Position Statement: Wetland protection and a net increase in wetland acreage and function through restoration and living shoreline implementation are an efficient way to meet TMDL requirements that also provide co-benefits for wildlife habitat, climate resiliency, recreation, tourism, and a healthy economy. Wetland values and co-benefits are identified and support the outcomes of a variety of State plans, policies, initiatives, etc., including:

1. **Phase III WIP**

Executive Summary: SWCDs and PDCs responded to the challenge of identifying best management practices (BMPs) and programmatic actions that are necessary to restore the Chesapeake Bay. From over 500 ideas and suggestions, the common themes among the programmatic actions for the urban/developed sector include: ...Enhance promotion of living shoreline techniques to address shoreline erosion.

Pg. 24: Capitalize on co-benefits – Maximize BMP selection to increase climate or coastal resilience, soil health, flood attenuation, habitat restoration, carbon sequestration, or socioeconomic and quality of life benefits

Wetland restoration and Shoreline Management are credited in the TMDL

1. **Wildlife Action Plan**

The Virginia wildlife action plan unites natural resource agencies and citizens through a common vision and concept for the conservation of the Commonwealth’s wildlife and the habitats in which they live.

Page 11-19. Conservation Strategies: Maintain and Restore Wetland Habitats. Promote Living shorelines where possible and minimize hardened shorelines. Enhance vegetative buffers. Control invasive species.

Page 11-27. Additional wetlands climate-related conservation actions include: restoring and enhancing vegetation within the wetlands to support changing conditions (e.g. using vegetation species that can withstand a broader array of conditions like more frequent inundation and higher salinity levels), restoration of wetlands to increase their elevation along the coast where feasible or needed and enhancement of wetland migration by targeted restoration or acquisition in areas where wetlands may migrate (both inland and upstream).

1. **Virginia's Strategy for Safeguarding Species of Greatest Conservation Need from the Effects of Climate Change (2009)**

Three Main Strategies -

Strategy 1: Conserve Species and Habitats as the Climate Changes: "...something should be done immediately to address issues already causing the loss of wildlife and habitats. "

"Over 60 percent of Virginia’s SGCN are aquatic and another 15 to 20 percent rely upon riparian and wetland habitats. "

"Some of the most expeditious means of conserving aquatic SGCN will be to expand and enhance existing programs that establish riparian buffers, remove obsolete dams and culverts from waterways, and restore stream and shoreline morphology.”

"Now, the threat of climate change offers an opportunity for the conservation community to again declare that our wildlife, their habitats, the recreation they support, and the services those resources provide are important to our civilization and must be conserved for our posterity."

1. **Outdoors Plan 2018**

The Commonwealth should continue its effort under Gov. Ralph Northam to develop and implement a comprehensive land conservation plan and expand the funding source for land conservation, including lands that support natural heritage resources, and ensure representation on protected lands for all of the state’s natural community types and rare species.

The Commonwealth should continue to implement the Virginia Department of Game and Inland Fisheries’ Virginia Wildlife Action Plan.

The Commonwealth should increase assistance to localities in their planning efforts for the protection of natural areas as a part of their recreational offerings.

DCR should increase its capacity to assist public and private land managers and owners with the management and restoration of natural heritage resources on their properties.

Chapter 12 - Land Conservation. Water Quality: Investing in green-infrastructure lands can often be more cost effective than conventional public works projects and can protect existing infrastructure investments. Virginia’s conservation-lands strategy should also include the protection of significant watershed areas.

Protecting Virginia's Open Space Supports its Tourism Industry: Outdoor recreationists spend more than $8 billion within the state annually, making recreation a highly significant factor in attracting travelers to the Commonwealth, according to a 2011 study by Aaron Paul of the Yale School of Forestry and Environmental Studies. Most of the popular forms of outdoor recreation for tourism are either dependent on resource lands and waters or enhanced by their proximity to them. Both public and private lands are important for meeting the needs of outdoor recreation.

1. **VMRC Tidal Wetland Regulations: Chapter 13 of Title 28.2, Code of VA**

The intent of the law is to balance preservation and use of wetlands in order to protect the ecosystem services they provide. Those services are specifically identified to include: production of wildlife, waterfowl, finfish, shellfish, and flora; protection against floods, tidal storms, and erosion; absorption of silt and pollutants; and provisions for recreational and aesthetic opportunities.

"The Commission shall preserve and prevent the despoliation and destruction of wetlands while accommodating necessary economic development in a manner consistent with wetlands preservation."

