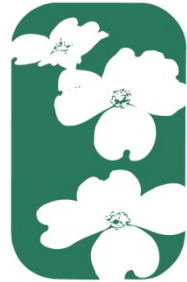


Tools for Localities Grappling with Hydraulic Fracturing in Virginia



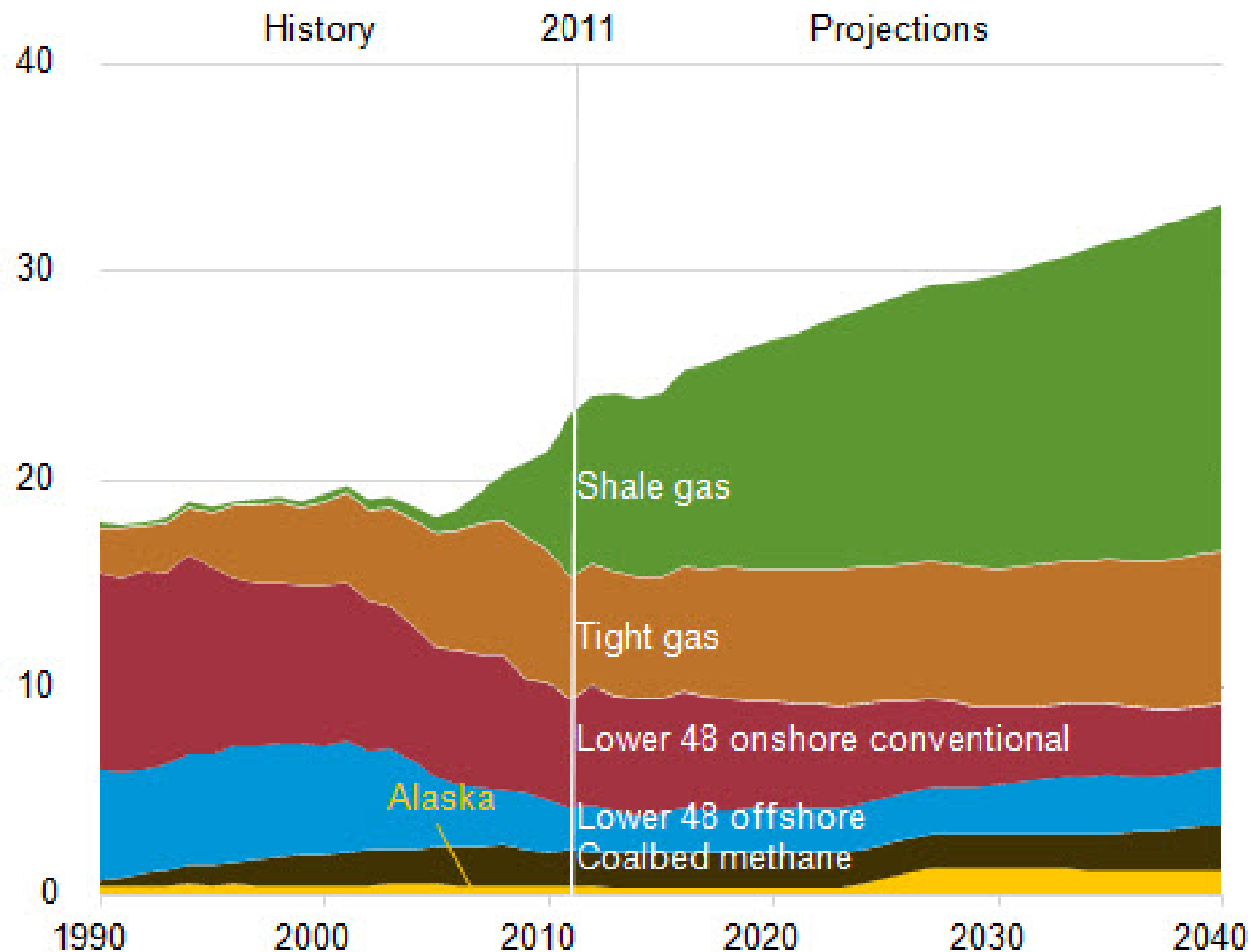
