

5-10-2019

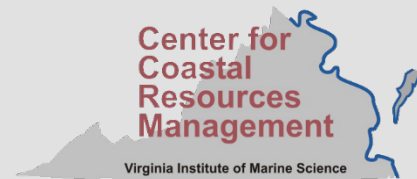
## Jurisdictions and The Permit Process

Pam Mason

# Jurisdictions And The Permit Process

Pam Mason  
Center for Coastal Resources Management

HR SLR  
Forum  
May 10,  
2019



# **OUTLINE**

**Why does it matter?**

- Legislative Mission**

**It's all one shoreline, isn't it?**

- Jurisdictional Boundaries**
- Jurisdictional Determination**

**How many permits do I need?**

- Jurisdictional Authorities**

**How does the process work?**

**Is the process different for NNBFs?**

# Legislative Mission

Legislation	Administration	Over-Sight/ Authority
Tidal Wetlands Act	Local Government: Wetlands Board	Virginia Marine Resources Commission
Coastal Primary Sand Dunes & Beaches Act	Local Government: Wetlands Board	Virginia Marine Resources Commission
Chesapeake Bay Preservation Act	Local Government: Wetlands Board, "Bay" Board or Staff	Department of Environmental Quality
Subaqueous Lands	Virginia Marine Resources Commission	
Virginia Water Protection Permit	Department of Environmental Quality	

# Subaqueous Lands

§ 28.2-1205

...protect and safeguard the public right to the use and enjoyment of the subaqueous lands of the Commonwealth held in trust by it for the benefit of the people as conferred by the public trust doctrine and the Constitution of Virginia.



# Tidal Wetlands Act

§ 28.2-1301 ...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.



# Coastal Primary Sand Dunes and Beaches

§ 28.2-1400: ...coastal primary sand dunes... serve as **protective barriers** from the effects of flooding and erosion caused by coastal storms, thereby protecting life and property; provide an essential **source of natural sand** replenishment for beaches and an important **natural habitat** for coastal fauna; and enhance the **scenic and recreational attractiveness** of Virginia's coastal area.

# Chesapeake Bay Preservation Act

## § 10.1-2100. Cooperative state-local program.

Healthy state and local economies and a healthy Chesapeake Bay are integrally related; balanced economic development and water quality protection are not mutually exclusive.

- ... (i) Tidewater Virginia incorporate general water quality protection measures into their local plans and ordinances;
- (ii) ...define and protect certain lands, hereinafter called Chesapeake Bay Preservation Areas, which if improperly developed may result in substantial damage to the water quality;
- (iii)...the Commonwealth make its resources available to local governing bodies by providing financial and technical assistance, policy guidance, and oversight;
- (iv) all agencies of the Commonwealth exercise their delegated authority in a manner consistent with water quality protection provisions of local comprehensive plans.



§ 62.1-44.15:5

The preservation of instream flows for purposes of the protection of navigation, maintenance of waste assimilation capacity, the protection of fish and wildlife resources and habitat, recreation, cultural, and aesthetic values is a beneficial use of Virginia's waters.

Serves as CWA section 401 certification.  
Applies to dredging, filling and other alterations in all wetlands

