

REPORT OF THE

**Virginia Nontidal
Wetlands Roundtable**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



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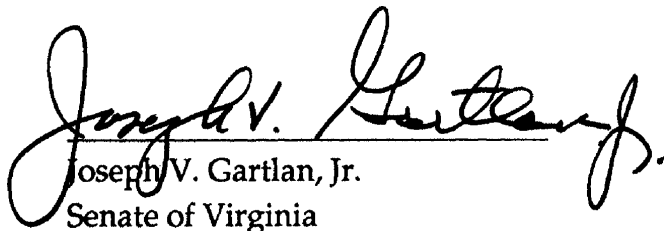
**COMMONWEALTH OF VIRGINIA
RICHMOND
1990**

January 1990

The Honorable L. Douglas Wilder, Governor
and
The General Assembly of Virginia

Over the course of seven months, the Virginia Nontidal Wetlands Roundtable engaged in extensive discussion and debate on all aspects of the Commonwealth's nontidal wetland resources and their management. While the diversity of interests and concerns surrounding this resource are manifold, the group was able to achieve a consensus reflected in this report. The term consensus is used to indicate that Roundtable members agree with the essential features of this report. It does not mean complete agreement exists on every specific recommendation or on how these might be interpreted or implemented by others. It does mean Roundtable members support the outcomes being sought and the overall approach recommended.

On behalf of the members it is my pleasure to submit the Report of the Virginia Nontidal Wetlands Roundtable. I commend it to your careful consideration.


Joseph V. Gartlan, Jr.
Senate of Virginia

**FINDINGS AND RECOMMENDATIONS
OF THE
VIRGINIA NONTIDAL WETLANDS ROUNDTABLE**

EXECUTIVE SUMMARY

The Virginia Nontidal Wetlands Roundtable pursued its study of issues related to management of the Commonwealth's nontidal wetlands resources as directed by the 1989 Virginia General Assembly. The study was conducted within the framework established by the 1987 Chesapeake Bay Agreement, the Living Resources Commitments which followed from the Agreement, and the 1988 Chesapeake Bay Wetlands Policy. Roundtable members concluded that while effective management of nontidal wetlands should be of immediate and continuing concern to the Commonwealth, creation of a new regulatory program for the resource may be premature at this time. The Roundtable believes that the state should immediately take steps to: enhance, coordinate and assess existing programs; institute continuing educational, research and incentive based preservation programs; and develop a current inventory of the resource. Once these efforts have been undertaken, the Commonwealth will be better able to determine both the need and appropriate design for any new regulatory program. In developing this general conclusion, the Roundtable's deliberations led its members to make the following specific recommendations for action.

RECOMMENDATIONS

- 1. The Virginia General Assembly should enhance the funding and staffing provided to the State Water Control Board for its Section 401 water quality certification responsibilities related to nontidal wetlands.
- 2. Virginia should decertify the U. S. Army Corps of Engineers Nationwide Permit No. 26 and any other nationwide permit which the State Water Control Board deems to impair protection of Virginia water quality.
- 3. The Department of Agriculture and the Division of Soil and Water Conservation of the Department of Conservation and Recreation should utilize, to the extent practical, the Department of Forestry model of nonregulatory interaction with its constituency, emphasizing education, voluntary compliance, peer review and monitoring to help minimize adverse effects on nontidal wetlands resulting from agricultural practices.
- 4. A comprehensive assessment of existing state programs should be undertaken with the goals of identifying how each program affects nontidal wetlands, how the programs

overlap or interact with one another in nontidal wetlands, where opportunities for effective coordination among programs exist and where new or enhanced programs are needed.

- 5. All state programs affecting nontidal wetlands should incorporate recognition of a Commonwealth policy for management of nontidal wetlands which seeks a short term goal of no net loss in acreage and function and a longer term goal of net resource gain in wetland acreage and function over present conditions.
- 6. State programs affecting nontidal wetlands should define wetlands as: Those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.
- 7. The federal procedures for delineation of wetlands should be included by reference in any state regulatory program.
- 8. All state programs or activities affecting nontidal wetlands should incorporate goals to avoid impacts on nontidal wetlands whenever possible, to minimize impacts when they cannot be avoided, and to seek full compensation for any impacts which occur.
- 9. Virginia should encourage and support research on the structure and function of nontidal wetlands with the goal of full elucidation of their functions.
- 10. The Commonwealth should make an immediate and continuing commitment to education of legislators, administrators, local government officials, and citizens on the scientific, legal, and political aspects of nontidal wetland management.
- 11. Virginia should make a commitment to the establishment and maintenance of a current inventory of the Commonwealth's nontidal wetland resources.
- 12. The Commonwealth should pursue implementation of as many types of incentives to preserve nontidal wetlands as possible.
- 13. Virginia should not pursue assumption of the federal Section 404 regulatory program at the present time.

