

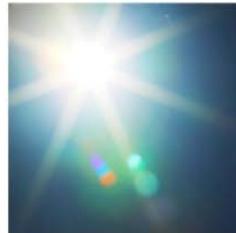


Virginia's Federal Consistency Program

11/16/16

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OEIR



Virginia's CZM Program Authority

- Derived from Executive Order 35 (2014)
- Renewed by each governor
- 10 'Goals' including:
- To protect and restore coastal and ocean resources, habitats, and species of the Commonwealth. These include, but are not limited to, wetlands, subaqueous lands and vegetation, beaches, sand dune systems, barrier islands, underwater or maritime cultural resources, riparian forested buffers, and endangered or threatened species.



Advantages of a CZM Program

- Voluntary participation
- Provides federal assistance
- Provide federal consistency review authority
 - Applies state policies to federal actions
 - Encourages state-federal coordination and cooperation





Federal Consistency Program

Section 307 of the "Coastal Zone Management Act of 1972" (CZMA) requires federal actions, in or outside the coastal zone, that affect any land or water use or natural resource of a state's coastal zone must be consistent with the enforceable policies of the state Coastal Management programs



Federal Actions

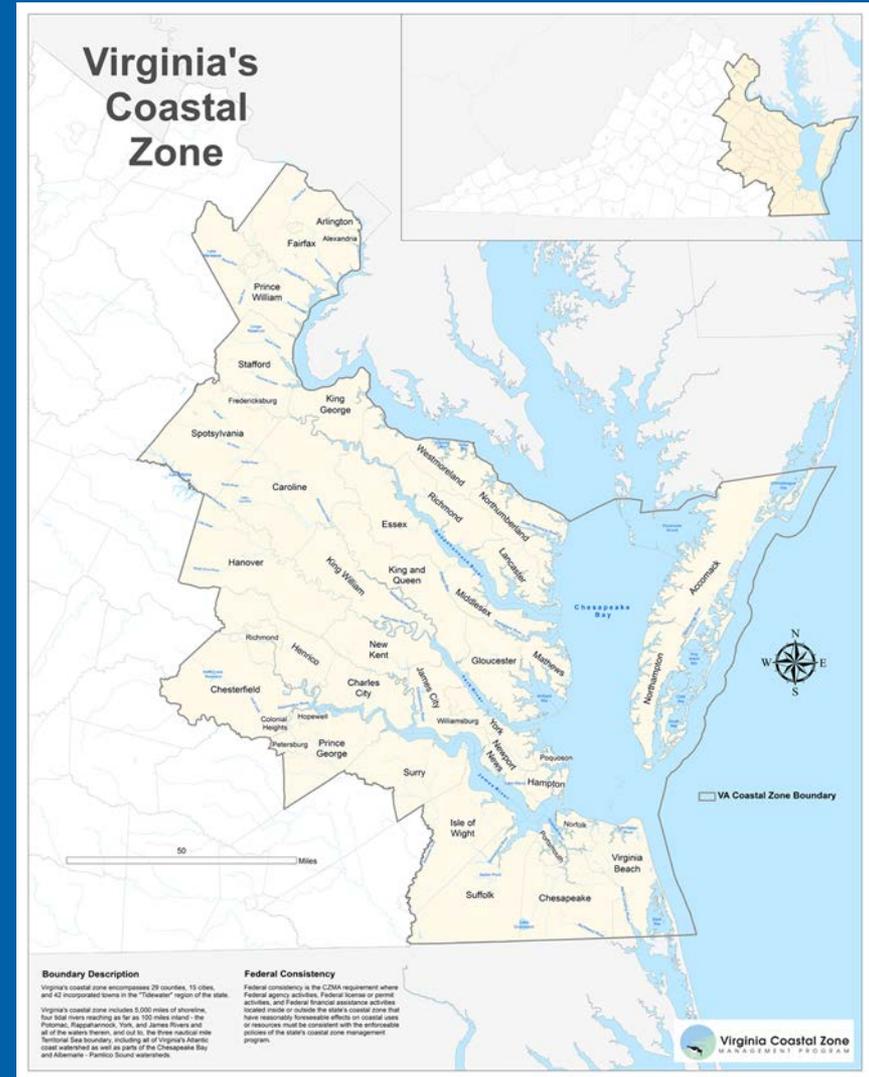
- Federal agency activities and development projects (FCD)
 - Development at federal facilities
 - Management plans
- Federal licenses or permits (FCC)
 - Corps IPs for wetland and stream impacts
 - FERC licenses (pipelines)
- Outer continental shelf plans
- Federal financial assistance to state or local agencies
 - HUD and USDA financial assistance

Virginia's Coastal Zone

Defined by code

Tidewater Virginia

3 miles off shore





Coastal Effects

- Federal Agency Activities –
 - Consistency is triggered by the “reasonably foreseeable effects” test
 - effects determined by federal agency
- Federal license or permit – state determines effects
- Unlisted activities – NOAA determines



Uses and Resources

- Uses:

- public access
- recreation
- fishing



- Resources:

- air
- wetlands and streams
- plants and animals
- SAV





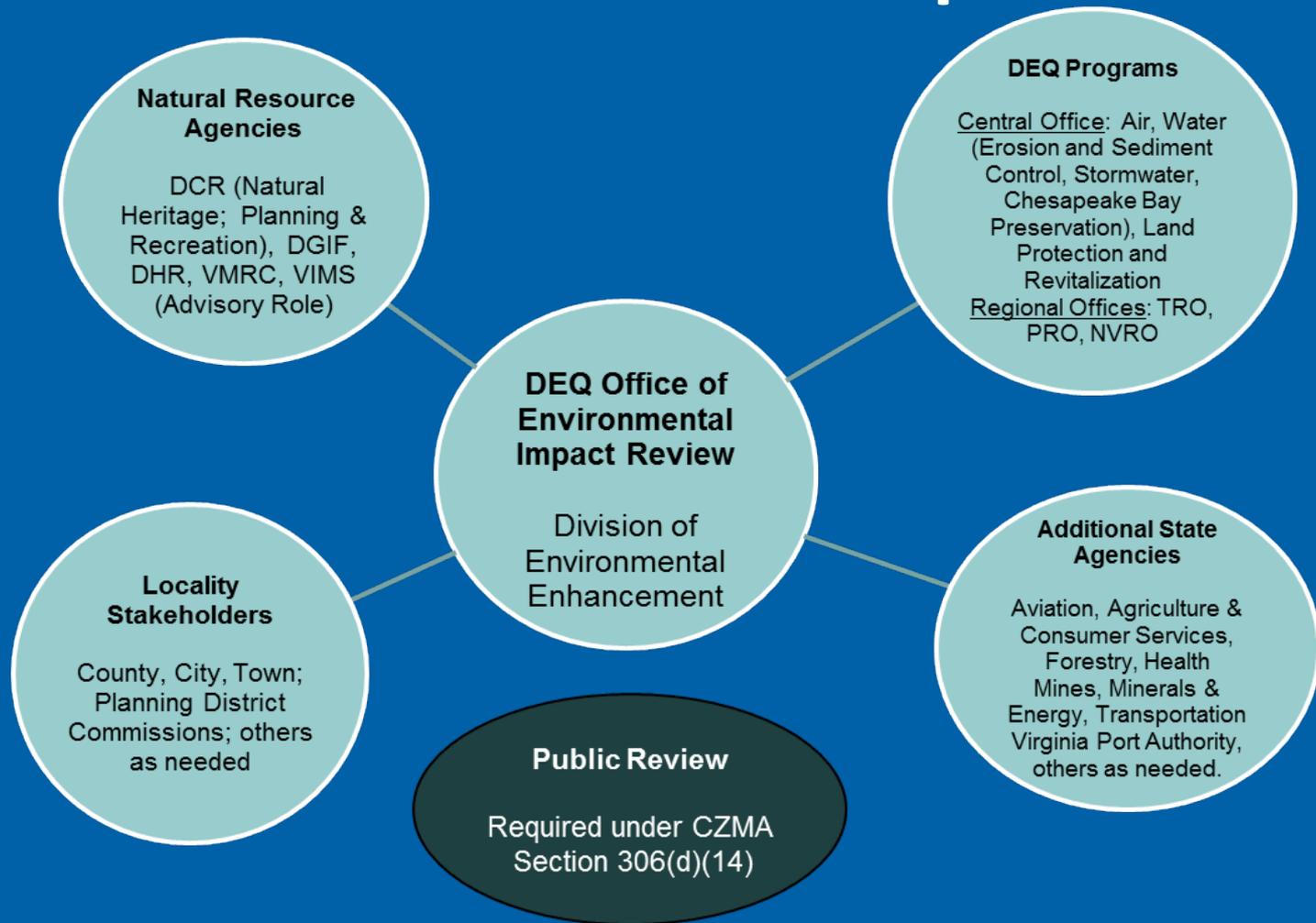
Virginia's Federal Consistency Program

NOAA Approved Program

- Enforceable Policies
 - 9 approved policies
- Listed Activities
 - Approved federal activities
 - Approved federal licenses and permits requiring federal consistency review



State Review and Response





State Review and Response

- Concurrence
 - agree project is consistent with program
- Conditional Concurrence
 - agree with conditions
- Objection
 - must be based on approved enforceable policies
 - federal agency may proceed over state's objection if consistent to the maximum extent practical (for federal agency activities)
 - Applicants to federal licenses and permits can appeal to the Secretary of Commerce



Example

- Native Oyster Reef Restoration, Piankatank River, VA
- Corps (Sponsor) submitted a Federal Consistency Determination (determined coastal effects)
- VMRC determined project not consistent with subaqueous lands enforceable policy
- VA issued conditional concurrence
- Project revised to meet conditions of VMRC permit





Example

- 2005 BRAC Recommendation 133, Washington Headquarters Services, Fort Belvoir
- DEQ's Air Division determined project is not consistent with the air pollution control enforceable policy due to insufficient information to support the Army's consistency determination and a lack of mitigation measures
- Project revised to meet enforceable policy





Questions

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