Southern
Environmental
Law Center

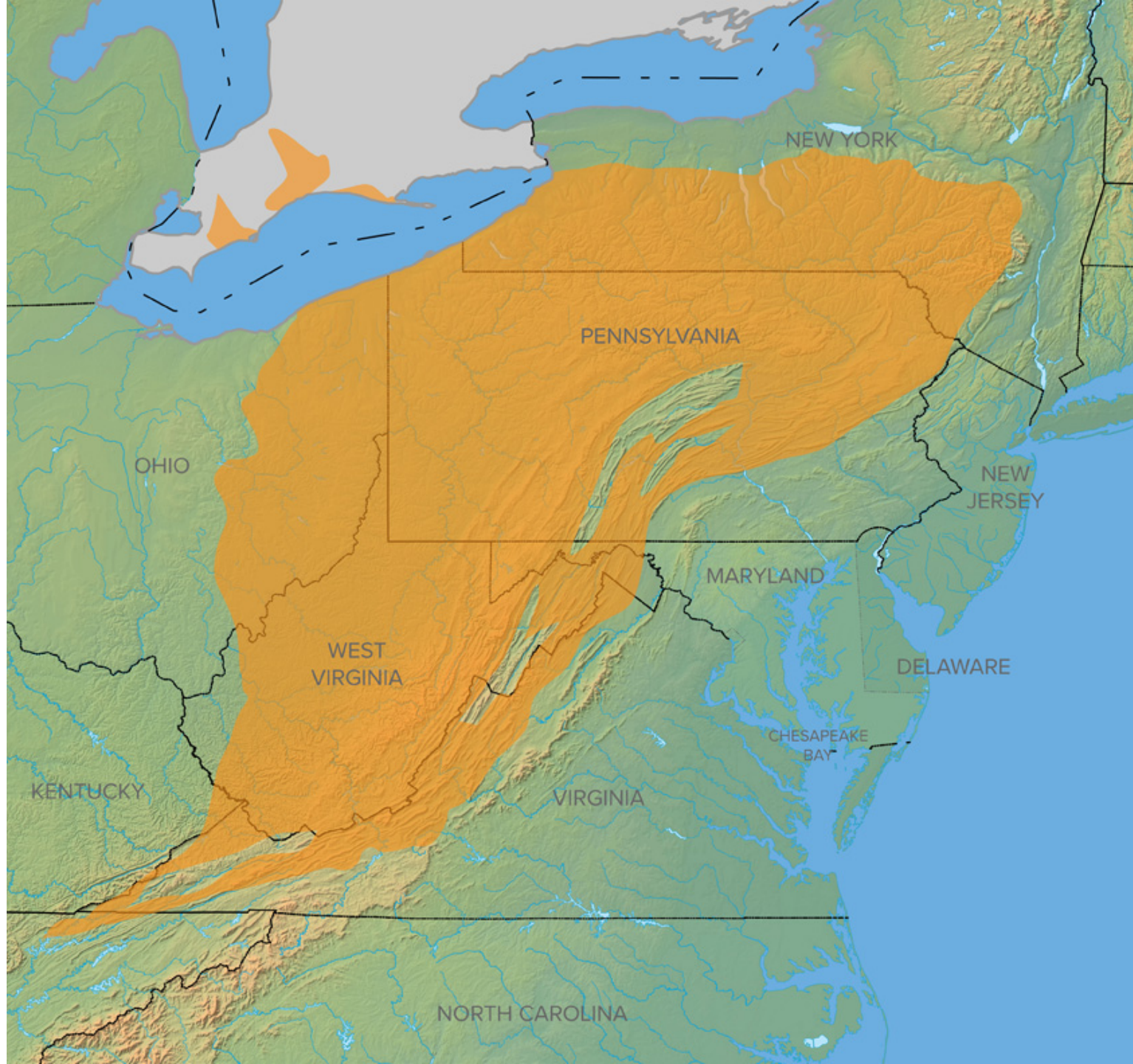
SouthernEnvironment.org

North American shale plays (as of May 2011)