**FINDINGS AND RECOMMENDATIONS
OF THE
VIRGINIA NONTIDAL WETLANDS ROUNDTABLE**

INTRODUCTION

During the 1988 and 1989 sessions of the Virginia General Assembly, state interest in nontidal wetlands came under intensive review. There was general consensus that nontidal wetlands are potentially important to maintenance of a "healthy" ecosystem. The General Assembly believed that in order to craft a specific state program for nontidal wetlands, a better understanding of the resource and alternative management programs was necessary and the subject required additional study. The Virginia Nontidal Wetlands Roundtable was created for this purpose.

The Roundtable began its work with the background of not only the General Assembly's 1988 and 1989 debates but also activities of the Chesapeake Bay Executive Council. The 1987 Chesapeake Bay Agreement specifically called for the development of programs to improve the protection of nontidal wetlands. The Living Resource Commitments which were developed in response to the Agreement, called for signatories to develop, by December 1988, a Bay-wide policy for protection of tidal and nontidal wetlands. That commitment was met in the form of the Chesapeake Bay Wetlands Policy which was produced and signed by the Governor of Virginia and other members of the Chesapeake Executive Council. It was within the framework of these investigations, agreements and commitments that the Roundtable commenced its deliberations. The results of the Roundtable's study and deliberations are set forth in the findings and recommendations of this report.

The members of the Roundtable respectfully transmit this report to the Governor and members of the 1990 Virginia General Assembly. The Roundtable members commend the report to the careful consideration of these individuals as they strive to meet the Commonwealth's commitments for management of its nontidal wetland resources statewide, and as specifically articulated in the 1987 Chesapeake Bay Agreement, the Living Resource Commitments and the 1988 Chesapeake Bay Wetlands Policy.

EXISTING VIRGINIA PROGRAMS/FINDINGS AND RECOMMENDATIONS

There are currently two state programs which establish some regulatory presence in nontidal wetlands. There are also a number of other state programs which have the potential to affect nontidal wetlands. The Roundtable concluded that Virginia needs to evaluate and enhance the effectiveness of these programs as a prerequisite to development of any new regulatory program for nontidal wetlands in the Commonwealth. To that end, the Roundtable offers the General Assembly the following findings and recommendations regarding existing state programs.

Chesapeake Bay Local Assistance Board

The Chesapeake Bay Preservation Act, as implemented by the Chesapeake Bay Local Assistance Board (CBLAB) and local governments, addresses some aspects of protecting nontidal wetlands contiguous to surface waters in Tidewater Virginia. Management of other nontidal wetlands (noncontiguous and those outside of Tidewater) may, at the discretion of local governments be placed under the framework of the

CBLAB program. Since the CBLAB program will not be in full operation before mid-1990, the degree to which the program is effective in protecting Virginia's nontidal wetland resources will not be apparent until late 1990 at the earliest.

Clean Water Act/Virginia State Water Control Board

The U. S. government's Clean Water Act establishes a federal wetlands management program. Under Section 404 of that act, the U. S. Army Corps of Engineers is assigned responsibility for administering a permitting program for activities in wetlands. Under Section 401 of the Act, before a federal permit can be issued, all activities which fall under federal purview must obtain a certification from the Virginia State Water Control Board that they will not adversely affect state water quality (based on the state's water quality standards). In the review of a proposed activity, the SWCB has the authority to simply certify the project, place conditions on the certification which require modification of the project, or deny certification which results in denial of a federal 404 permit. Even though the SWCB has had this authority for some time, it has not had the resources to pursue the responsibility effectively. As a consequence uncertainty remains as to the extent the SWCB Section 401 water quality certification process might achieve a reduction in destruction or despoliation of nontidal wetlands. In order to permit this program to achieve its potential and thereby enable an appropriate assessment of its impact on nontidal wetland resources, the Roundtable recommends that

Recommendation
No. 1

the Virginia General Assembly should enhance the funding and staffing provided to the State Water Control Board for its Section 401 water quality

certification responsibilities related to nontidal wetlands.

