

**HJR527 Invasive Plant Species Workgroup
Pocahontas State Park, Chesterfield, Virginia
October 21, 2021**

WORKGROUP MEMBERS PRESENT

Neal Beasley, VNCA
Glenda Booth, Audubon Society of Northern Virginia
John Burke, Fairfax County Park Authority
Corey Connors, VFA
Dean Cumbia, VDOF
Michael Flessner, Virginia Tech
Alex Fisher, TNC
Jim Hurley, VNPS
Martin Krebs, VDOT
David Lisowski, VA ASLA
Larry Nichols, VDACS
Carla Passarello, Garden Club of Virginia IT Infrastructure Partnership
Craig Regelbrugge, AmericanHort
Ben Rowe, Farm Bureau
Nancy Vehrs, VNPS
Rod Walker, Blue Ridge PRISM

OTHERS PRESENT

Jason Bulluck, DCR
Michael Fletcher, DCR
Kevin Heffernan, DCR
Nancy Holcomb, Garden Club of Virginia
Joel Maddux, VDACS
Tom Smith, DCR
Amos Sweany, DCR
Virginia Witmer, DEQ

CALL TO ORDER AND OPENING REMARKS

Mr. Nichols called the meeting to order at 10:07 a.m. He thanked members for their participation. Mr. Nichols noted that Mr. Burrell had been called away to deal with a family emergency.

Mr. Nichols advised that he would like to review the list of recommendations compiled by staff based on conversations from previous meetings. He commented that this would allow the workgroup to dive deeper into some of the topics discussed in order to include them in the report. The list of recommendations was mailed to members prior to the meeting.

A full copy of the recommendations is included as Attachment A.

APPROVAL OF MINUTES

Mr. Nichols advised that the workgroup needed to approve the minutes from both the August and September meetings.

Mr. Fletcher noted that he had received additional edits from Mr. Smith.

Ms. Booth requested that language on page 11 of the September minutes be change from “recommendations the workgroup has agreed to” to “recommendations that the staff has recommended.

Because the work group had not been given the opportunity to review both sets of minutes with all edits included, the revised versions will be sent to members for approval at the November 10 meeting.

PROPOSED WORKGROUP FRAMEWORK PRESENTATION – Rod Walker

Mr. Walker presented a document he prepared to help outline the process for the workgroup. He noted that the intent of the document was to bring the group closer to having something to present to the legislature and that this was his attempt to develop a compromise position. He offered that this was provided as framework and that there were plenty of opportunities to tweak and edit.

Mr. Walker reviewed the document with the work group. A full copy of his presentation is included as Attachment B.

Mr. Walker noted that the first pages address the more complex issue of removing invasive plants from the trade. This was based on conversations from the last meeting.

Mr. Walker commented that the beginning focus should be on defining terms that are in the noxious weeds law. Based on statements from previous meetings, if only a small number of nurseries carries a specific species, that plant may not be considered to be commercially viable, implying that there is a threshold for the definition of commercially viable.

Mr. Walker noted that changing the threshold would require industry involvement. He noted that in addition to commercial viability, the Noxious Weeds law also includes in-state production or whether a plant is commercially propagated.

Mr. Walker also noted that if a plant is to be removed from the trade, it should be phased out over a period of time. He advised that there may be opportunities to develop an agreed upon set of substitutes.

Mr. Walker advised that the work group could develop a list of 30-60 plants, some of which are already on the DCR Invasive Species list, and others that should be. There should be a long-term discussion about what those plants are as well as potential substitutes.

While native plants are preferred, non-invasive, non-native plants that are not invasive should be considered. If the workgroup agrees on substitutes, then the invasive plant could be added to the Noxious Weeds list.

Mr. Walker advised that the strategy would be to drive down the demand so that a plant does not remain commercially viable. The key would be to label plants at the point of sale.

Today buyers do not realize that their purchase is a problem.

Mr. Walker summarized that there would be four groups of plants with new definitions.

- Some are in the trade, but not commercially viable. These would go through the Noxious Weeds listing process.
- Those with proven non-invasive cultivars could go through the process, but the non-invasive could still be sold.
- Generally agreed to substitutes could be sold.
- Plants with no non-invasive cultivars or substitutes would have to go through a public education process.

Mr. Walker noted that the document asked the question of whether there were plants that the industry would agree were not commercially viable that could be listed immediately.

