

SAFEGUARDING VIRGINIA'S WETLANDS

Ian Blair // Wetlands Watch // ian.blair@wetlandswatch.org
Jay Ford // Chesapeake Bay Foundation // jford@cbf.org
Jonathan Gendzier // Southern Environmental Law Center // jgendzier@selc.org
Adam Gold // Environmental Defense Fund // agold@edf.org

WHY IT MATTERS

Wetlands—swamps, marshes, and other areas inundated or saturated by surface or groundwater—play a critical role in reducing **storm surge** and absorbing rainfall, filtering pollution, trapping carbon, and providing habitat for wildlife. Virginia has an exceptional diversity of wetlands, from forested swamps and upland bogs to tidal freshwater and salt marshes.

The Commonwealth's approximately 1 million acres of wetlands are vital to Virginia's natural landscape, but they are disappearing at an all-too-rapid pace. Virginia has already lost to development approximately half of the wetlands that existed in the 1780s,¹ and the Commonwealth is projected to lose as much as 89% of its existing tidal wetlands by 2080 due to climate-induced sea-level rise if we do not plan for wetlands migration.²

To meet the goals of the **Chesapeake Bay Total Maximum Daily Load, Virginia's Phase III Watershed Implementation Plan** calls for the restoration of hundreds of acres of wetlands across each of the Bay's tributaries³ — but Virginia is not on track to achieve this initiative.⁴ Restoration efforts are simply not enough. We must ensure that our existing wetlands can survive the pace of sea level rise by migrating landward.

CURRENT LANDSCAPE

Virginia has some of the most robust state wetlands laws in the nation, thanks to the 1972 **Tidal Wetlands Act**⁵ and 2000 **Nontidal Wetlands Act**,⁶ but a 2023 Supreme Court ruling and climate change impacts are threatening our ability to protect these critical natural resources. The U.S. Supreme Court's decision in **Sackett v. EPA** drastically scaled back federal protections, removing them from vast swaths of the nation's wetlands, with severe repercussions for water quality, flood control, and critical habitat in Virginia. Up to 938,000 acres of Virginia's non-tidal wetlands may no longer be federally protected⁷ and may have to rely on private determinations for conservation. It now falls largely to our existing state tidal and nontidal wetlands regulations, and to state and local decision-makers charged with enforcing these regulations, to protect the wetlands that support Virginia's communities, local economies, and cherished resources such as the Chesapeake Bay.

Although Virginia has relatively strong wetlands laws that protect both tidal and nontidal wetlands in the state, that doesn't mean the Commonwealth's wetlands aren't at risk. The Supreme Court's decision has caused confusion among regulators and landowners alike and passes the burden and costs of management onto Virginia's agencies. While the Commonwealth still maintains jurisdiction over nontidal wetlands, the Supreme Court's decision reduced federal involvement in jurisdictional determinations and shifted more responsibility to states. **Virginia Department of Environmental Quality (DEQ)** previously relied on the **U.S. Army Corps of Engineers** to make wetlands determinations, but must now rely on private **Wetlands Delineators** to make these determinations – adding uncertainty,

costs, and potential delays to the permitting process.

OPPORTUNITIES

The future of Virginia's wetlands depends on safeguarding the Commonwealth's existing wetlands protection programs and ensuring that agencies receive sufficient funding to fill the federal gap left in the wake of the Sackett decision. With more limited federal participation in wetlands delineations, DEQ, **Virginia Marine Resources Commission**, and local wetlands boards will need increased funding to delineate wetlands, provide quality-control reviews of third-party delineations, and effectively implement wetlands permitting programs.

DEQ should enforce Virginia's existing "no net loss" approach to wetlands protection and maintain Virginia's ability to implement more comprehensive wetlands protections than those under federal law. In addition, creating a permanent wetlands workgroup within the Secretariat of Natural and Historic Resources will give the state the capacity to develop a comprehensive plan to protect, enhance, and create tidal and nontidal wetlands in the face of climate change impacts.

TOP TAKEAWAYS

Virginia has some of the strongest state-level wetlands protections in the nation and yet we continue to lose wetlands year over year due to climate change and development pressures.

DEQ should enforce Virginia's existing "no net loss" approach to wetlands protection and maintain Virginia's ability to implement more comprehensive wetlands protections than those under federal law.

With more limited federal participation in wetlands delineations, additional financial resources will be needed for state agencies to fill the gap; local wetlands boards will also require additional technical assistance and training to make wetlands permitting decisions.