Because the SWCB Section 401 water quality certification program is limited to the scope of the federal regulatory program, the Roundtable also believes it is important for Virginia to ensure that it is as thorough as practical in establishing its role in that program. At the present time the federal program operates with procedures which automatically permit activities meeting certain criteria (e.g. area affected less than a given acreage, specific infrastructure maintenance, etc.). The Roundtable believes the existing SWCB program can achieve enhanced effectiveness by asserting its right to review and approve, deny, or place conditions on some of these otherwise "permitted" activities. To this end, the Roundtable recommends

Recommendation
No. 2

Virginia should decertify the U. S. Army Corps of Engineers Nationwide Permit No. 26 and any other nationwide permit which the State Water Control Board deems to impair protection of Virginia water quality.

Forestry and Agriculture

The forestry and agricultural industries in Virginia have had and will continue to have significant effects on the nontidal wetland resources of the Commonwealth. In the case of forestry the effects occur because many of the valuable timberlands in the state exist as forested wetlands, and these areas are periodically harvested in the normal course of silvicultural activities. In the case of agriculture, many of the remaining nontidal wetlands in the Commonwealth are immediately adjacent to farmlands and receive inputs from those lands as surface and groundwater moves to and through the wetlands.

The Roundtable learned that both the forestry and agricultural industries have a variety of voluntary programs encouraging use of best management practices (BMPs). The Virginia Department of Conservation and Recreation, Division of Soil and Water Conservation operates a program focused in part on reduction of soil erosion and minimization of nutrient runoff from agricultural lands. The Virginia Department of Forestry (DOF) has initiated a voluntary BMP program in cooperation with the private sector which seeks to minimize the adverse water quality impacts associated with normal timber harvesting. The Roundtable notes that the DOF program includes both a significant emphasis on education about the importance of wetlands and a commitment to an independent monitoring of the program's success. The Roundtable believes both of these elements are important to the success of a voluntary program and recommends that

Recommendation
No. 3

the Department of Agriculture and the Division of Soil and Water Conservation of the Department of Conservation and Recreation should utilize, to the extent practical, the Department of Forestry model of nonregulatory interaction with its constituency, emphasizing education, voluntary compliance, peer review and monitoring to help minimize adverse effects on nontidal wetlands resulting from agricultural practices.

Other State Programs

Numerous other state programs were identified by the Roundtable as having potential effects on nontidal wetlands in the Commonwealth. These programs include activities of the Department of Transportation, the Game and Inland Fisheries Department, the Department of Agriculture and Consumer Services, the Department of

Conservation and Recreation's Division of Soil and Water Conservation and Natural Heritage Program, the Department of Mines, Minerals and Energy, the Department of Health, the State Water Control Board and the Virginia Marine Resources Commission. It is the belief of the Roundtable that there are few effective efforts at coordination among these programs with respect to effects on nontidal wetlands. There is no indication that this is an intentional oversight. Rather, there has been no previous impetus to attempt coordination among various programs to achieve a common goal. It is therefore a recommendation of the Roundtable that

Recommendation
No. 4

a comprehensive assessment of existing state programs should be undertaken with the goals of identifying how each program affects nontidal wetlands, how the programs overlap or interact with one another in nontidal wetlands, where opportunities for effective coordination among programs exist and where new or enhanced programs are needed.

It is the suggestion of the Roundtable that the Council on the Environment has a mandate which makes it suitable for such an assignment. The Roundtable further suggests that the assessment of programs be designed to indicate the significance of "gaps" in state regulatory or management presence in nontidal wetlands in light of applicable existing state policies. The "gaps" should be identified in terms of: (a) types of nontidal wetlands (e.g. isolated hardwood wetlands, small shrub/scrub wetlands, etc.); (b) types of activities affecting wetlands (e.g. draining, impounding, harvesting, etc.); and (c) functions of wetlands (e.g. flood and erosion control, water quality maintenance, recreation, habitat, etc.).

Common Elements of Existing Programs

The Roundtable reasons that successful coordination and effective implementation of existing state programs under their existing authorizations can help reduce detrimental impacts on nontidal wetlands. Success in these efforts will require some common steps for all programs. For example, the Roundtable recognizes that the SWCB will need to develop new or expanded regulations clarifying its procedures under the Section 401 certification program. Among the issues requiring attention will be identification of the Commonwealth's policy for nontidal wetlands, procedures for identification of those wetlands, and guidelines for managing unavoidable impacts on the resource. The Roundtable believes these issues are of significance in all of the state programs which affect nontidal wetlands and strongly believes that every program should strive for consistency by incorporating, as appropriate, the following recommendations with regard to management policy, definition of nontidal wetlands, delineation procedure, and mitigation/compensation policy.