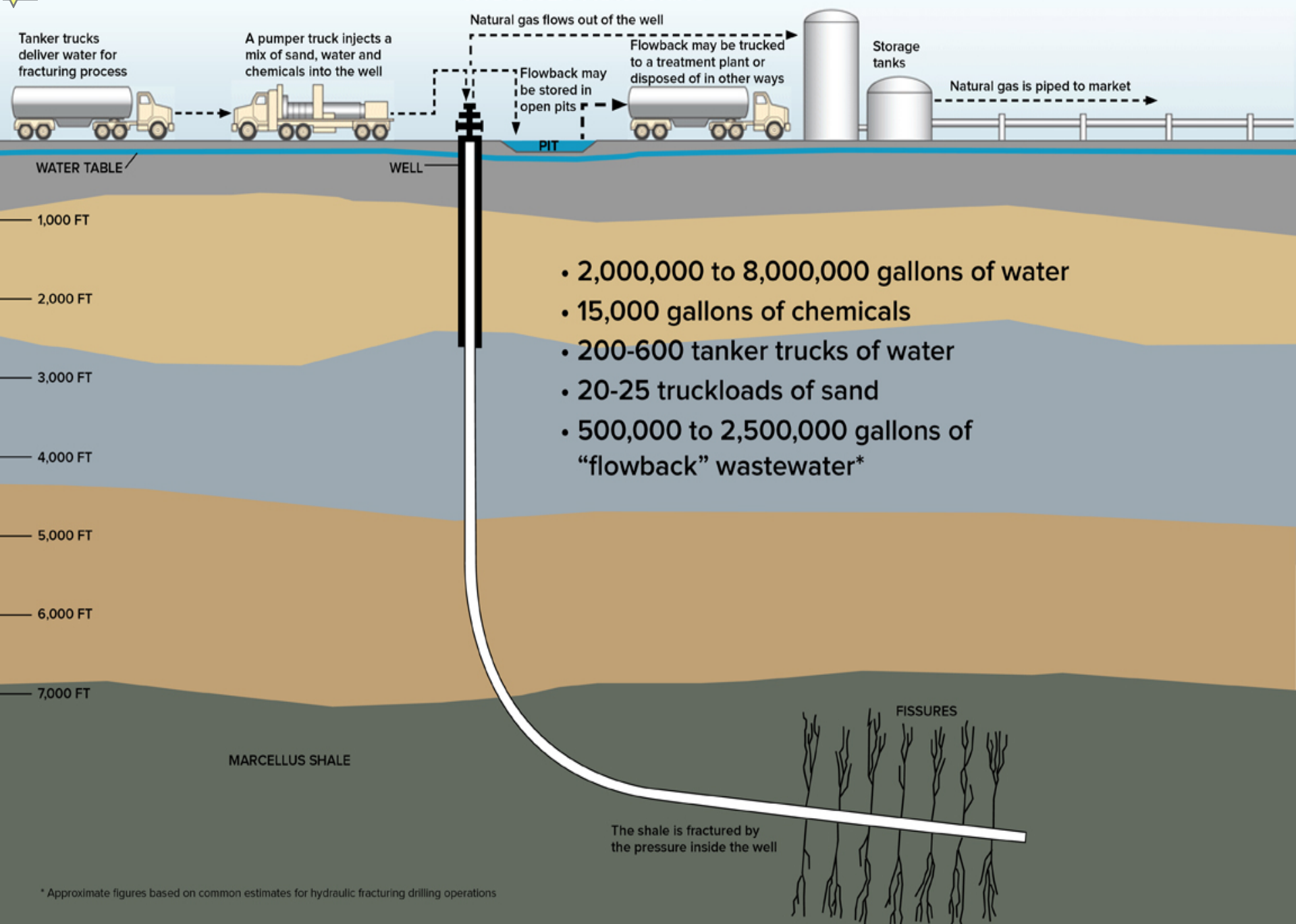


Figure 91. Natural gas production by source, 1990-2040 (trillion cubic feet)