Mr. Walker advised that while the first two pages of his document addressed taking plants out of the trade, the section beginning on Page 3 addresses the promotion of native plants in the trade.

Mr. Walker noted that DCR updated the list of invasive plants in 2014. The list should be updated on a regular basis.

Mr. Walker commented that one option would be to develop a biodiversity task force similar to the work group. That task force would oversee the actual implementation of the existing plan.

Mr. Walker advised that his outline was intended to put the relevant issues on the table for further discussion by the work group.

Ms. Booth thanked Mr. Walker for the presentation and commented that it represented a lot of work and thoughtful analysis. She commented that there were certainly parts that should be advanced.

Ms. Booth mentioned that she had recently spoken with Delegate Bulova who was the author of the resolution forming the work group. He asked about progress. She advised that she told him that the work group had held four meetings, but as of yet did not have specific recommendations.

Ms. Booth noted that Mr. Walker's presentation was very helpful. She expressed skepticism regarding the establishment of another group. She reminded the work group that they were tasked with developing specific recommendations. She noted that she had five recommendations she would like to offer for consideration.

Ms. Passarello commented that she was also very appreciative of Mr. Walker's work. She expressed concern that the document left it up to the work group to define "commercially viable." She noted that the law addresses that thoroughly. She suggested that the question is whether the Noxious Weeds law is still efficient. The exemption clause prevents answering that question. Because of the exemption in the law, the term "commercially viable" is rendered useless. Either the law needs to work as intended or a new law is needed.

Mr. Nichols read from the Noxious Weeds law:

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.

Ms. Passarello noted that was the passage that was difficult. She stated that in this definition the law weighs the cost to industry, taxpayers, to the state, and to the environment. However the challenge is the exemption which does not allow that evaluation. The only consideration is whether a plant is being sold.

Mr. Regelbrugge commented that nearly every activity would run afoul of something in that definition. The exemption basically says that a crop cannot be listed as a noxious weed if it is a viable crop. He

advised that if the proposal is to follow the law strictly, there will be no consensus. But there should be a willingness to have a discussion regarding commercial viability.

Ms. Passarello commented that the original law was passed through the state legislative process and meant to weigh in the balance the interest of all parties. It was not intended to regulate the industry or impose undue hardship. The clause was inserted at a later date when the law was amended.

Mr. Nichols commented that the only way to change the definition is through the General Assembly.

Ms. Passarello agreed, but noted that the exemption was included for a specific purpose to address an industry concern. There is a need to get back to the point where all concerns could be weight equally.

Mr. Walker commented that in the original 1970 law there was an exemption clause that said a plant could not be listed if widely disseminated. A work group was convened to discuss how to remove the term "widely disseminated" from the law. That's the genesis of the current law.

Mr. Nichols noted that the process went through the General Assembly and the VDACS Board was not involved.

Mr. Hurley suggested there were a couple of alternatives 1) remove the entire phrase, or 2) negotiate to an acceptable definition.

Ms. Passarello commented that if the current statute could not be applied to the mission of the work group, then a new statute is needed.

Mr. Hurley noted that was the approach taken in Delaware. He commented that while that was his preference, he recognized there were complexities with what is politically possible.

Ms. Booth stated that the job of the work group is to find the right solutions and recommend the best policy. The work group can recommend removing the exemption, creating a new definition, or creating a new law. She noted that at the outset she had asked why the work has to start with the noxious weeds law. She asked Mr. Walker if he had made progress in working with the industry to define commercially viable.

Mr. Walker responded that he had not attempted to create that definition. He noted that the work group could develop approved definitions but that would not be likely to occur prior to the Session.

Mr. Nichols commented that there was much discussion regarding not having formal recommendations. He asked if it would be feasible to establish another work group tasked with defining “commercially viable.”

Ms. Passarello commented that was not the purview of the work group. The work group was tasked with addressing the issue given the existing structure.

Mr. Nichols responded that the work group could also make recommendations for statutory changes. He suggested that rather than a recommendation on a statutory change the process could be delayed for a year.

Mr. Walker proposed that the work of the work group be enshrined in legislation. Included in that is a process for finishing the definitions.

Ms. Booth advised that she would be opposed to developing another group. The same stakeholders would participate and there would be more meetings with no decisions. She suggested that the staff to the Noxious Weeds committee could develop definitions through the regulatory process.

Mr. Nichols commented that the Noxious Weeds committee does not have the authority to make changes to the regulations. He also noted that the Board of Agriculture cannot make a change in a definition that does not align with the law.