## Virginia Water Protection Permit

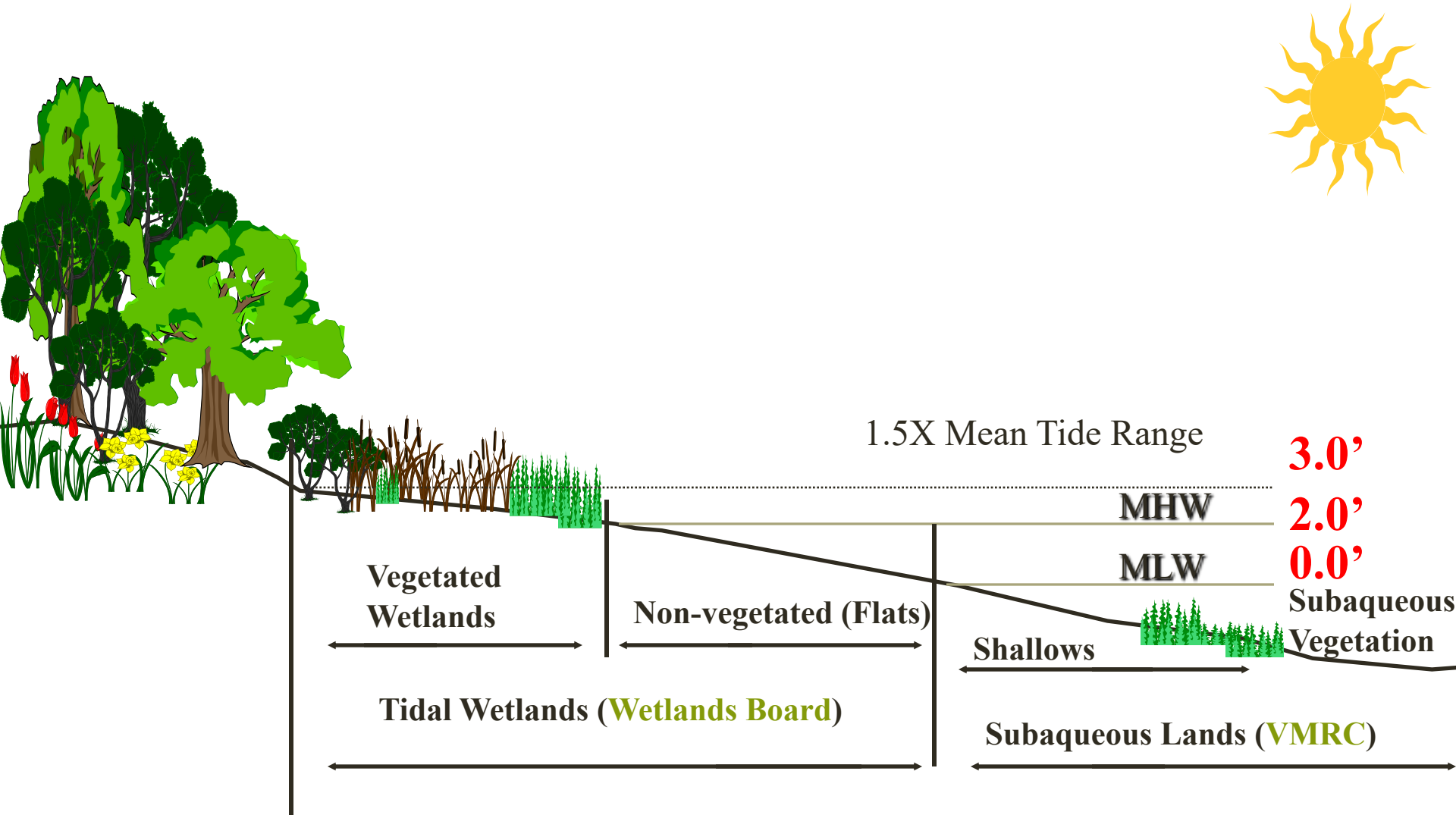
# Clean Water Act

**33 USC 1344/ 40CFR230\_Section404:**  
Federal authority over placement of fill  
in waters of the United States.

