

**Meeting Agenda**  
**HJR527 Invasive Plant Species Workgroup**  
**Day 6**  
**November 10, 2021, 10:00 AM – 1:00 PM**  
**Pocahontas State Park, Powhatan Dining Hall**

**WORKGROUP MEMBERS PRESENT**

Glenda Booth, Audubon Society of Northern Virginia  
Christopher Brown, Jr., VNLA  
Nathan Burrell, DCR  
Alison Clock, Garden Club of Virginia  
Corey Connors, Virginia Forestry Association  
Scott Douglas, Virginia Tech  
David Gianino, VDACS  
Jim Hurley, VNPS  
Martin Krebs, VDOT  
Steven Living, VDWR  
Larry Nichols, VDACS  
Craig Regelbrugge, AmericanHort  
Ben Rowe, Virginia Farm Bureau  
Rod Walker, Blue Ridge PRISM  
Nancy Vehrs, VNPS  
Ed Zimmer, VDOF

**AGENCY STAFF PRESENT**

Jason Bulluck, DCR  
Michael Fletcher, DCR  
Kevin Heffernan, DCR  
Tom Smith, DCR

**OPENING REMARKS**

Mr. Burrell called the meeting to order at 10:06 a.m. He thanked members for their participation and noted that this would be the last meeting of the workgroup.

**APPROVAL OF MINUTES**

Ms. Booth asked that her comment in the September minutes be amended to say “recommendations heard throughout the process.”

**ACTION**

Mr. Walker moved that the minutes of the August, September, and October meetings of the Invasive Species workgroup be approved as submitted and as amended at this meeting. Mr. Zimmer seconded

Mr. Nichols advised that Mr. Shreve from the Virginia Agribusiness Council was not able to attend the meeting and asked that the following be entered into the record:

I apologize, but neither Beck nor I will be able to attend the workgroup meeting today due to our Annual Meeting. I wanted to forward long our position for inclusion in the report. The Council is supportive of outreach and education efforts surrounding plants that are native and non-native including increased funding for voluntary labeling promoting native plants. WE would also support the VDACS Board forming a workgroup to define and create parameters for “commercially viable” within the context of the noxious weed code. This definition could then be used by the noxious weed committee to make determinations as to which species could be added to the noxious weeds list moving forward. Should the VDACS Board decide to make such a definition change, we would also support a grace period for sale of existing stock should a new species be added to the list.

We cannot support mandatory labeling of invasive plant species or commercially viable stock or a tax on such inventory.

Mr. Hurley advised that The Nature Conservancy was also not able to be present.

Mr. Nichols confirmed that organizations will be able to review the draft report and be able to submit comments in support or in disagreement with the recommendations. He noted that the workgroup would have about a week to review the report before it needs to move forward.

The report will need to be reviewed by leadership at both agencies as well as the Secretariats before being provided to the General Assembly. The report is due to the General Assembly by the first day of the 2022 Legislative Session.

Ms. Booth offered a comment and a motion. She noted that in August she attempted to clarify the process for the workgroup. She noted that one of the points made was the opportunity for workgroup members to comment on the final report. She thanked staff for including that provision.

Ms. Booth advised that since the workgroup would be making recommendations at this meeting that she would like the workgroup to vote on each of those.

#### ACTION

Ms. Booth moved that the workgroup vote on all recommendations brought forward to be included in the report.

Mr. Hurley seconded.

Mr. Zimmer clarified that as a state employee, he had been directed by leadership at DWR not to vote on any actions.

Mr. Burrell noted that the legislation called for agencies to be represented, but that agencies to not take stances on specific policy. He advised that the discussion was for the purpose of making suggested changes.

Mr. Smith noted that if he were speaking for DCR he would feel free to vote and comment because the workgroup is providing recommendations for consideration by the General Assembly.

Mr. Brown commented that under the scope of the workgroup there could be a thousand recommendations. The legislation did not call for the workgroup to agree on all recommendations. All members will have a different viewpoint. He noted that Mr. Nichols and Mr. Burrell would do their due diligence to see that all comments and viewpoints are represented.