Ms. Passarello commented that the law was created mainly for the agriculture industry. She question whether the current law was the most efficient vehicle to address a more complex question.

Mr. Hurley commented that if the work started from the beginning to develop a new law there would be the same types of discussions regarding definitions. There needs to be an additional criterion added to the definitions that balances the interests. He advised that he would like to see the work group agree on a definition of commercially viable.

Mr. Hurley noted that at the last meeting there was a discussion about the availability of the data from the industry and what data regarding the sales of invasives can be generated.

Mr. Regelbrugge responded that the data is available at a very high level. He suggested that JLARC be asked to generate valid data and suggested that legislative recommendations from the work group call on JLARC to issue valid data that can be trusted.

Mr. Walker noted that there were 30-60 species of concern and that some 35 need to be evaluated. The list has not been updated since 2014. There are a number of other species to be considered

Mr. Regelbrugge asked what the Noxious Weeds law restricted other than the movement of certain plants.

Mr. Hurley noted that there was considerable amount of work to get an additional twenty plants listed. He advised that the Noxious Weeds list is primarily educational and has little or no impact on the industry.

Mr. Walker noted that almost everything on the DCR list is available to purchase, just not from nurseries in Virginia.

Mr. Nichols noted that some of the plants listed on the regulatory side do require a permit to move.

Ms. Passarello noted that she had researched nurseries in Virginia. She found that most of the larger nurseries have a sensibility about wanting to do something good. There is a general orientation to get people headed in the right direction. She suggested development of a list of five species that the industry would be willing to consider eliminating. These five could be included in the report.

Mr. Beasley noted that there were probably 10-13 plants on the DCR list that cause concern.

Mr. Walker asked Mr. Beasley if he could provide that list. Mr. Beasley agreed to do so.

Mr. Regelbrugge commented that if a working definition of commercially viable could be addressed, the chance are that a bulk of the species of concern would not be found to be of commercial significance.

Mr. Beasley commented that if commercial viability could be defined, that would provide a means to regulate those species.

Mr. Connors asked about the DCR process to develop what goes on the list.

Mr. Heffernan responded that DCR has an assessment process adapted from The Nature Conservancy.

Mr. Nichols noted that even if a species is on the DCR list changes would still have to go through the regulatory process through the Noxious Weeds committee and the VDACS board.

Mr. Nichols asked the group to review the document he provided. (Attachment A). He advised that the document would align with much of the conversation. The document was compiled from prior discussions.

Under "Conduct studies," Mr. Hurley suggested that a JLARC study be included to identify plants as invasive as opposed to plants available for sale. The work group would put forward the ideas for the studies.

The studies should also look at the economic impact of both the sales and eradicating the plants.

Mr. Walker suggested two studies: 1) Identifying the cost of dealing with invasive species across the Commonwealth, and 2) What is the economic cost of controlling the sale of these species?

Mr. Connors noted that the studies should include the cost of remediation.

Mr. Walker noted that it would be difficult to determine how much revenue was associated with a particular plant.

Mr. Beasley suggested that it should be a percentage of overall sales. For example, if a grower was receiving three percent of their revenue from the sale of invasives, they would need to replace that product. He also noted that the impact of out-of-state sales should be considered.

Ms. Passarello asked if there was a threshold where the argument of commercial viability is moot.

Mr. Nichols noted that the Noxious Weeds Law does not prohibit the sale, but rather the movement of noxious weeds. In those cases it would be illegal to move the plant, but there could be a permit issued to allow movement from one state to another.

Mr. Regelbrugge commented that there were two different ideas being presented. One the one hand, commercial viability talks about a threshold of sales. The other consideration is the cost-benefit that looks at sales vs. cost.

Mr. Hurley noted that a JLARC study would likely need to be directed by the legislature.

Mr. Walker advised that he had been considering ways for Virginia Tech or another organization to look at what inaction would mean for the Virginia environment.

Mr. Nichols noted that the section on labeling came from suggestions included in meeting minutes.

Ms. Booth commented that she had five proposals. The first addressed labeling. She noted that a lot of the discussion was about the public being uninformed. One way to address that is the labeling of the plants.

Ms. Booth presented a document outlining her proposals. The document is included as Attachment C.

Ms. Booth proposed that the work group consider labeling and develop a provision for labeling at the point of sale.

Mr. Walker asked where the labels would be applied. Would it be by the grower or the retailer at the point of sale.