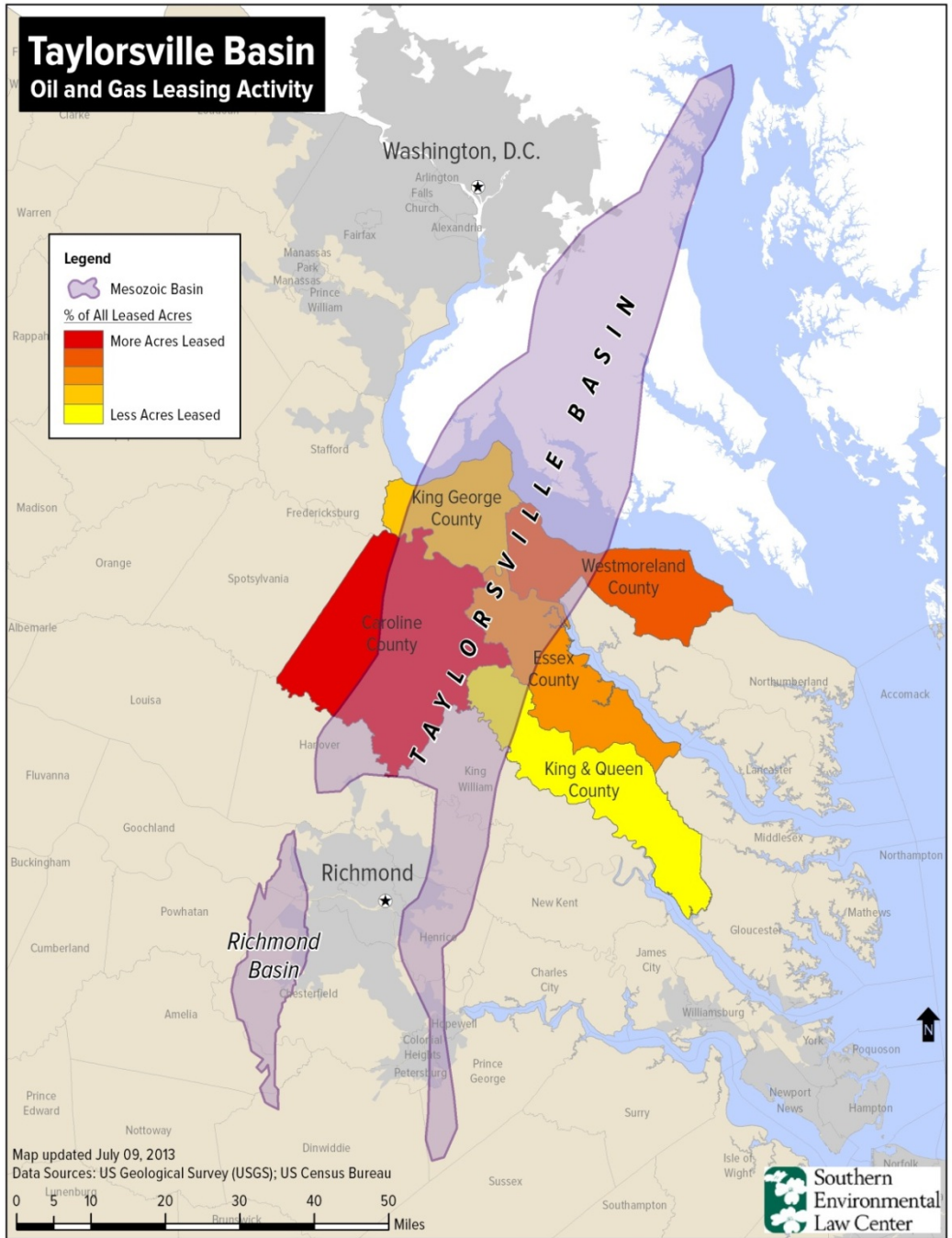
HYDRAULIC FRACTURING



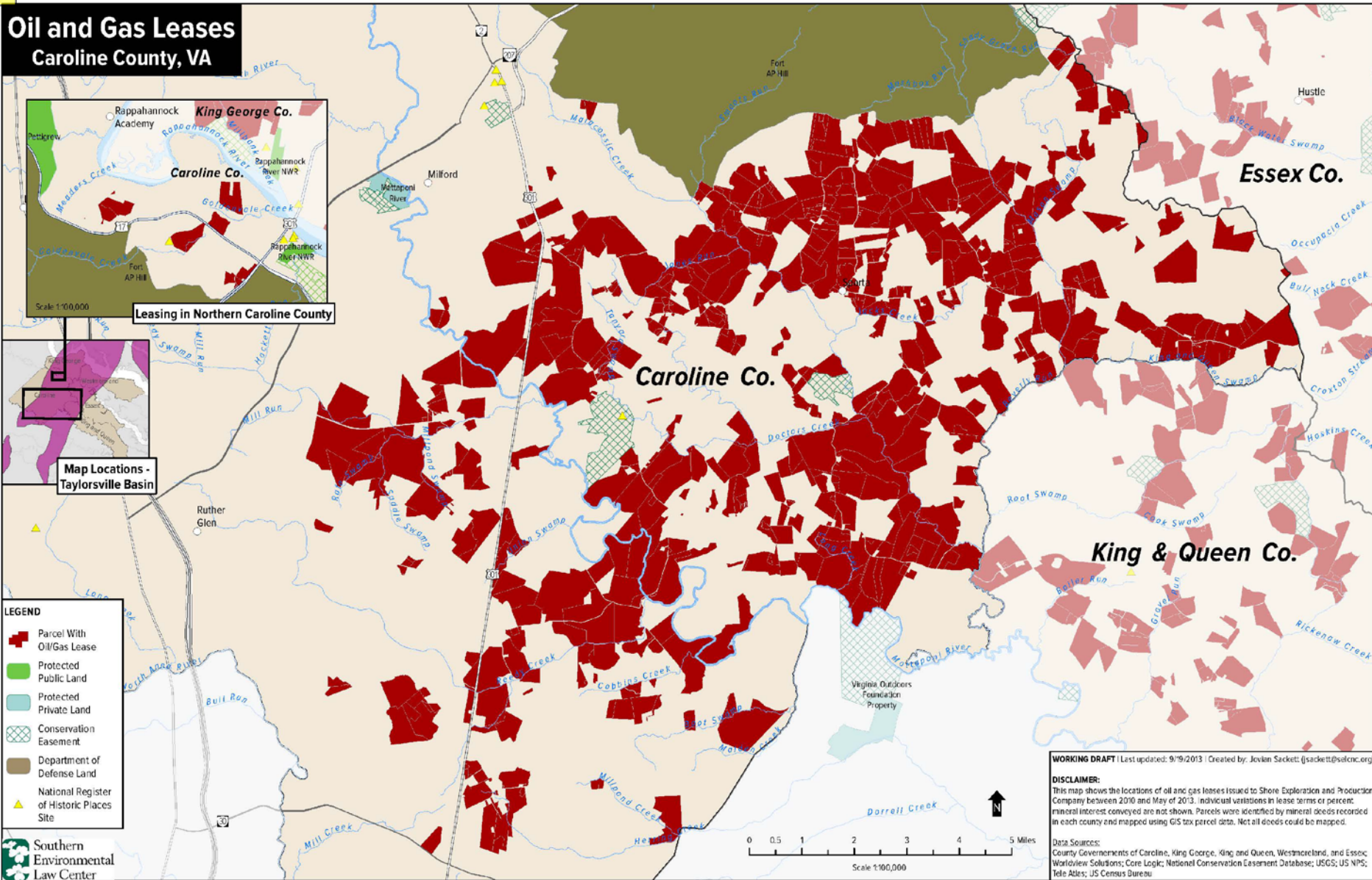
* Approximate figures based on common estimates for hydraulic fracturing drilling operations