Mr. Nichols advised that dissenting opinions would be brought forward. All organizations will be allowed to write a letter of approval or no support for particular recommendations. The report will list the advantages and disadvantages of particular recommendations.

Mr. Nichols noted that the preference would be consensus with the plan moving forward. However, if there is not agreement in the group, that will be reflected in the report. He advised that there is no time to schedule another meeting prior to the established November 30 deadline.

Mr. Hurley withdrew the second and the motion failed.

#### DISCUSSION ON TAX RECOMMENDATIONS

Mr. Nichols advised that there was a need for understanding of the scope of the issue with regard to creating a tax and spend formula. He noted that there had been discussions of additional studies.

A member suggested that there may be a need to add a more robust recommendation related to the need to fully understand the tax issue and to get to the point of making a recommendation regarding a point of sale tax.

Mr. Nichols advised that Mr. Burrell had discussed this with the Virginia Department of Taxation. He noted that a number of issues regarding taxation had been developed by the group.

Mr. Hurley noted that his suggestion would be not to add a new tax, but to reserve existing tax revenues that apply to plant sales. Those funds would be placed into a special revenue fund to deal with invasive plants.

Ms. Booth asked what the funding source would be.

Mr. Walker commented that an annual or semi-annual appropriation would not work as this is an ongoing issue. There needs to be consistent reliable funding going forward. General funds are not consistent.

Mr. Douglas asked if this was about a retail level tax or only a wholesale tax that would impact Virginia growers.

Mr. Hurley responded that the discussion was about converting existing taxes from the sale of plants.

Mr. Regelbrugge summarized the suggestion of a cost-share program that can be used for combating invasive species. Land owners would contribute a portion. The state would contribute a portion.

Mr. Smith said in looking at recent models, DWR has a tax on ammunition and guns as well as a percentage of taxes on camping supplies, etc. The conversation has focused on the sale of invasive species, but it should also consider other tools for the eradication of invasive species, such as herbicides.

Mr. Connors suggested that the legislature would determine the source of revenue.

The group took a consensus vote regarding the development of a cost share program. This proposal was viewed favorably.

Mr. Nichols noted that the other discussion was a diversion of taxes on nursery stock that could be used to fight invasive species. This would be diverting a portion of the current tax on the retail sale of plants.

It was noted that redirecting an existing tax would pull revenue from elsewhere in the budget.

Mr. Hurley suggested the proposal be amended to direct a portion of the sales tax currently charged on nursery stock to be diverted to a special fund.

Mr. Zimmer noted that the determination of the funding source would fall to the legislature. The group could recommend measures, but the legislature will consider the funding.

Mr. Nichols asked if the group supported a portion of the retail sales tax funding the eradication of invasive species.

Mr. Burrell noted that there was general agreement but a number of controversies regarding these proposals. He advised that members would have the opportunity to comment regarding any recommendations included in the report.

There was general agreement regarding the diversion of existing tax revenues, but there was no support for creating a new tax.

#### DISCUSSION ON EDUCATION AND OUTREACH

Mr. Burrell commented that the industry is considering programs to educate members as well as opportunities for non-profits to engage in the discussion with the nursery industry.

Ms. Booth noted that at the last meeting she offered a proposal for labeling plants.

Mr. Nichols noted that Ms. Booth's recommendation would be included in the report. The discussion focused on labeling and associated costs. There was also consideration given to adding particular information on a label. He commented that if Virginia growers were required to provide that information, out of state growers would not necessarily be required to do the same.

Mr. Zimmer noted that the Plant Virginia Natives campaign has put forth a great deal of effort in this regard. This program under Coastal Zone Management is just in the Chesapeake Bay Watershed at this point but is proposed to go statewide.

The workgroup did not come to a consensus regarding labeling plants as invasive.

Mr. Walker clarified that his suggestion was not to label each individual plant. A sign or label near where the plant is being sold could indicate that the plant was on the DCR invasive species plant list. He asked that it be mandatory as opposed to voluntary.