Mr. Regelbrugge expressed skepticism regarding mandatory labeling. It is difficult to arrive at a consistent and enforceable labeling system.

Ms. Passarello noted that quite a few nurseries already label their plants. She noted that as soon as the discussion turns to enforcement, there are additional costs. But she agreed that some system of labeling is needed.

Mr. Regelbrugge commented that he did not have a counter proposal but expressed concern regarding the labeling process.

Ms. Booth noted that the task of the work group is to present recommendations to the legislature.

Mr. Walker advised that the key to reducing the usage of plants is for the customers who are buying the plants to understand that they are a problem.

Mr. Beasley noted that labels come on all shapes and sizes. All of the necessary information cannot be included on small labels. He suggested the use of QR codes on the label that would take the consumer to a site that provides the necessary information.

Mr. Beasley objected to the third item on Ms. Booth's presentation that would charge a retail vendor with a Class 1 misdemeanor if the labeling policy was not followed.

Ms. Passarello expressed concern that when a penalty is attached, there must be an agency to enforce the plan. However, she noted that there does need to be a way to inform consumers that certain plants are problematic.

Mr. Nichols noted that from an enforcement standpoint there would need to be a list of invasive plants provided to retail establishment. The question would be who determines that a plant is invasive and in need of a label.

Mr. Beasley again suggested the use of a QR code that leads to a site that provides the pros and cons of a particular species.

Mr. Nichols commented that the information would have to come from the supplier.

Mr. Walker asked about out of state providers

Mr. Hurley asked if out of state retailers could be required to provide that label.

Mr. Nichols responded that it would be a matter of putting that requirement into the Code.

Mr. Walker asked if the industry would be okay with labels that address problems with a particular plant.

Mr. Beasley replied that no retailer would be inclined to make a plant less saleable.

Ms. Booth commented that she was not interested in sending 15-year-olds to jail, but was presenting a point of discussion. Her hope was that the work group could agree on acceptable language. She agreed that there would be costs to every decision the work group makes. She suggested a QR code was a positive step forward.

Mr. Nichols returned to Ms. Booth's document.

Regarding item 1 he asked if there was agreement that a sign should be provided explaining the value of native plants and the harm of invasive plants.

Mr. Hurley asked if state employees would be able to vote on the recommendations.

The second point on Ms. Booth's proposal was that native plants be labeled with different levels of warning.

Mr. Regelbrugge advised that he could support a model label, but not a mandate.

Mr. Walker asked about requiring nurseries to organize a separate section for native plants.

Ms. Passarello noted that could be done in nursery catalogues and is already being done by some nurseries.

Mr. Rowe asked if there was a Virginia native label that the industry would support using.

Mr. Beasley commented that there could be something similar to the Virginia Finest label.

Ms. Booth advised that she would withdraw the recommendation regarding a Class 1 misdemeanor.

Mr. Nichols advised that he would incorporate Ms. Booth's recommendations into the document containing the recommendations from the full group. He asked that members review the document and suggest necessary edits prior to the next meeting.

PUBLIC COMMENT

Ms. Whitmer advised that she sent a summary regarding the Plant Virginia Native initiative to Mr. Nichols. She noted that Virginia Coastal Zone management has a point of sale agreement with providers that encourages, but does not mandate the sale of native plants. The agreement shows retailers how to increase their revenue.

Mr. Walker asked about the deadline for the final report.

Mr. Nichols commented that the report is due to the General Assembly by the first day of the session. The hope is to complete the first draft by December 1 because it will require review by two agencies.

Mr. Nichols advised that November 10 would be the last meeting of the work group.

ADJOURN

There was no other business and the meeting adjourned.

ATTACHMENT A

HJ527 Preliminary Recommendations from Workgroup

9/16/2021

Conduct studies to:

- Identify and quantify the economic impact of the sale of invasive plants in Virginia.
- Determine how much money is made by selling the plants listed on DCR's invasive species list,
- Determine the financial impact if all those listed plant species were banned,
- Identify the industries that would be negatively impacted by banning the sale of all DCR's invasive plant species.

Labeling:

All species of plants listed on DCR's invasive species list labeled as "may be invasive" at all points of sale. This labeling requirement would include nursery locations, retail establishments, and garden centers.

- Labeling would be costly for the nursery industry
- Currently, all production nurseries (266 nurseries in FY21) are inspected each year, but not all retail outlets (2,282 retail nurseries in FY21), so there would be a cost to enforcing a labeling requirement as VDACS would then need to inspect all licensed retail nurseries.