Taylorville Basin

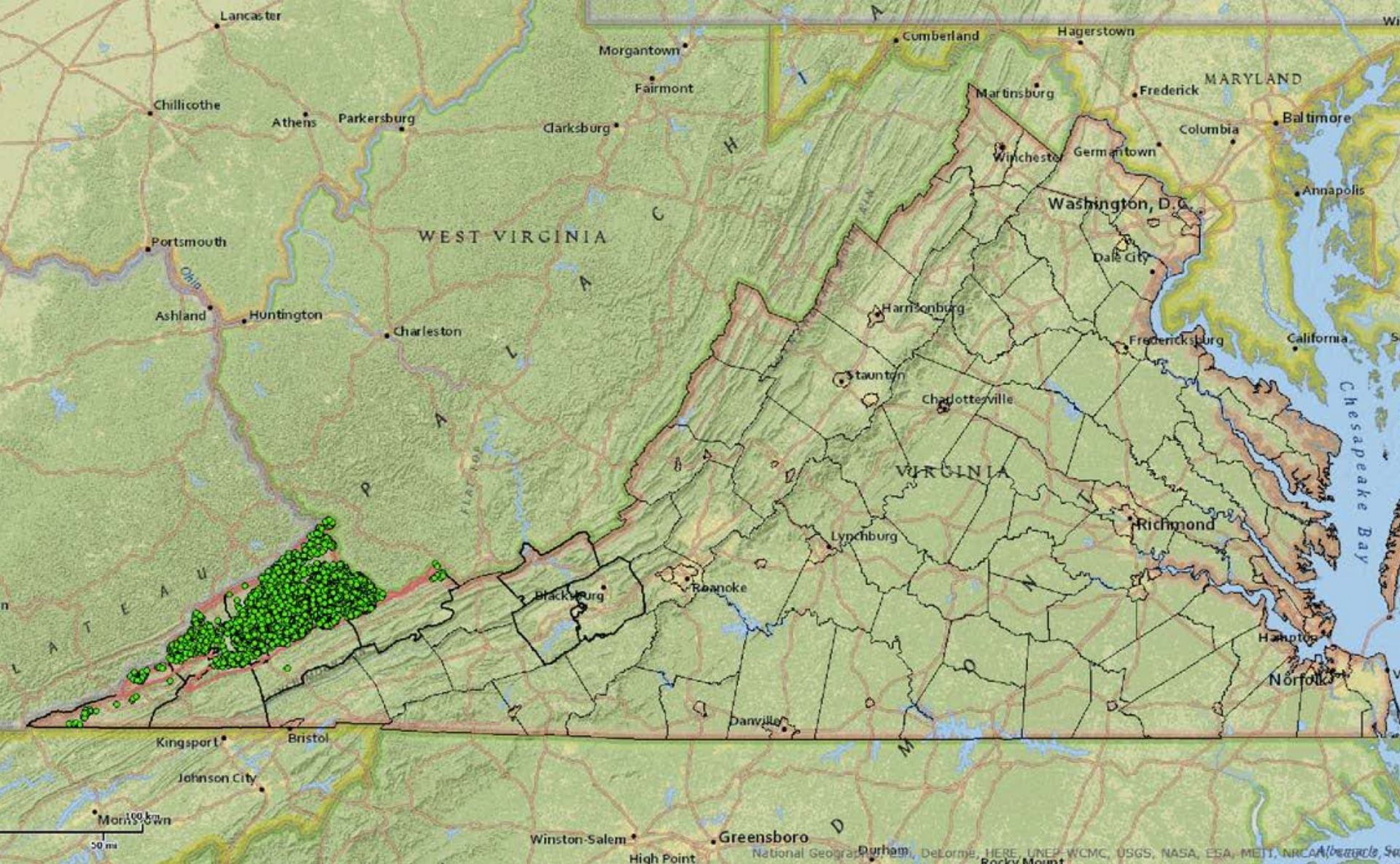
Oil and Gas Leasing Activity



Oil and Gas Leases Caroline County, VA



- More than 84,000 acres leased since 2010 in five counties



Virginia has about 8,300 existing gas and oil wells, all in the southwest part of the state.