Mr. Nichols noted that in previous discussions the VNLA has indicated that they would provide information to member regarding invasive plants. Mr. Brown noted that this would require VNLA approval.

Mr. Heffernan noted that DCR has a web page related to native species and invasive species. This could be expanded.

#### DISCUSSION ON USE OF NATIVE PLANTS

Mr. Burrell noted that there was a suggestion from a previous meeting that there could be an Executive Order requiring state agencies to use native plants. After the first meeting implemented a policy relating to plants and plantings on agency owned properties.

Mr. Smith noted that DCR also has agricultural lands as well as historic properties that do currently have non native plants.

Ms. Booth noted that she had previously distributed the following proposal regarding native plants on public lands.

#### **State Properties, Prioritize Native Plants**

The Departments of Conservation and Recreation and the Department of General Services shall:

1. Identify state properties that are appropriate to convert to natural communities and native species habitats.
2. Encourage all state agencies to give priority to native plants and trees in purchasing and installing plants on state properties.
3. Provide guidance to all state agencies that manage state properties on restoring properties degraded by invasive plants by planting more natural communities and native species habitats.

*Rationale: The state government should set the example for others. DCR already has a policy for DCR properties. A state policy and its implementation could create a new market for native plants all over the states, at facilities like state offices, prisons, colleges, including expanding VDOT's current pollinator habitat program. If there are safety or sightline concerns, native groundcovers can be used.*

Mr. Krebs expressed VDOT's concern regarding expense and availability.

Mr. Zimmer commented that he would prefer these policies be encouraged rather than mandated.

The workgroup generally supported the concept.

Mr. Hurley suggested that it would be useful to have a model ordinance to be adopted by or recommended to localities.

The group generally supported the concept of a model ordinance.

Ms. Booth offered a second proposal:

**Establish a DOF Native Plant Nursery**

The Department of Forestry shall:

1. Establish native plant nursery production capacity at existing nursery facilities to provide native plants to the commercial nursery industry; and;
2. Prepare and submit to the General Assembly a 10-year estimate of funds needed to establish, produce and annually manage the production of native plant materials at existing nursery facilities.

*Rationale: The state can help expand native plants across the state on state and other properties by creating and operating a native plant nursery and offering plants for sale at the cost of production. DOF has expertise in managing nurseries and currently has a tree seedling nursery in Augusta County and owns property in New Kent County.*

Mr. Regelbrugge commented that the industry would oppose the competition of state run nurseries. This approach tends to cost taxpayers money and tends to be less efficient.

Ms. Booth noted that early in the process companies indicated there were not enough available native plants.

Mr. Zimmer noted that there is a role for universities and state entities with regards to research.

Mr. Nichols noted that there was no consensus on this recommendation.

DISCUSSION ON STATUTORY/REGULATION CHANGES

Mr. Walker presented a document entitled "Proposed Working Group Statute and Regulation Changes." A copy of this presentation is included as Attachment #1.

The following items from the document were discussed:

Mr. Walker noted that the proposal was from Blue Ridge PRISM. He noted that if there was enough support for the proposal it could be drafted into a legislative proposal.

Mr. Walker commented that he was looking for a compromise position that can be supported by the industry.

Mr. Walker noted that at a previous meeting a representative from VNLA had indicated that there were thirteen plants that would be considered an issue on the DCR list. The remainder would then be eligible to be reviewed by the Noxious Weeds Advisory Committee. There would be a phase out period for these plants.

Mr. Walker asked for suggestions to make the proposal better and to develop a proposal that could go to the legislature.

Mr. Zimmer noted that the proposal called for full implementation of the Invasive Species Management plan which deals with more than invasive plants.

Mr. Nichols noted that the first bulled “directs the VDACS Board.” He advised that would require the regulatory process. A year is not enough time for that process.

Mr. Walker clarified that he intended for it to be for the definitions to be on the table for consideration.

Mr. Brown indicated that he had a concern regarding the list of thirteen plants and the definition of commercial viability.

Mr. Smith noted that with regard to creating a new group the Invasive Species Council is established by Code to address the management and oversight of the plan.