Taxes:

- Tax on Invasive Plant Species
 - Establish a revenue tax or sales tax generated from the sale of those plants on DCR's invasive plants list, which would be used for the management or mitigation efforts for invasive plants, or used to establish alternative (native) plant species.
- Provide tax incentives for using native plant species
 - When providing tax incentives, it is likely that revenue sources will need to be identified in order to cover the cost of the incentives in order to make the tax incentives revenue-neutral.

Transition Period:

Establish a phase-out period where all plant species currently on DCR's list will have a 5-10 year deadline before they are banned from sale in the Commonwealth.

- The transition period will allow the nursery industry to adjust, thereby reducing the financial impact
- The transition period will allow plants with invasive characteristics to continue to be planted in Virginia

Amend Noxious Weeds Law or Regulations:

- Amend §3.2-800 of the Noxious Weeds Law by defining “commercially viable.” This definition should reference the economic impact to the nursery industry of sale of this plant species.
 - Defining commercially viable will require input from industry. An industry workgroup may be needed to define commercially viable
- Remove the phrase, “except when in-state production of such living plant, or part thereof, is commercially viable or such living plant is commercially propagated in Virginia” from §3.2-800 of the Noxious Weeds Law.
- Include all plants on DCR’s Invasive Plant Species List on the noxious weeds regulation (Section 20 of 2VAC5-317)
 - Note: Most plants on DCR’s list are not being sold
 - Potential starting point is to list 3-5 plants on DCR’s list
 - DCR’s process for evaluating plants is subjective
 - DCR’s process for adding plants to their Invasive Plant Species List does not go through the Commonwealth’s standard regulatory process for regulations
- Include plants on Virginia’s noxious weeds list that are listed as noxious weeds in neighboring states in an effort to establish a regional approach to regulating noxious weeds (ie. Maryland).
- Add and define “Tier 4” to the Noxious Weeds Regulation (Section 20 of 2VAC5-317)
- Amend Section 3.2-804 of Noxious Weeds Law to remove requirement for permit to move Tier 4 noxious weeds (requires bullet above to add Tier 4 to the Noxious Weeds Regulation)
- Include an economic impact as part of the current noxious weeds assessment in order to evaluate both the environmental impact and the economic impact of a specific invasive plant
 - Analysis of the economic impact will be more difficult than the environmental impact
 - Note: This would likely not require a statutory or regulatory change

Education and Outreach:

Educational campaign to reach all industries involved with the green industry as a whole, not just nurseries and retail establishments. Landscape professionals, home owners, and other members of the green industry.

- Education and outreach could discourage the use of invasive plants to the point where the sales of these plants are no longer commercially viable for the nursery industry
- Education and outreach should focus on the nursery industry as well as consumers, government agencies, and localities
 - Outreach at the point of sale is important to educating consumers
 - Outreach for production nurseries is also needed
- Plant Virginia Natives Campaign is a regional native plant guide developed by the Virginia Coastal Zone Management Program. These publications are limited to the Chesapeake Bay Watershed program, however similar outreach materials could be developed for the entire Commonwealth, providing information to consumers on native plants that are suited for their geographic area.
- Revise the Master Gardener document

Establish Workgroup to Continue Work on Invasive Plant Species:

Recommendation that an invasive plant species group (long term) be established to carry out these issues and concerns and implementation of phasing-out the DCR’s invasive plant species list.

Native Plant Species:

- Develop a list of alternative native plant species that would be suitable to replace the invasive plant species.
 - Development of alternative species is costly and takes a long time and will not provide an immediate solution when the nursery industry is seeking to replace those invasive plants which are currently being sold
- Establish requirements for the use of native plant species
 - Depending on these requirements, it could be difficult to enact as it is likely that the current supply of native plants will not be sufficient to meet demand
- DCR has developed a list of native plant recommendations for solar farms. These recommendations may be able to be modified for other uses.
- Require state agencies and localities to increase the use of native species on state or local property. (DCR already has a policy for planting on DCR owned lands).
 - The supply of native plant species may not meet the demand if this requirement is implemented
 - Need to evaluate the supply of native plant species and the resources needed to increase the supply of native plant species

ATTACHMENT B

PROPOSED WORKING GROUP FRAMEWORK

10/13/21

OBJECTIVE: Provide a framework for discussion and possible proposal that minimizes impact on the trade while achieving some of the stated goals of HJ527. Virtually anything in this framework can be changed, if not improved. Hopefully this will help move us to a path of constructive discussion and compromise. Many of the items discussed below will require changes to laws and/or regulations. 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.