28.2-1301 (D) “In developing guidelines or regulations under this chapter the Commission shall consult with all affected state agencies. Consistent with other legal rights, consideration shall be given to the unique character of the Commonwealth's tidal wetlands which are essential for the production of marine and inland wildlife, waterfowl, finfish, shellfish and flora; serve as a valuable protective barrier against floods, tidal storms and the erosion of the Commonwealth's shores and soil; are important for the absorption of silt and pollutants; and are important for recreational and aesthetic enjoyment of the people and for the promotion of tourism, navigation and commerce.

28.2-1302(9) (With regard to local Wetlands Boards) "In fulfilling its responsibilities under this ordinance, the board shall preserve and prevent the despoliation and destruction of wetlands within its jurisdiction while accommodating necessary economic development in a manner consistent with wetlands preservation."

28.2-1302(10)(B) The board shall grant the permit if all of the following criteria are met:

1. The anticipated public and private benefit of the proposed activity exceeds its anticipated public and private detriment.

2. The proposed development conforms with the standards prescribed in § 28.2-1308 of the Code of Virginia and guidelines promulgated pursuant to § 28.2-1301 of the Code of Virginia.

3. The proposed activity does not violate the purposes and intent of this ordinance or Chapter 13 (§ 28.2-1300 et seq.) of Title 28.2 of the Code of Virginia.

C. If the board finds that any of the criteria listed in subsection B of this section are not met, the board shall deny the permit application but allow the applicant to resubmit the application in modified form.

1. **Virginia Living Shorelines Act**

This legislation made several significant changes to the tidal wetlands regulator program. The legislation codified the State preference for the use of living shorelines to address tidal shoreline erosion.

Section 28.2-1100 of the Code of Virginia was amended as follows: The Commission, in cooperation with the Department of Conservation and Recreation and with technical assistance from the Virginia Institute of Marine Science, shall establish and Implement a general permit regulation that authorizes and encourages the use of living shorelines as a preferred alternative for stabilizing tidal shorelines in the Commonwealth.

While there are many options for promotion of living shorelines in Virginia, the recommendation put forth in a report to the Governor and General Assembly of Virginia, as mandated by Senate Joint Resolution 35 of the 2010 Assembly (CCRM, VIMS, 2010), was for the development of a general permit.

1. **Virginia State Wetlands Program Plan**

This Wetland Program Plan (WPP) is the second iteration of the planning effort prepared at the direction of the Environmental Protection Agency (EPA), and summarizes (1) the multiple existing regulatory and voluntary wetland program elements in Virginia, (2) identifies opportunities for improvements in current program objectives and operations, and (3) prioritizes program development to achieve an effective and comprehensive program strategy.

The WPP describes Virginia’s efforts in four core element areas, plus three additional areas identified by Virginia as critical to the achievement of wetland no-net-loss and net resources gain.

Chesapeake Bay Commitments

Virginia has agreed to the Major Desired Outcomes for Wetlands (Chesapeake Bay 2000 Agreement, Subsection 2.3) to “(i) achieve no net loss of existing wetland acreage and function through regulatory programs; (ii) achieve net wetland resource gain through wetland restoration; and (iii) assist local governments and community groups with development of wetland preservation plans as part of integrated locally based watershed planning.” Under the 2010 Agreement, Virginia had committed to restoring 6,000 new acres of wetlands by 2010 within Virginia’s portion of the Chesapeake Bay. In addition, Virginia has set a goal of restoring 4,000 acres outside of the Bay drainage, for a total of 10,000 new acres statewide.

Priorities

Virginia is committed to a net resource gain of wetlands and the enhancement of wetland ecosystem services…. This will require coordinated efforts to better understand the wetland resources and effects of the threats and stressors, effectively manage the resource, improve communications to the public and decision makers to ensure better decision-making and compliance, enhance planning activities, and find efficiencies in integration of wetlands programmatic efforts with other water quality and habitat regulatory and non-regulatory programs, processes and products.

Objective R9 (Regulation): “”Tie in outcomes of living shoreline NPS load reduction study to regulatory process.

7. Outreach/Education

Overall Goal: Develop and deliver outreach materials, presentations and training to decision makers and the general public. Enable better-informed decision-making and increase awareness of wetland management programs and permit compliance.

**Objective O/E1:** Improve public communications print materials. See <http://www.deq.virginia.gov/portals/0/deq/water/wetlandsstreams/publicguiderevised2012.pdf>

**Objective O/E2:** Maintain and update DEQ Wetlands website to incorporate new reports, data and programs. See

<http://www.deq.virginia.gov/Programs/Water/WetlandsStreams.aspx>

and

<http://www.deq.virginia.gov/Portals/0/DEQ/Water/WetlandsStreams/WetlandsStatusandTrendsReport-Dec2013.pdf>

Modify existing website content to keep current as reports, data, and outreach materials are

updated.