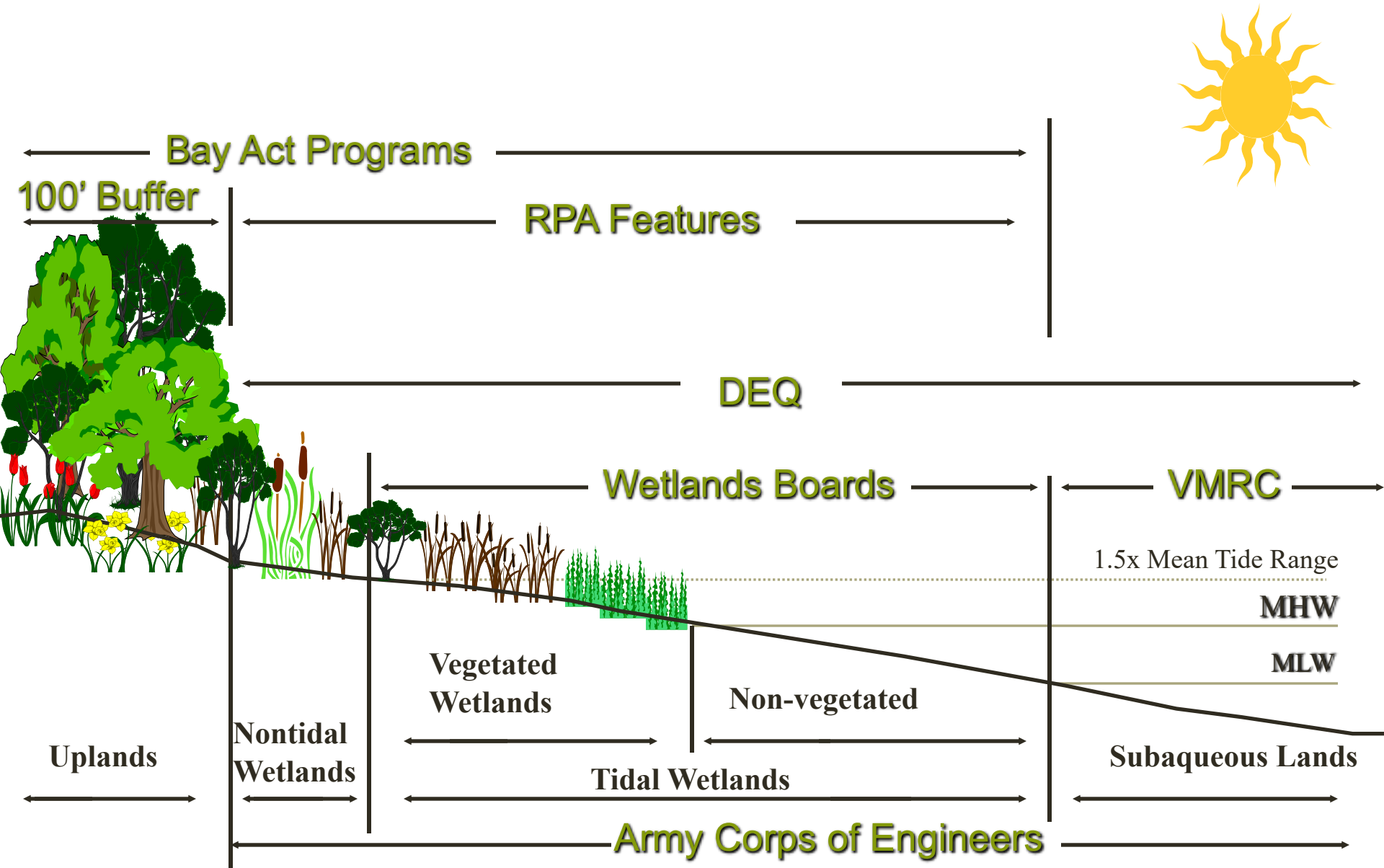
Wetlands navigable in fact - all tidal  
wetlands. Wetlands with a nexus to  
interstate commerce are waters of the  
United States. (Under proposed  
regulatory Change)