TAKING INVASIVE PLANTS OUT OF THE TRADE

- Start by focusing on clearly defining the “commercially viable” clause in the noxious weed law:
 - “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.
- As discussed in the prior meeting of the Working Group, if only a small number of nurseries are selling just a few plants per year, then that should not be considered to be commercially viable.
- To define “commercially viable” will require serious industry involvement including representation from different kinds and sizes of growers (perhaps including garden centers that grow and propagate plants).
 - Presumably the right group of people could come up with definitions of the minimum thresholds for sales to count as commercially viable and also to propose phase-out durations.
- Also need to work out clear definitions of “in-state production”, “or part thereof” and “commercially propagated”.
 - 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 if they are being sold at volumes below the “thresholds” and therefore no longer considered to be “commercially viable”.
- With regard to phase-out durations: inventory in a nursery can vary from 1 year up to 6 years or more for some plants to be grown and then sold.
 - Implication is that any phase out period could vary by plant and be up to 6 years or possibly even more.
- Provision needs to be made for the Noxious Weeds process to list a plant as a noxious weed, but allow for exceptions for cultivars proven to be non-invasive. 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*
- A separate process could be devised to deal with substitutes for plants that are still considered to be commercially viable, but don’t have non-invasive cultivars. This will require major discussion, as it is a complex topic and ultimately becomes a subjective decision, not a data-driven decision.

- Collectively, we need a list of the 30-60 plants in the trade that are generally considered to be invasive and then:
 - Propose alternative plants that could be substituted for them. Note that proposed substitutions have to take into account how and why the plants are used (e.g. commercial landscaping, lining driveways, etc.), levels of maintenance required, comparable showiness, size, shape, color, etc.
 - Native plants are clearly preferred, but non-native non-invasive plants should also be considered.
 - Identify trends and specific cases where landscapers are already making substitutions to illustrate that it works.
 - Also note cases where non-invasive cultivars have been developed or are being developed
 - Identify plants on this list that are agreed to have existing viable substitutes and therefore might be candidates for near-term phase-outs. How do we proceed with these? Allow the Noxious Weeds Advisory Committee to nominate the plants if there is agreement from the industry that there are viable substitutes?
 - Who has to agree that they are viable substitutes? The growers vs the landscape architects who actually choose plants professionally? Or both?
- For plants that are still deemed to be commercially viable with no agreed upon substitutes, agree on strategies to be deployed to reduce demand over time to the point where more of them are no longer considered commercially viable. The obvious strategies include:
 - General public awareness campaigns to push people to plant non-invasive alternatives
 - Will the industry help with this?
 - Point of sale labelling of invasive plants, preferably with suggested alternatives
 - **This is a major point.** Today consumers are buying plants and not realizing they are buying invasive plants that can cause problems. The most effective way to create the desired changes is to make sure that customers at the point of sale are aware that these plants are invasive. Arguably we owe it to the consumers to be sure they are making educated decisions and not planting something they will regret.
 - This kind of labelling has been done in other states, at least for plants that are being phased out, including plants shipped to other states by Virginia growers.
 - Presumably this would apply only to 30-60 plants, including those being phased out because they are no longer considered commercially viable.
 - Other demand reduction strategies?
- In summary there would be four groups of invasive plants:
 - Plants not meeting the new definition of commercially viable and therefore subject to phase-out and being added to the noxious weeds list by the Noxious Weeds Advisory Committee (NWAC).
 - Commercially viable plants with proven, non-invasive cultivars. These plants should be allowed to go through the NWAC noxious weeds process with exceptions to allow the sale of the non-invasive cultivars.
 - Commercially viable plants with other plants that are generally agreed to be acceptable substitutes. For these the industry will need time to phase in the substitutes and phase out the invasive plants. Note that this will require some form

of industry focused education program including growers, retailers, landscape architects, etc. Each plant will have its own phase-in/phase-out schedule. Who gets to decide what are “acceptable substitutes”? This would seem to require its own study group to see if there are answers that can be agreed on.

