sites in the area places community members' health and safety at higher risk.

At the Quarterly April meeting, Air Board members expressed concerns about accessibility to the proceedings, and some members recommended scheduling at least part of the meeting for a time outside of standard business hours and making the meeting accessible for the large # of members of the public that weighed in during the comment period. This Board conversation highlighted the larger discussion around DEQ's ongoing assessment of public outreach and the efforts of the Air Board Public Engagement Committee to identify opportunities to provide meaningful engagement.

As described in previous comments, unfortunately, the DEQ has decided to host the meeting not in June, as discussed, but on July 7 as an in-person, one day only meeting during regular business hours. Given the ongoing health crisis, not offering a hybrid option limits safe public participation, + requiring hours of travel from those in the impacted area.

Limiting public participation runs counter to the DEQ's mission outlined in the agency's October 16, 2020 Environmental Justice Initiative to "proactively and authentically engage communities on issues and decision-making that could potentially affect their health and quality of life."

Yesterday 23 Orgs asked Director Paylor to offer hybrid options. I respectfully ask that the Council please ask Director Paylor and the Administration to allow a hybrid call in option, livestream provided by DEQ and an after 5pm option to comment or submit written comments.

Also, at this time there is a periodic review of Public Participation Guidelines for the Air, Water and Waste Management boards and for the DEQ, which now has a public comment period. The comment periods were announced on June 21, but close soon, on July 12. As of this afternoon, zero comments have been submitted for any of these 4 public comment opportunities, which leads one to believe people are not widely aware there is an opportunity to comment. The purpose of the review is to determine if current regulations should be repealed, amended or stay the same. I think it would be incredibly helpful if the Council were to consider participating in the public comment period, and additionally, if it would be possible for the council to ask DEQ to please extend the public comment periods.

Thank you all very much for your work.

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