Based on authority over navigable  
waters under the River and Harbors  
Act

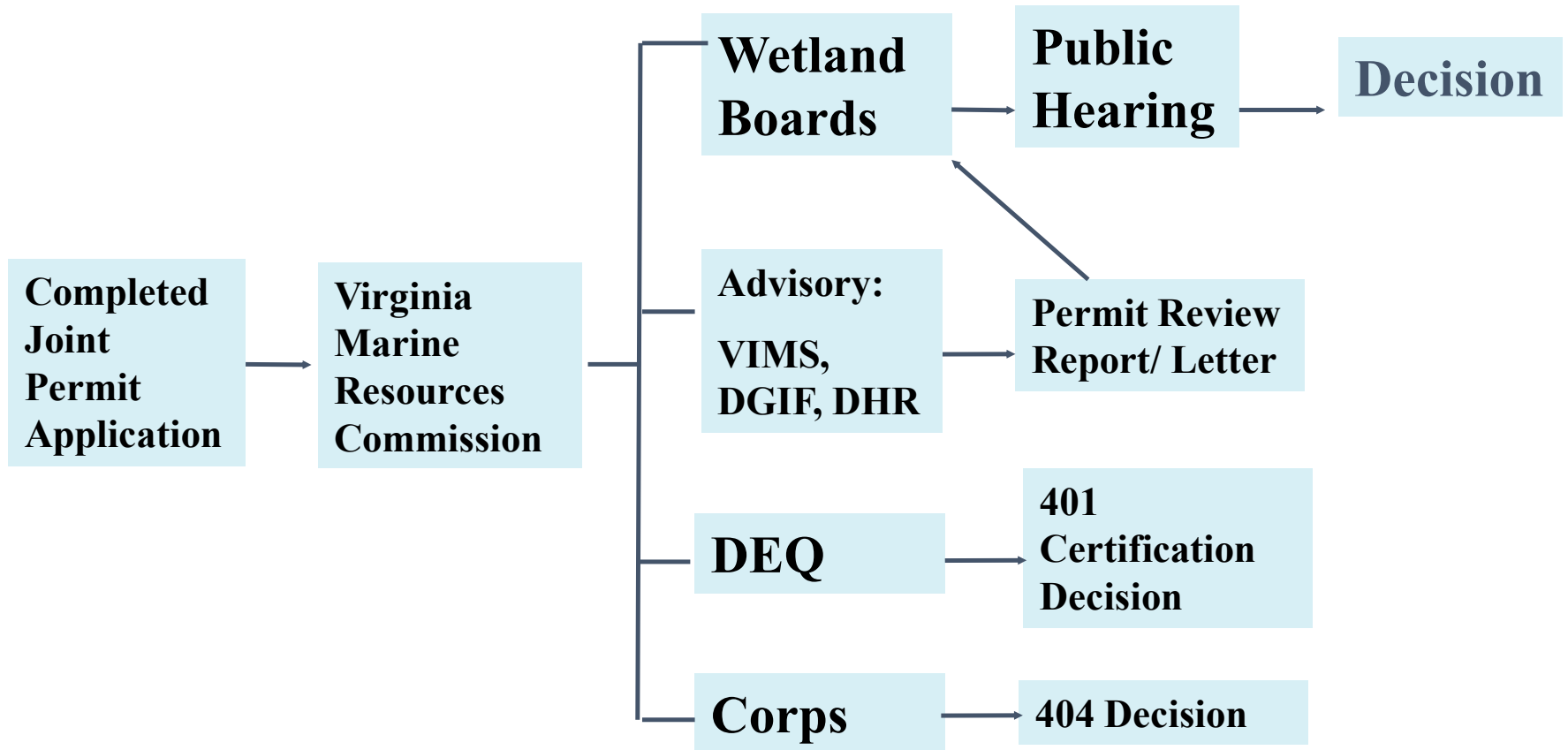
# Wetland & Subaqueous Jurisdiction



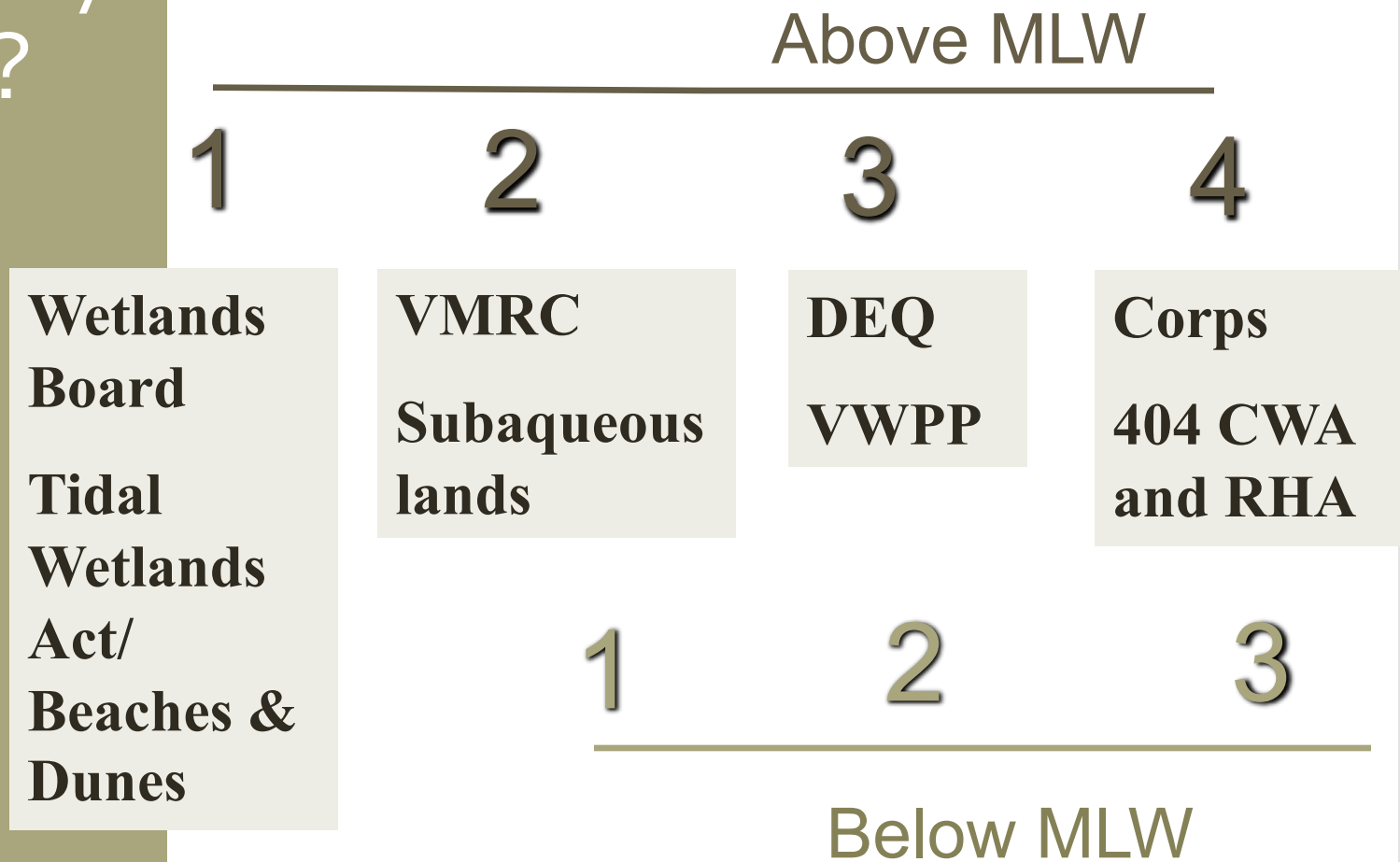
# Jurisdictional Boundaries



# Permit Process: Simplified

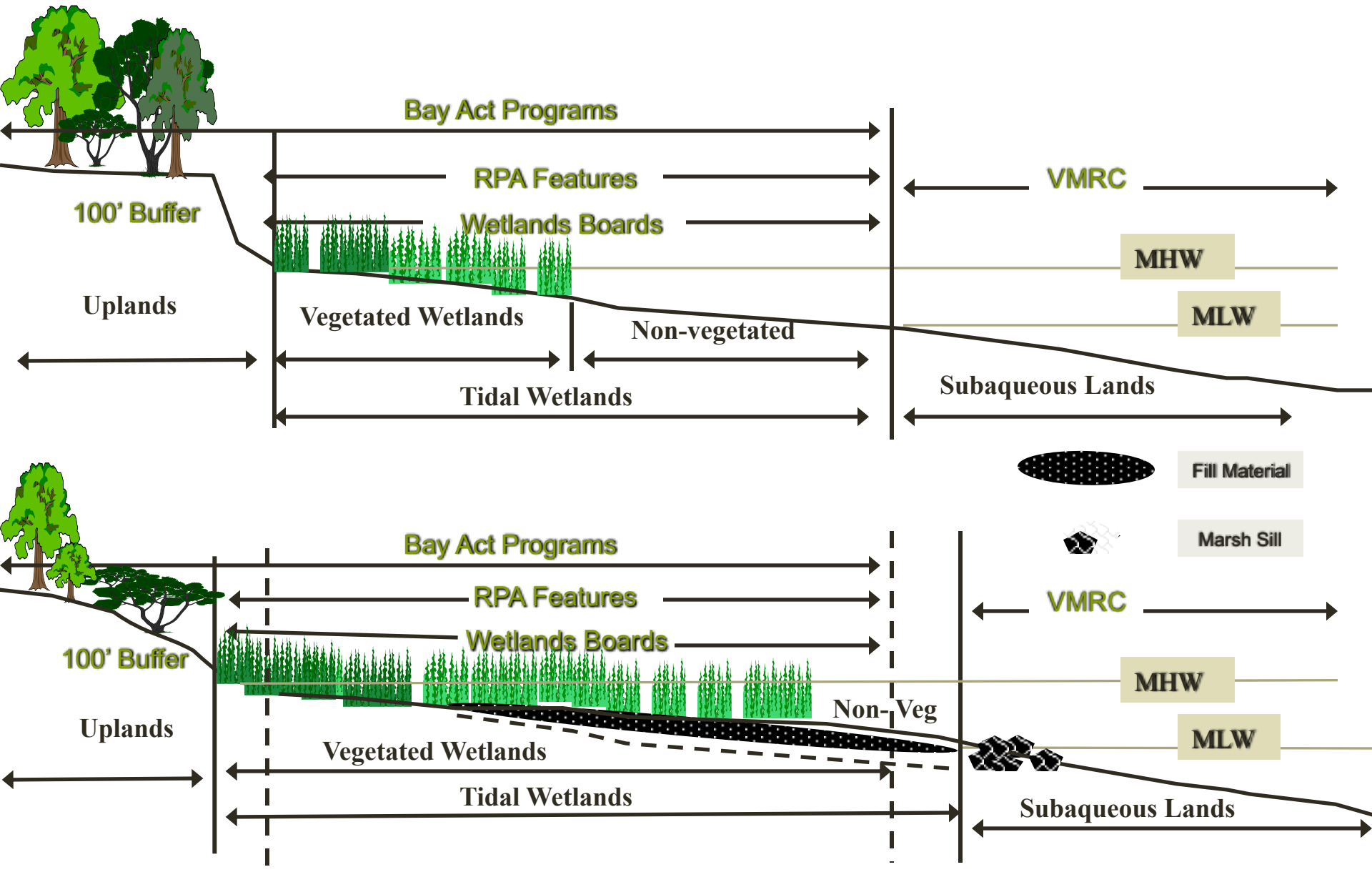


# How Many Permits?



Additional approvals as required

# Shorelines and Jurisdictional Changes



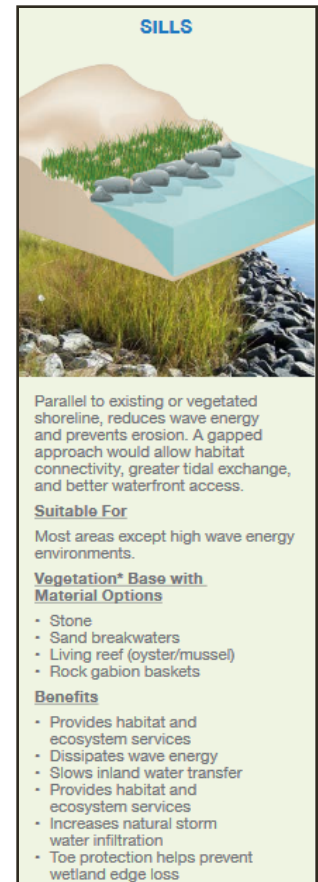
# Policy: Virginia General Assembly 2010

Tasked VIMS\ Center for Coastal Resources Management with a Study to:

1. Review tidal shoreline management