- Commercially viable plants with no agreed substitutes where programs to reduce demand would be implemented to try to drive these plants down to the level of no longer being commercially viable.
- Are there any plants that the industry would agree today are not commercially viable, without going through all the above process? If so, could these be named in the forthcoming legislative request and explicitly allowed to be acted on by the Noxious Weeds Advisory Committee?

PROMOTING NATIVE PLANTS IN THE TRADE

- Agreement by the industry groups to promote the use of native plants among their members and to publicize to their members the problems caused by specific plants.
 - VNLA to agree to have an article about an invasive plant in the trade in each issue of their newsletter?
 - Farm Bureau and others to do the same or similar?
- VNLA et al to help us identify invasive plants that have de minimis sales and help convince the purveyors to substitute native plants for them

PUBLIC EDUCATION

- Labeling plants at point of sale to educate consumers and to let them know which plants are invasive (and alternative plants to consider) and which are native
- Concept is to educate the public to switch demand to native plants and away from the invasives
- Support native plant campaigns
- Good faith efforts by the industry to educate the public and move them toward native plants will reduce the pressure from conservation groups to make further changes.

STATE ACTIONS

- DCR to update list of 90 invasive plants on a regular basis with a defined science-based process
- Prohibit state agencies from selling or planting anything on the DCR list; use native plants wherever possible
- Have the state nurseries jump start the mass production of selected native plants to establish the markets and provide stock for state plantings and then phase out said production as private industry in the state steps in? Alternatively, have the state subsidize private nurseries to produce more native plants and fewer invasives.
- Fund and implement the Invasive Species Management Plan
- Add staff support to the NWAC to prepare noxious weed nominations

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 (see discussion below)
- 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

ADDING MORE PLANTS TO THE NOXIOUS WEEDS LIST

- New Tier 4 to solve the bale of hay problem. No permit required for incidental movement of these plants.
- Expedited process for the NWAC to nominate plants already listed in two other states in the Region of Interest, as defined in the NWAC plant nomination process. Would apply if it is determined that the neighboring states in question have a suitably or comparably rigorous, science-based process for nominating and approving their listed plants. The approval process once a plant leaves the NWAC would be the same as it is today.

- If listed by one other state in the Region of Interest, then put a moratorium on purveyors adding that plant to their businesses unless the NWAC determines that the plant is not a threat if released in Virginia.

FUNDING FOR MOST OF THESE PROGRAMS

- Diversion of the sales tax on plants to a special revenue fund to fund invasive plant remediation efforts including early detection and rapid response activities, forming new PRISMs, public education, funding studies, funding plant-related portions of the state's invasive species management plan, etc. Can include funding positions for these purposes in state agencies.
 - Avoids the imposition of a new tax on the industry and puts the industry in a position where they can say they are funding solutions to the problem.
 - Consider forming an advisory council similar to this group to advise the state on allocations of the funds – see the discussion of a Biodiversity Task Force.
 - Could be overseen jointly by the Secretary for Agriculture and Forestry and the Secretary for Natural Resources
 - Provides a dedicated funding stream less subject to changes with every legislative session or change of party in control
 - Could include wording so the industry won't feel this could be used against them
 - Not sure what this means in terms of reporting requirements, though horticulture industry sales for VA are being compiled at least by the USDA.

OTHER TOPICS

- How to prevent new problem plants from entering the trade? What process, if any, do they go through today?
- Do we need to differentiate regions of the state where a plant is invasive vs regions where it is not? Allow for the Noxious Weeds Advisory Committee to allow exceptions by region if and when it deems it appropriate?

CONCLUSION

If the Working Group is interested in pursuing this kind of framework approach, I would propose that all the legislative implications of all the above topics be packaged up in one comprehensive bill to be presented to the next legislative session. For some areas that lack adequate detail, the bill could empower VDACS to determine the answers and build them into the regulations.

BACKGROUND INFORMATION ON INDUSTRY SIZING:

2019 Virginia Census of Horticulture Results: The U.S. Department of Agriculture's National Agricultural Statistics Service (NASS) released the 2019 Census of Horticultural Specialties report, the only source of detailed production and sales data for floriculture, nursery, and specialty crops for the entire United States. The data show that horticulture operations in Virginia sold a total of \$271 million in floriculture, nursery and specialty crops in 2019, down 16% from the sales in 2014. The number of horticulture operations in Virginia decreased 17% during this time to 465.