6 28 '12









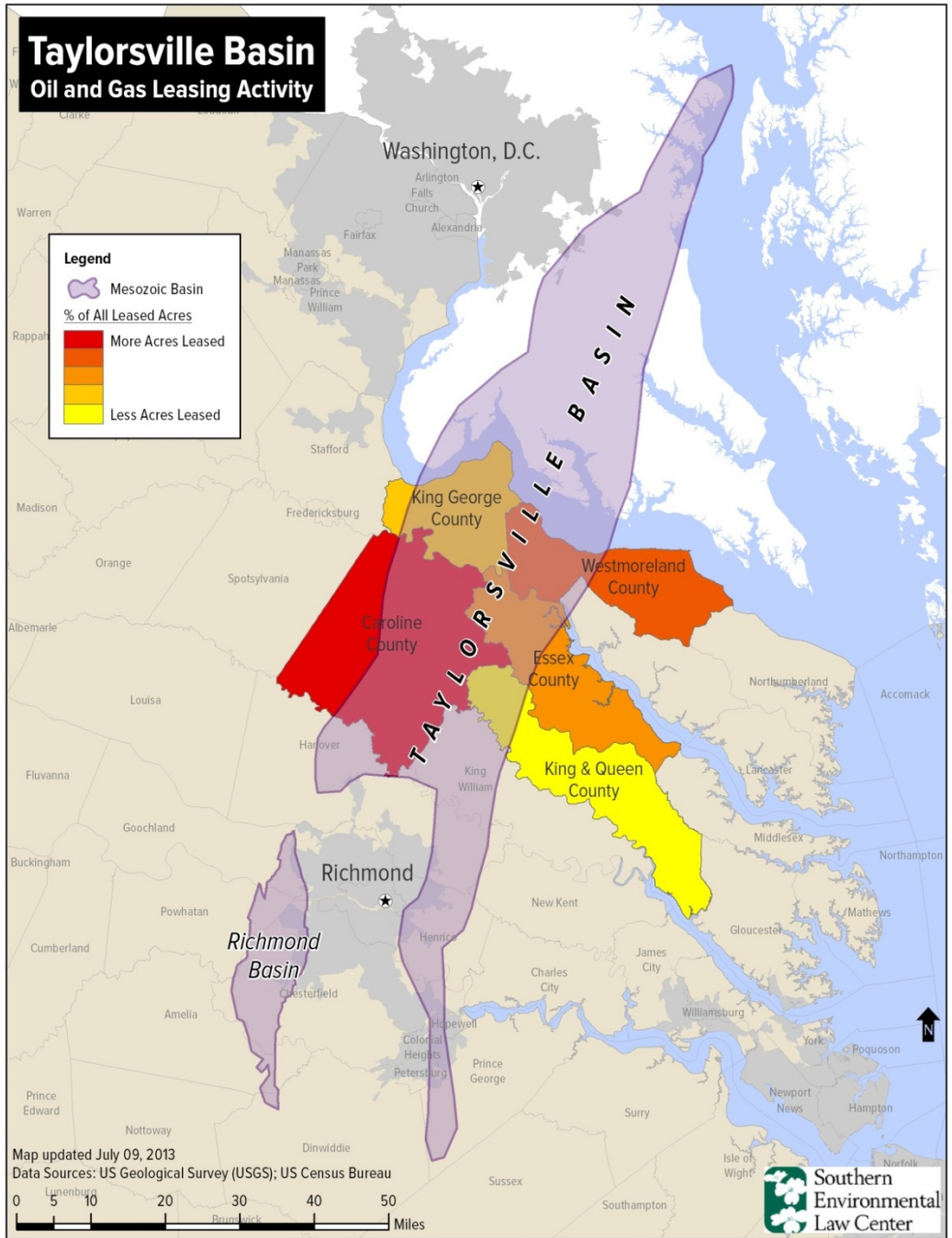






Taylorville Basin

Oil and Gas Leasing Activity



Va. Code Ann. § 15.2-2280

Zoning Ordinances Generally

Any locality may, by ordinance, classify the territory under its jurisdiction or any substantial portion thereof into districts of such number, shape and size as it may deem best suited to carry out the purposes of this article, and in each district it may regulate, restrict, permit, prohibit, and determine the following:

1. The use of land, buildings, structures and other premises for agricultural, business, industrial, residential, flood plain and other specific uses; . . .
4. The excavation or mining of soil or other natural resources.



Va. Code Ann. § 45.1-361.5

“No county, city, or town or other political subdivision of the Commonwealth shall impose any condition, or require any other local license, permit, fee or bond which varies from or is in addition to the requirements of this chapter. However, no provision of this chapter shall be construed to limit or supersede the jurisdiction and requirements of . . . local land-use ordinances. . . .”



COMMONWEALTH of VIRGINIA

Office of the Attorney General

January 11, 2013

Kenneth T. Cuccinelli, II
Attorney General

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Richmond, Virginia 23219
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Virginia Relay Services
800-828-1120
7-1-1

The Honorable Terry G. Kilgore
Member, House of Delegates
Post Office Box 669
Gate City, Virginia 24251

Dear Delegate Kilgore:

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

Issue Presented

You ask whether a local governing body has the authority to adopt a blanket prohibition of the exploration for, and drilling of, oil and natural gas within the locality's boundaries through the use of its zoning laws.

Response

It is my opinion that, although a local governing body may adopt a zoning ordinance that places restrictions on the location and siting of oil and gas wells that are reasonable in scope and consistent with the Virginia Gas and Oil Act¹ and the Commonwealth Energy Policy,² a local governing body cannot ban altogether the exploration for, and the drilling of, oil and natural gas within the locality's boundaries.

Background

Since April 20, 2010, the Virginia Gas and Oil Board ("Board") has approved the creation of four different 160-acre units for the drilling of gas wells in Washington County.³ Additionally, on August 16, 2010, the Board approved an application to pool⁴ the interests in the first of those four units.⁵ The uncontradicted testimony at the pertinent Board hearings established that drilling for gas in Washington

¹ The Virginia Gas and Oil Act, Chapter 22.1 of Title 45.1, VA. CODE ANN. §§ 45.1-361.1 through 45.1-361.44 (2002 & Supp. 2012).

² The Commonwealth Energy Policy, Chapter 1 of Title 67, VA. CODE ANN. §§ 67-100 through 67-103 (2012).

³ See Va. Gas and Oil Board transcripts for docket item VGOB-10-0420-2700, heard on April 20, 2010, docket item VGOB-11-0315-2918 heard on March 15, 2011, and docket items VGOB-11-0315-2920 through -2956, heard on June 14, 2011.

⁴ Section 45.1-361.21(Supp. 2012) gives the Board a nondiscretionary mandate to pool, or utilize, all interests in a drilling unit when the criteria of that statute are met.