2. Identify changes to reduce the cost and time required to issue a permit;
3. Identify regulatory innovations to promote the use of living shorelines
4. Make recommendations to achieve the sustained protection of tidal shoreline resources

## Recommendations:

- State Legislative Requirement
- State Regulation to prefer natural shorelines for erosion control
- General Permit
- Exemption from state permit
- Design Assistance
- Cost-share/low-no interest loans
- Water Quality Revolving Loan - Nonpoint sediment control
- Permit fee waiver
- Tax Incentives
- Permitting preference





## Recommended from Shoreline Management Study

- State Legislative Requirement
- State Regulation to prefer natural shorelines for erosion control
- General Permit
- Exemption from state permit
- Design Assistance
- Cost-share/low-no interest loans
- Water Quality Revolving Loan - Nonpoint sediment control
- Permit fee waiver
- Tax Incentives (Waiver)
- Permitting preference

**Red text = implemented**

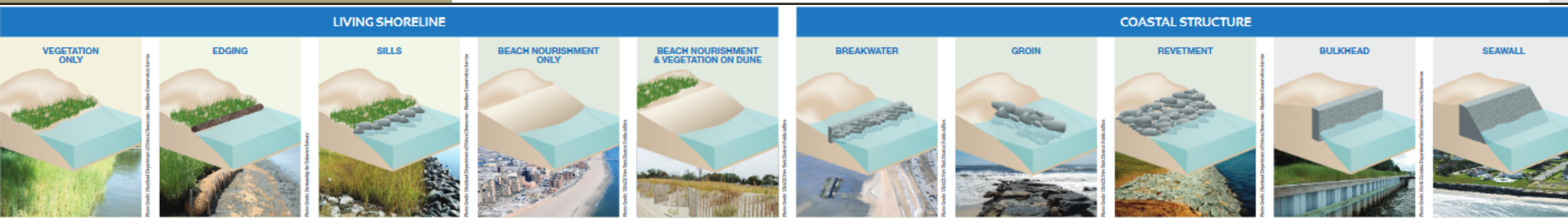
**Gold text = partial implementation**

# State Legislative Requirement

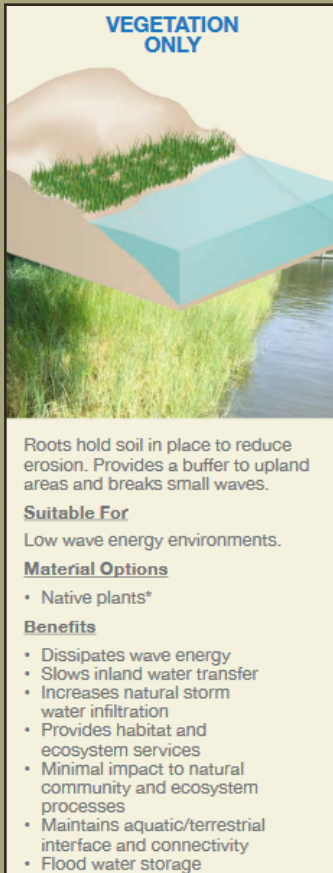
**Legislation January 2011, effective July 1, 2011**  
**Preference NOT Requirement**