Highlights from the report include:

- Nursery stock: \$71.6 million, up 8%
- Annual bedding/garden plants: \$70.8 million, down 42%
- Sod, sprigs and plugs: \$11.3 million, down 38%
- Potted flowering plants: \$51.1 million, up 63%
- Potted herbaceous perennials: \$29.6 million, up 2%
- Food crops under protection: \$16.5 million, down 23%

Other key findings from the 2019 Census of Horticultural Specialties report include:

- Corporately-owned operations made up the largest number of operations, accounting for 44% of total operations and 84% of total sales (\$227 million).
- Total industry expenses were down 1% since 2014, with labor being the largest cost, accounting for 38% of total expenses in 2019.

ATTACHMENT C

Proposals presented by Glenda Booth, October 21, 2021

Note: The workgroup only discussed the “Public Education Labeling” proposal at the October 21 meeting.

9/14/21 DISCUSSION DRAFT
Invasive Plants (H.J.Res. 527) Workgroup Recommendations
From Glenda Booth, Audubon Society of Northern Virginia

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.

Utility-scale Solar Facilities

In coordination with local governments, the Department of Environmental Quality shall require applicants for permits for utility-scale solar facilities (facilities that exceed two megawatts), as a condition of the permits, to give priority to planting native plants at solar facility sites, including buffers, using DCR’s Pollinator Smart Program.

Rationale: Solar facilities are increasing rapidly around the state, with companies buying or leasing large parcels of farmland or other undeveloped land. Utility-scale solar facilities can require hundreds, even thousands of acres of land, between five and ten acres of land per megawatt of generating capacity, according to the Solar Energy Industries Association.

Solar energy facilities are predicted to grow. The 2020 Virginia Clean Economy Act is designed to phase out fossil-fuel power plants and decarbonize energy production by 2050. Solar is one source of that renewable or non-carbon energy.

“Solar energy is key to Dominion Energy’s clean energy growth,” says the company’s website. “There are plans for a significant expansion of large-scale solar energy in Virginia . . . at least 15,900 megawatts of new solar energy could be added in the next 15 years.”

Solar facilities offer a potential market for more native plants. Native plants can provide biodiversity and more ecological services than plants that companies might plant without a requirement like this.

Public Education Labeling

The commissioner shall --

(1) By January 1, 2023,

(a) prepare a model sign for retail establishments that explains the value of native plants and the harm of invasive plants;

(b) and a model label for the wholesale and retail sale of plants and require that plant labels include the plant's common and scientific name and an explanation indicating that the plant is native or invasive to eco-regions that include Virginia.

Rationale: Consumers need guidance in buying plants at the point of sale and many retail employees are not knowledgeable about native and invasive plants. Providing this information at the point of sale is an effective way to educate employees and customers, discourage the sale of invasive plants and encourage the use and sale of native plants.

(2) For all native plants offered for sale, require retail outlets to organize the plants in a separate section with the required labeling.

Rationale: Having a separate section of native plants makes shopping easier and emphasizes native plants' importance. Since many vendors and their employees cannot identify native plants, having them all in one place together makes them easier for staff and customers to find and identify.

(3) Any wholesale or retail vendor who fails to comply with this section is guilty of a [Class I misdemeanor].

Rationale: Penalties encourage compliance with the law.

Establish a DOF Native Plant Nursery

The Department of Forestry shall

(1) establish a native plant nursery and provide native plants to the public and managers of local and state properties at the cost of production;

(2) prepare and submit to the General Assembly a 10-year estimate of funds needed to establish and annually manage a native plant nursery, including the estimated cost of acquiring property if necessary.

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.

Invasive Plants Management Plan

(1) require the DCR to annually request sufficient funds to implement the plan for plants and establish measurable steps and deadlines for implementing the plan.”

Rationale: State officials argue that there are insufficient funds to implement the invasives plan for plants required in current law. They should prepare an estimate of need, share estimates with the public and request funds from the General Assembly.

(2) Prepare an annual report to the public and the legislature by December 15 on the status of implementation of the plan.

Rationale: Requiring an annual report on the invasives plants plan would encourage more accountability and implementation and provide more data to the public and the legislature.

(3) Recommend necessary changes in the law to discourage the use and sale of invasive plants and encourage the use and sale of native plants.

Rationale: Agency officials say that only the governor’s policy staff can recommend legislation. This would agency officials a legal “push” to pro-actively make recommendations and not rely on appointed officials to propose amendments or new laws. Agency officials who have to administer the law better understand its strengths, weaknesses and potential. In our system of government, the executive proposes; the legislature disposes.