#### BRADFORD PEAR IN THE LANDSCAPE

Mr. Hurley gave a brief overview of the issue of Bradford Pear. He noted that the same could be done for other species, but this is a glaring example of a plant that continues to be sold and used across the Commonwealth.

#### ADDITIONAL MEASURES

Mr. Nichols advised that the next step would be the drafting of the report. He advised that members would have approximately one week to review and to submit comments. From there the document will be reviewed by the Secretariats.

Mr. Nichols and Mr. Burrell expressed their appreciation to the members of the workgroup for their input during this process.

There was no other business and the meeting adjourned.

ATTACHMENT #1

PROPOSED WORKING GROUP STATUTE AND REGULATION CHANGES

11/8/21

**OBJECTIVE:** Outline what we would put in one composite bill for the upcoming legislative session and accompanying changes to regulations. The intent is to meet most of the objectives of HJ527 while minimizing impacts on the trade. Virtually anything in this proposal can be changed, if not improved. Hopefully this will help move us to a path which results in a new bill being submitted to the upcoming legislative session. Note that some of the ideas will take 4 years or more to get plants onto the Noxious Weeds List and then time beyond that to phase them out of the trade. This proposal includes provisions that would set the state on a sustainable path to truly impact the problem of invasive plants.

**1. TAKING INVASIVE PLANTS OUT OF THE TRADE**

- Direct the **VDACS Board to set specific definitions** for various terms in the Noxious Weed Law, including “commercially viable”, “in-state production”, “or part thereof” and “commercially propagated”. VDACS will convene a new working group with broad representation from industry leaders and selected conservation groups to recommend these new definitions. See the relevant paragraph of the law below:
  - “Noxious weed” means any living plant, or part thereof, declared by the Board through regulations under this chapter to be detrimental to crops, surface waters, including lakes, or other desirable plants, livestock, land, or other property, or to be injurious to public health, the environment, or the economy, except when in-state production of such living plant, or part thereof, is commercially viable or such living plant is commercially propagated in Virginia.
- Require the VDACS Board to **publish said definitions and start the regulatory review/approval process within one year** of this bill being enacted, along with proposed changes to the regulations to implement any required changes due to the new definitions or any other items included in this bill.
  - If the new definitions are enshrined in the laws and regs, then the **existing processes can be used** to put plants on the Noxious Weeds List even if they are being produced or sold in Virginia.
- If a plant is to be listed as a Noxious Weed that is currently being produced and sold in Virginia, then also empower the VDACS Board to establish a **phase-out period of 1-6 years** for each such plant that reflects how long the industry will need to mature and sell the existing inventory. The intention would be that no new inventory be created once the plant is approved for listing by the VDACS Board, but that time would be available to realize the value of the existing inventory.
- Plants produced in Virginia that are listed on the Noxious Weeds list could continue to be produced, but only if the **plants are being shipped out of state**. Does this require a new kind of permit? If so, direct VDACS to define it and implement it.
- Provision needs to be made for the Noxious Weeds process to list a plant as a noxious weed, but allow for **exceptions for cultivars research-proven to be non-invasive**. This includes allowing exceptions for proven non-invasive cultivars of already listed plants. Examples might be:
  - Seedless and “Worry Free” barberries being sold in CA and elsewhere as viable substitutes for the invasive common varieties
  - Firepower and Gulfstream cultivars of Nandina domestica
- If a plant is still considered to be ineligible to be listed as a noxious weed even with the new definitions, the Noxious Weeds Advisory Committee (NWAC) may still recommend it to the VDACS Board for listing as long as the VNLA, the Agri-Business Council and the ASLA all agree



that it may be listed. This provision would allow for listing a plant for which there is **consensus that other non-invasive plants will serve as acceptable substitutes.**