*...“it is the policy of the Commonwealth to support living shorelines as the preferred alternative for stabilizing tidal shorelines”...*

**§ 28.2-104.1 C1 Living shorelines;**  
**development of general permit;**  
**guidance.**



# General Permit



**Legislation January 2011, Clarifying leg. 2014**  
**Lead: Virginia Marine Resources Commission**  
**Workgroup Members: VIMS, Dept. Con Rec, Dept. Env. Qual., Corps**

*“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 the preferred alternative for stabilizing tidal shorelines in the Commonwealth. In developing the general permit, the Commission shall consult with the U.S. Army Corps of Engineers to ensure the minimization of conflicts with federal law and regulation.”*

**§ 28.2-104.1. Living shorelines; development of general permit; guidance.**

# General Permits

## **Group 1. Effective September 2014.** § 4 VAC 20-1300-10 ET SEQ.

### **“Soft/ Non- Structural”**

- Not applicable channelward of mean low water
- Sand fill, fiber logs, fiber mats, shell bags and temporary grazing protection
- Maximum fetch 0.5 miles
- Clean course sand fill
- Vegetation to be planted on any fill

## **Group 2. Effective Nov 1, 2017** § 4 VAC 20-1330-10 ET SEQ.

### **“Hybrid”**

- Applicable channelward of mean low water
- Sand fill, fiber logs, fiber mats, shell bags, riprap, woven containment bags, and temporary grazing protection
- Maximum fetch 1.5 miles
- Minimum 8 feet wetland width
- Max water depth 2 feet, channelward limit 30 feet
- **Net gain in areal vegetation cover**
- Gap/ window per property or 100 linear feet

**Lead: Soil and Water  
Conservation Districts  
Virginia Conservation  
Assistance Program (VCAP)  
Cost-share for non-agriculture  
lands for Best Management  
Practices  
Funds- EPA Chesapeake  
Bay Implementation Grant**

**Cost-  
Share/  
Loans**

**Eligible Practices...**

Most practices are eligible for 75% cost-share and some practices provide a flat incentive payment up to the installation cost.



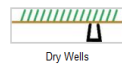
Conservation Landscaping



Impervious Surface Removal



Permeable Pavement Installation



Dry Wells



Rainwater Harvesting



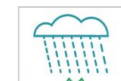
Vegetated Conveyance System



Constructed Wetlands



Bioretention



Rain Gardens



Infiltration



Green Roofs



Living Shorelines



**Virginia Conservation  
Assistance Program**

Presented by Virginia Association of Soil & Water Conservation Districts

# Cost-Share/ Loans

Water Quality  
Revolving Loan -  
Nonpoint  
Sediment control

## Legislation 2015

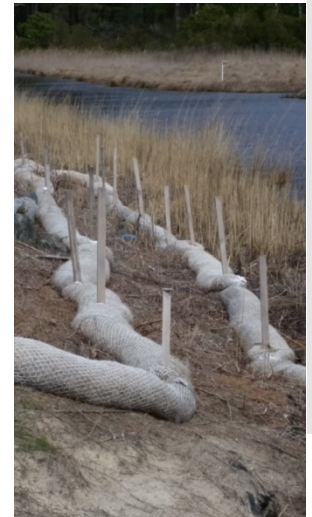
**Lead: Local Government**

**Funding: State Water Control Board**

“Loans may be made from the Fund, in the Board's discretion, (i) to a local government for the purpose of establishing living shorelines, as defined in § 28.2-104.1”...