**Objective O/E3:** Maintain outreach for local government decision-makers.

See: <http://events.r20.constantcontact.com/register/event?oeidk=a07eadresat9a39b2f7&llr=5knx77cab>

and <http://ccrm.vims.edu/publications/pubs/rivers&coast/RC914.pdf>

CCRM conducts an annual workshop for Wetland Board Members. Additionally, each local government for which a CCRMP had been completed has gotten targeted training on the elements within the portal. This targeted education effort has been developed, in part, as a response to the need for additional training as identified through the Regulatory Fidelity Study.

1. **VA Chesapeake Bay Preservation Act: (**VA Code Section 10.1-2100 thru 10.1-2116)

(The CBPA provisions are now under the regulatory and administrative purview of the state Water Control Board and DEQ)

Purpose: The purpose of this chapter is to protect and improve the water quality of the Chesapeake Bay, its tributaries, and other state waters by minimizing the effects of human activity upon these waters and implementing the Act, which provides for the definition and protection of certain lands called Chesapeake Bay Preservation Areas, which if improperly used or developed may result in substantial damage to the water quality of the Chesapeake Bay and its tributaries.

The Resource Protection Area shall include:

1. Tidal wetlands;

2. Nontidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow;

3. Tidal shores

9VAC25-830-140(5)(a)(4) For shoreline erosion control projects, trees and woody vegetation may be removed, necessary control techniques employed, and appropriate vegetation established to protect or stabilize the shoreline in accordance with the best available technical advice and applicable permit conditions or requirements.

1. **Virginia Natural Heritage Program**

"The Natural Heritage Program's (DCR-DNH) mission is conserving Virginia's biodiversity through inventory, protection, and stewardship."

"The Natural Heritage Program's work focuses on science-based conservation to protect Virginia's native plant and animal life and the ecosystems upon which it depends."

"Our and our partners’ work focuses on ensuring the conservation of Virginia’s common, rare and endangered species and ecosystems"

"The Virginia Registry of Natural Areas encourages voluntary preservation of important natural lands in private and public ownership. This is a nonbinding, non-regulatory program designed to recognize property owners who act voluntarily to safeguard natural areas."

"Natural Areas Stewardship: Natural areas encompass a wide range of environments and support a rich diversity of plant and animal species. Natural areas stewardship is the long-term management of land and water to sustain natural heritage resources, restore and enhance habitat conditions suitable for rare species, and sustain the inherent biodiversity and beauty of natural communities. DCR acquires, dedicates, and manages natural areas of statewide significance through the Natural Area Preserve System. In addition, DCR advises other public and private landowners about techniques and methods for managing natural areas. "

The DCR-DNH has developed the Virginia Natural Landscape Assessment (VaNLA), a conservation planning tool that uses wetland-related attributes to *identify* and then *prioritize* areas that should be conserved to maintain an intact functioning network of natural habitats/lands on the landscape. This model *identifies* a network of natural lands (i.e. not only forests but expanses of intact natural lands including wetlands) as habitat cores and interconnecting corridors. The network of cores and corridors are then *prioritized* with an Ecological Integrity Score; every core over 100 interior acres is ranked from 1 – Outstanding Ecological Integrity to 5 – General Ecological integrity. The process for incorporating wetlands into the model and for setting priorities is described below…

1. **EO 24: Coastal Resilience Master Plan**

The Master Plan will incorporate nature and nature-based infrastructure and flood control whenever possible, resulting in expanded buffers and reduced runoff to the Chesapeake Bay and its tributaries.

1. **Virginia Scenic River Program**

Chapter 10: Enhances the conservation of Scenic Rivers and their corridors.

Scenic river designations are good for business

DCR administers the scenic river system to preserve and protect its natural beauty and to assure its use and enjoyment for its scenic, recreational, geologic, fish, wildlife, historic, cultural or other assets, and to encourage the continuance of existing agricultural, horticultural, forestry, and open space land and water uses.

Implement the 50th anniversary (2020) celebration strategic plan for the Virginia Scenic Rivers Program.

1. **Dam Safety and Floodplains**

DCR was named manager of the state's floodplain program and designated the coordinating agency of the National Flood Insurance Program under the act, §10.1-602ct.

All participating communities can reduce the cost of policyholder premiums by participating in the Community Rating System (CRS) Program. This program awards points to communities that implement flood protection measures beyond minimum NFIP participation requirements. Points are awarded to communities for various activities including higher regulatory standards, open space preservation, flood warning systems and citizen-education programs.