- All of the above discussions of definitions notwithstanding, all of the 90 plants on the current DCR list will now be considered not commercially viable and eligible for listing through the current NWAC process except for the following list, which will still be considered to be commercially viable until one of the other provisions above causes them to be eligible for listing through the NWAC process. Note that the following list is included with the caveat that these plants are still up for discussion and hopefully some of them may yet be removed from this list.
  - Winged euonymous (*Euonymus alatus*), research-validated sterile cultivars only
  - Yellow flag iris (*Iris pseudacorus*)
  - Norway maple (*Acer platanoides*)
  - Mimosa (*Albizia julibrissin*)
  - Japanese barberry (*Berberis thunbergii*), research-validated sterile cultivars only
  - Wintercreeper (*Euonymus fortunei*)
  - English ivy (*Hedera helix*)
  - Moneywort (*Lysimachia nummularia*)
  - Chinese Silvergrass (*Miscanthus sinensis*)
  - Callery pear (*Pyrus calleryana*)
  - Japanese spirea (*Spirea japonica*)
  - Vinca minor
  - Vinca major
- Any plant still being sold that is on the DCR list of invasive plants is required to have a **sign or label on or near each plant** being sold that clearly identifies it as being on the DCR list of invasive plants. VDACS is hereby required to set the standards (regulations?) for such signs and their placements in order to reasonably solve the following problem.
  - The problem is that many consumers who buy these plants are not aware that they are invasive and are thereby creating problems both for themselves and for their neighbors. Given that the **nursery trade is well aware of the issues** with these plants, it behooves them to make sure their customers are properly informed and not deceived with marketing that only touts the good features of the plants.

## 2. UPDATING THE DCR LIST

- DCR shall **update and reissue its list** at least once every 2 years.
- Include funding for a position to do this?

## 3. STATE AGENCIES

- State agencies are hereby **prohibited from selling, planting or distributing** any of the plants on the DCR list except for research purposes.

## 4. FUNDING FOR INVASIVE PLANT PROGRAMS

- **Divert the sales tax revenues on plants to a special revenue fund** to fund invasive plant remediation efforts including early detection and rapid response activities, forming new PRISMs, updating the DCR list, funding studies, supporting native plant campaigns, educating the public on the problems caused by invasive plants, funding plant-related portions of the state's invasive species management plan, etc. Can include funding positions for these purposes in state agencies.

- Invasive plants represent a long-term problem that requires reliable long-term funding. Starting and stopping funding and related efforts results in huge wastes of time and money.
- The special revenue fund is to be overseen jointly by the Secretary for Agriculture and Forestry and the Secretary for Natural Resources – advised by the proposed Biodiversity Task Force (see below)

**5. FUND AND IMPLEMENT THE STATE’S EXISTING INVASIVE SPECIES MANAGEMENT PLAN, AT LEAST AS IT CONCERNS INVASIVE PLANTS**

**6. STAFF A POSITION IN VDACS TO PREPARE NOXIOUS WEED NOMINATIONS**

**7. FORM A BIODIVERSITY TASK FORCE**

- Include key state agencies (e.g. VDACS, DCR, DOF, DWR, VDOT, DEQ) and the secretariats.
- Include conservation groups and industry groups – **similar to this working group**
- **Oversee the actual implementation of the invasive species management plan**
- **Advise on the allocation of the special revenue fund**
- **Oversee implementation of recommendations generated by this Working Group**
- **Report to the legislature once per year on the progress on these recommendations and related issues**

**8. ADD A TIER 4 TO SOLVE THE BALE OF HAY PROBLEM**

- No permit required for incidental movement of these plants.

SUBMITTED COMMENTS

**Ann DiFiore**  
**Vienna, Virginia**

Dear Mr. Nichols,

As a long-time citizen of the Commonwealth, I urge you to support the Invasive Plants Legislation that would phase out propagation and sale of invasive plants in VA. I am also a Virginia Master Naturalist who volunteers to remove invasive plants and promotes native plant landscaping.