“to a local government that has developed a funding program ...to facilitate the establishment of living shorelines“

**§ 62.1-229.5. Loans for living shorelines**





## Tax Incentives (Waiver)

### **Legislation 2016**

#### **Lead: Local Government**

#### **Local Government Taxation**

#### **Living Shorelines added to exiting exemption**

*...”any living shoreline project approved by the Virginia Marine Resources Commission or the applicable local wetlands board and not prohibited by local ordinance that satisfies the definition of a living shoreline consistent with § 28.2-104.1 shall qualify for full exemption from such taxation by local governments.”*

**§ 58.1-3666 Wetlands and riparian buffers; living shorelines.**

# New and Developing Actions



## Financial :

**Flood Insurance Incentive:  
Community Rating System**

**TMDL: Nutrient Trading via the Virginia  
Nutrient Credit Exchange**

**Watershed Implementation Plan Credits/  
stormwater (Dept. Env. Quality)**

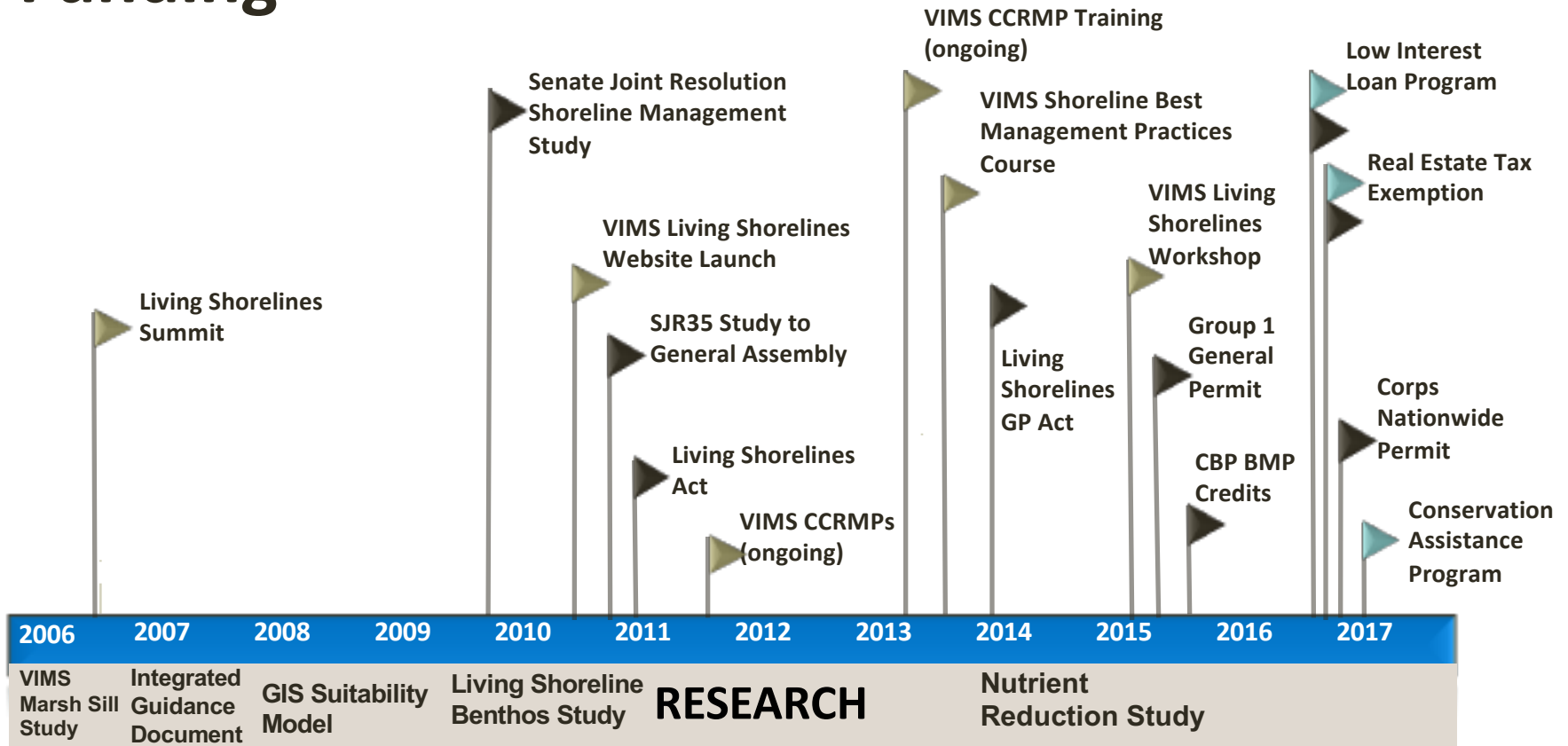
## Partners :

**Funding/ Assistance– Landscape  
Conservation Cooperatives , NGOs,  
Federal and State Restoration (FWS, NOAA,  
state authorities)**

**Flood reduction/ Storm Protection  
Carbon sequestration – Blue Carbon  
Ecotourism**



► **Law & Policy**  
 ► **Outreach**  
 ► **Funding**



**Thank  
You**

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