CRS credit is provided under Activity 420, open space preservation: Communities in VA can submit RPA buffers for 420 credit if they enforce the CBPA buffer development restrictions outlined in the Act. CRS program will apply an impact adjustment ratio for credit calculation based on structures built within the RPA. Currently, many VA communities have submitted buffers for credit successfully. This approach or practice could be applied in other Bay states.

Floodplains are valuable

Significant research has revealed the many beneficial roles natural floodplains play.

They support local economies and quality of life by:

•Improving property values for areas near natural areas and out of the floodplain due to natural aesthetics and access to recreational opportunities

•Reducing flood damage and cleanup costs

•Ensuring faster recovery from flood events

•Supporting ecosystem services

•Enabling more attractive and resilient waterfront districts

•Providing potential access for recreation

•Having the potential for multiple funding sources for community projects that combine hazard mitigation with open space or historic preservation, recreation, quality of life and other shared goals

Protecting water resources

This tidal habitat is protected from erosion that can occur during flooding and tropical storm events. This tidal habitat is protected from erosion that can occur during flooding and tropical storm events.

•Natural flood and erosion control ◦Provide areas of floodwater storage

◦Reduce flood velocities, giving us more time to react to floods

◦Reduce flood peaks

◦Reduce sedimentation

•Soil and Water ◦Filter nutrients and impurities from runoff

◦Process organic wastes

◦Help moderate temperature fluctuations

◦Potential reduction in dredging costs

◦Lower water treatment costs

• Groundwater recharge ◦Promote infiltration and recharge of the aquifer

◦Slowly release water to reduce infrequency and duration of low surface flows

Nurturing biological resources

•Fish and wildlife habitat ◦Provide breeding and feeding grounds

◦Create and enhance waterfowl habitat

◦Protect habitat for rare and endangered species

◦Support industries that rely on the biological resources

1. **Virginia Coastal Zone Management Program**

(From the Phase III WIP page 27) Wetlands and other natural or nature-based features (NNBF) have a proven capacity for reducing the impacts of coastal storms and flooding on nearby communities. They also filter sediment and absorb nutrients from coastal waters and provide critical habitat.

The Virginia CZM Program is supporting the use of NNBF through a range of initiatives, including promoting the use of living shorelines, protecting beaches and dunes, and using dredged material as a resource for building coastal resilience.

**(**From The Virginia State Wetlands Program Plan**):** This executive order directs state agencies to carry out their legally established duties consistent with this Program and its ten goals. It also designates the Department of Environmental Quality as the lead agency for the networked program and outlines a conflict resolution process should any state actions be deemed inconsistent with the Program.

The VCZMP completed a Coastal Needs Assessment in 2015. It is a planning initiative to direct efforts for the next five years through a number of specific strategies, funded under Section 309 of the federal Coastal Zone Management Act. One of the strategies developed through that process targeted shoreline management. The strategy focused on promoting living shorelines.

(From the Phase III WIP page 27) Wetlands and other natural or nature-based features (NNBF) have a proven capacity for reducing the impacts of coastal storms and flooding on nearby communities. They also filter sediment, absorb nutrients from coastal waters, and provide critical habitat. The Virginia CZM Program is supporting the use of NNBF through a range of initiatives, including promoting the use of living shorelines, protecting beaches and dunes, and using dredged material as a resource for building coastal resilience.

1. **Constitution of Virginia**

At the January 2020 Chesapeake Bay Commission meeting, Martin Siegel with the Chesapeake Legal Alliance, talked about “Constitutional Protections for the Chesapeake Bay”. He mentioned the Constitution of Virginia’s Article XI, Sections 1 and 2. They state:

**Section 1. Natural resources and historical sites of the Commonwealth.**

“…Further, it shall be the Commonwealth's policy to protect its atmosphere, lands, and waters from pollution, impairment, or destruction, for the benefit, enjoyment, and general welfare of the people of the Commonwealth.”

**Section 2. Conservation and development of natural resources and historical sites.**

In the furtherance of such policy, the General Assembly may undertake the conservation, development, or utilization of lands or natural resources of the Commonwealth, the acquisition and protection of historical sites and buildings, and the protection of its atmosphere, lands, and waters from pollution, impairment, or destruction, by agencies of the Commonwealth or by the creation of public authorities, or by leases or other contracts with agencies of the United States, with other states, with units of government in the Commonwealth, or with private persons or corporations…”

The protection and restoration of wetlands by choosing (or requiring) living shoreline erosion protection appears to be consistent with the intent of the Constitution of VA whereas the approval of shoreline hardening for erosion control would appear to violate the state constitution and the Commonwealth’s policy to protect its lands and waters from impairment or destruction.