⁵ See Va. Gas and Oil Board transcript for docket item VGOB 10-0615-2713, heard on August 16, 2010.

“[A] locality’s delegated power is limited to the ability to adopt *reasonable siting regulations*.”

- Va. Attorney General Cuccinelli (January 2013)

- Statutory language is not ambiguous, see 1993 Va. Op. Att’y Gen. 173 (April 16, 1993)
- *Resource Conservation Management, Inc. v. Board of Supervisors*, 380 S.E.2d 879 (Va. 1989)
- General Assembly added the exception for local land-use ordinances in 1990, a year after the *Resource Conservation* decision.



LOCAL LAND-USE AUTHORITY

- Localities have the full scope of their delegated land-use authority to prohibit or regulate gas and oil development. See , e.g., Va. Code Ann. § 15.2-2280.
- Localities can impose additional requirements not contained in the Gas and Oil Act that do not conflict with the Act's requirements. See *Ticonderoga Farms, Inc. v. County of Loudoun*, 409 S.E.2d 446, 449 (Va. 1991).
- Examples:
 - a) location restrictions, setback requirements, noise requirements, traffic restrictions, hours of operation
 - c) measures to protect water quality, liner requirements for wastewater pits

Comprehensive State Study of Drilling in Tidewater Va. Code Ann. § 62.1-195.1(H)

- Environmental risks and safeguards
- Transportation issues
- State-of-the-art oil production technology
- Economic impacts
- Regulatory initiatives
- Operations standards
- Other matters related to the production of oil in the region

Resolution #14-017

**A RESOLUTION OF THE BOARD OF SUPERVISORS OF
ESSEX COUNTY, VIRGINIA**

WHEREAS, Essex County overlies a portion of the Taylorsville basin, an ancient geologic formation that is believed to contain oil- and natural gas-rich shale and access to this oil and natural gas will likely involve horizontal drilling and hydraulic fracturing technology;

WHEREAS, industrial oil and gas development, including horizontal drilling and hydraulic fracturing, has never taken place in the Tidewater region of Virginia and the risks and impacts to the natural resources and the communities of Essex County are not well-understood;

WHEREAS, Va. Code Ann. § 62.1-195.1, subsection H, requires that the Secretary of Commerce and Trade and the Secretary of Natural Resources prepare a "joint report to the Governor and the General Assembly assessing the environmental risks and safeguards; transportation issues; state-of- the-art oil production well technology; economic impacts; regulatory initiatives; operational standards; and other matters related to the production of oil" in the Tidewater region upon a finding "that production of commercially recoverable quantities of oil is likely and imminent" in the region;

WHEREAS, Shore Exploration & Production Corporation has secured more than 84,000 acres of oil and gas leases on the Northern Neck and Middle Peninsula, including more than 12,300 acres of leases in Essex County, and recently announced that it expects to start drilling for oil and natural gas in the Taylorsville basin in the next twelve to eighteen months; and

WHEREAS, the joint report described in Va. Code Ann. § 62.1-195.1 will be a critical and essential tool for Essex County and other localities in Tidewater to understand the risks and impacts of industrial oil and gas development in the Taylorsville basin.

NOW, THEREFORE, be it resolved, the Essex County Board of Supervisors requests that the Governor, the Secretary of Commerce and Trade, and the Secretary of Natural Resources complete the joint report and recommendations on matters related to the production of oil and gas in the Tidewater region, as described in Va. Code Ann. § 62.1-195.1, subsection H, prior to approving any state permit for exploratory or production oil or gas wells in Essex County.

ADOPTED: This 11th day of March, 2014

CERTIFICATION OF ADOPTION OF RESOLUTION

The undersigned Clerk of the Board of Supervisors of the County of Essex, Virginia hereby certifies that the Resolution set forth above was duly adopted during an open meeting on March 11, 2014, by a majority of the members of the Board of Supervisors at a regular meeting with the following votes:

“WHEREAS the joint report described in Va. Code Ann. § 62.1-195.1 will be a critical and essential tool for Essex County and other localities in Tidewater to understand the risks and impacts of industrial oil and gas development in the Taylorsville basin.”

-Resolution No. 14-017, Essex County Board of Supervisors

Four Things Localities in Eastern Virginia Can Do

1. Endorse the launch of a state study on gas and oil drilling
2. Update the comprehensive land use plan with guidelines to avoid or minimize the impacts of gas and oil drilling
3. Update the zoning ordinance to implement the guidelines from the comprehensive plan
4. Measure local economic impacts



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