



VIRGINIA FLOODPLAIN MANAGEMENT ASSOCIATION

P.O. Box 1726, Richmond, VA 23218

Website: www.vaflood.org Email: vafloodplain@gmail.com

Dedicated to expanding the application of proactive floodplain management in the Commonwealth of Virginia.

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Kristin Owen, AICP, CFM
Henrico County

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**Matthew Simons, AICP,
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**Whitney Thomas, PE, CFM,
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WSP

May 3, 2021

Mr. Justin Williams
Department of Environmental Quality
P.O. Box 1105
Richmond, VA 23218

Dear Mr. Williams:

The Virginia Floodplain Management Association (VFMA) appreciates this opportunity to comment on the Virginia Department of Environmental Quality (DEQ) draft regulations to the Chesapeake Bay Preservation Act (CBPA) (§ 62.1-44.15:72 of the Code of Virginia), which add “coastal resilience and adaptation to sea-level rise and climate change” to the criteria requirements for regulations to be established by the State Water Control Board for use by local governments.

VFMA is a non-profit dedicated to expanding the application of proactive floodplain management across the Commonwealth, representing floodplain management professionals from local governments, state and federal agencies, private firms, and nonprofits.

Please accept our comments below on the draft regulations. VFMA appreciates the significant efforts made by the Northam Administration and DEQ to address sea level rise and climate change in the Commonwealth, and we support continuing efforts to protect the Chesapeake Bay and increase coastal resilience.

The draft regulations could negatively impact Virginia communities participating in the National Flood Insurance Program’s (NFIP) Community Rating System (CRS) Program and the flood insurance policyholders who depend on the annual premium discounts earned by those communities. The [NFIP’s CRS](#) Program is a voluntary incentive based program that rewards localities that take extra steps to reduce flood risk with lower annual flood insurance premiums for policyholders. Communities earn points by adopting plans, programs, and policies that promote flood risk reduction. Total points correspond to different class ratings, which in turn correspond to discount percentages on annual flood insurance premiums. Flood insurance policy holders save \$7 million annually statewide through their community’s participation in the program. The actions that are incentivized under the CRS program overlap with the coastal resiliency goals outlined in HB 504.

Exempting all “adaptation measures or activities” from the existing development and performance criteria of the CBPA weakens the Act’s ability to restrict development in the 100-foot buffer. The national policy team of the CRS Program approved Virginia’s CBPA 100-foot buffers for open space preservation credits for communities that prove they enforce the Act and keep development out of the 100-foot RPA buffer. Their approval is predicated on the entirety of the CBPA regulations. Many communities in Virginia earn credits for prohibiting development and fill inside the RPA buffers. When passed, the amended regulations will be required to undergo CRS Program



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national review. New language related to permissible development in the 100-foot buffer will be reviewed under strict scrutiny. The proposed regulations' appearance of allowing a more than limited use of fill will raise a red flag during the CRS Program review. The language indicates that adaptation measures or activities that are not "solely of the use of fill" are permissible to install in the 100-foot buffer, without any impact assessment review. This allowance and its bypassed water quality impact assessment, despite its intentions, presents a different program and exemption review process than the previous CBPA regulations, which are already approved by the CRS Program.

The use of the word "fill" is controversial for the NFIP. The word "fill" in the NFIP equates to development and is not typically used to describe shoreline activities, like those adaptation measures or activities contemplated by the draft regulations. We recognize the use of limited fill is permissible under the current law and necessary to install shoreline erosion control projects, but this language appears to expand the use of fill, without clear parameters in place. A significant percentage of RPA buffers overlap with Special Flood Hazard Areas (SFHA), which are regulated by communities as part of their participation in the NFIP. As mentioned above, the NFIP equates the word "fill" with "development," triggering a community to require floodplain permits and potentially more detailed engineering analyses for every proposed shoreline practice. If a community fails to enforce permit requirements, it could be considered noncompliant with the NFIP. If a community is noncompliant with the NFIP, the community and its residents could lose access to flood insurance, which would disrupt the real estate market, federal disaster assistance, and certain federal grants and loans.

We hope that you will take our concerns into consideration.

Sincerely,

Kristin Owen, AICP, CFM
VFMA President