As a VA Master Naturalist and a neighbor of Nottoway Park, in Oakton, VA, I have volunteered in the park's IMA areas, removing invasive plants that originated in neighbors' properties—Wintercreeper, Autumn olive, Periwinkle, Burning bush, and English ivy—sold at local nurseries and in the landscaping departments of big box stores. I have seen the tremendous amount of effort that goes into the removal of plants overrunning our natural areas—suffered injuries and tick bite infections in the process—because homeowners, landscapers and developers alike continue to plant them. Trees throughout local parks and adjacent to our townhouse community of Marywood Oaks have been undermined by climbing invasives like ivy, Asiatic bittersweet, and wintercreeper which imperil both homes and people. Why? The word still hasn't reached the general public that these plants are bad and that there are better ways to landscape.

As a volunteer for Plant NOVA Natives, I have seen firsthand the reluctance of many nurseries to stop selling invasive plants despite knowledge of their harm to the environment and economy. They make money from promoting the use of cheap, familiar "exotics" that degrade our environment and cost county and state governments millions of dollars to control or eradicate. Their justification--that the gardening public does not want weedy native plants or plants with holes in them.

As a long-standing Audubon at Home Ambassador and a former Master Gardener, I have heard that argument. Invasive plants aren't eaten because they have no role in our ecosystem's food pyramid—unlike natives, which serve as host plants to feed insect larvae, sustaining the birds most gardeners want to support. When we plant natives, we are providing what nature needs--host plants, shelter, food for wildlife. We are protecting our planet's biodiversity, and in the process, ensuring cleaner air, water, and soil for everyone. Informed gardeners and property owners will put up with a butterfly weed with holes in its leaves because they cherish the monarch butterfly that feeds upon it. We can make our yards, parks, green spaces—whatever size they are—productive, ecologically valuable, and beautiful simply by planting natives.

By taking a stand on invasive plants, you will be showing the way to a healthier, more productive, Virginia. Your legislation would give nurseries and wholesalers the push they need to go green and embrace native plants.

Thank you.

Ann DiFiore

**Scott Knudsen**  
**Alexandria, Virginia**

Dear Mr. Nichols and Mr. Burrell,

I was told to contact you with my comments about invasive plants for your discussion in your Invasive Plant Species Work Group. I hope my comments are not too late—I was told that your final meeting will be held tomorrow, November 14.

REVISED: 11/17/2021 2:27 PM

As a Tree Steward, I have spent many hours pulling invasive vines out of our natural areas in Northern Virginia and in my neighborhood of Parkfairfax in Alexandria. If there is one invasive non-native vine that I would suggest not be sold any longer in Virginia, it would be Chinese Wisteria.

I have seen Chinese Wisteria take over whole acres of the woodlands in Parkfairfax. It will strangle trees, both young and old, and I have seen Chinese Wisteria vines actually snap off the tops of mature trees that it had overrun.

There is a perfectly acceptable alternative to Chinese Wisteria in American Wisteria, which is much less destructive. American Wisteria is not that easy to find, at present, but I'm sure that it would become more prevalent in the nursery industry if Chinese Wisteria were phased out of the commercial market.

I have many other non-native invasive vines that I dislike, Porcelainberry and English Ivy among them, but the one vine that should definitely not be sold in Virginia is Chinese Wisteria.

Thank you for reading my comments,

Scott Knudsen

**David Forrer**  
**Harrisonburg, Virginia**

Larry and Nathan,

I'm writing in support of HJ 527. For years I've been fighting English Ivy and a couple of other encroaching invasives in my yard. And much worse, I volunteer at JMU's arboretum every week, where my primary job is removing invasive plants such as winged euonymus, callery pear, barberry, honeysuckle, privet, Oriental bittersweet, garlic mustard, Japanese stiltgrass, and Norway maple. It's quite frustrating to know that the group of 8 of us will probably never work ourselves out of a "job" because neighboring property owners have planted many of these plants.

I don't hold the property owners who are planting these invasives responsible. They don't know any better, and the landscaping services are recommending them. In fact, when I bought my home property 22 years ago, I had the landscaper, at his recommendation, plant a hillside of liriopse, a couple of nandinas, and a crepe myrtle because I didn't know any better.

Something needs to be done to stop landscape services and plant retailers from selling these invasives. For the first time in years, HJ 527 is giving me some hope of turning the tide against invasive plants. PLEASE see it through.

Thank you SO MUCH!

David Forrer