– Management Policy

With respect to a policy for nontidal wetlands, the Roundtable notes that the Commonwealth has a policy for management of wetlands by virtue of the execution of the Chesapeake Bay Wetlands Policy agreement signed by the Governor in January 1989. The goal of the wetland protection and management strategy outlined in that agreement is

to achieve a net resource gain in wetland acreage and function over present conditions by:

- (1) protecting existing wetlands; and
- (2) rehabilitating degraded wetlands, restoring former wetlands, and creating artificial wetlands.

The Roundtable discussed the ramifications of this policy statement in detail and recognized that achieving a "net resource gain" is actually a long term goal which is preceded by the shorter term goal of "no net loss" of the existing resource. The Roundtable concluded that a "no net loss" policy represents a conservative approach to management of a valued resource and is justified due to the remaining technical uncertainties surrounding comprehensive identification of nontidal wetland functions and values. The Roundtable therefore recommends that

Recommendation
No. 5

all state programs affecting nontidal wetlands should incorporate recognition of a Commonwealth policy for management of nontidal wetlands which seeks a short term goal of no net loss in acreage and function and a longer term goal of net resource gain in wetland acreage and function over present conditions.

The Roundtable asserts that water quality protection is not the only function for which nontidal wetlands are valued. Flood and erosion control, aesthetic values, recreation, habitat for fish, wildlife and endangered species are also functions that are of value to Virginia's citizens.

– Definition of Nontidal Wetlands

After reviewing the technical information available on nontidal wetlands, the Roundtable agreed that the definition utilized by the federal management programs is useful and acceptable. The Roundtable therefore recommends that

Recommendation
No. 6

state programs affecting nontidal wetlands should define wetlands as: Those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

– Delineation Procedure

This definition emphasizes three parameters found to be typical of most areas which function as wetlands, namely hydrology, vegetation, and saturated soils. After reviewing the technical understanding surrounding delineation of nontidal wetlands, the Roundtable agreed that the current federal procedures for delineation of wetlands represent a best available technique. These procedures include detailed methods for determining the composition of plant communities, the types of soils, and the presence of water on a site. The methods are products of several years of development effort. Further, the procedures undergo periodic review to ensure they are representative of the best available information regarding the resource. In extensive discussion the Roundtable agreed it was not desirable to attempt to craft a definition and delineation procedure which embodies management goals. Such a mix of technical understanding and management objectives seems destined to produce a definition fraught with unwarranted complexities. The technical adequacy of the federal procedures and their continuing review led the Roundtable to recommend that

Recommendation
No. 7

the federal procedures for delineation of wetlands should be included by reference in any state regulatory program.

The Roundtable notes that effective utilization of the procedures for identification of wetlands can only be accomplished by individuals whose competence is established and monitored.

– Mitigation/Compensation Policy

Utilization of the recommended definition and delineation procedures will not resolve all management issues surrounding nontidal wetlands. The Roundtable recognized that continued development of the Commonwealth's lands would necessarily present a continuing conflict with preservation of its nontidal wetlands. It will be necessary to accommodate some unavoidable and/or desirable impacts on the resource in a manner consistent with the "no net loss" policy. To support difficult decisions of this nature, state programs need policies which direct permitted activities to less "valuable" wetlands and seek replacement of wetlands or wetland functions degraded by development. The Roundtable spent some time reviewing mitigation policies and agreed, in conclusion, that the model provided by the VMRC tidal wetlands mitigation/compensation policy is a workable and desirable approach. The Roundtable therefore recommends that

Recommendation
No. 8

all state programs or activities affecting nontidal wetlands should incorporate goals to avoid impacts on nontidal wetlands whenever possible, to minimize impacts when they cannot be avoided, and to seek full compensation for any impacts which occur.

ADDITIONAL FINDINGS AND RECOMMENDATIONS

The Roundtable believes the foregoing recommendations for enhancement and evaluation of existing programs are necessary precursors to determination of the need for development of a specific nontidal wetlands management program. Based on the limitations of the SWCB program (to activities falling within the purview of the federal regulatory program) and of the CBLAB program (to contiguous nontidal wetlands in Tidewater), it is expected that some wetland areas will remain outside effective regulatory oversight. It seems prudent, however, given the recent advent of the CBLAB program, the potential enhancement of the SWCB program, and the potential for enhancement of other state programs, to assess these accomplishments prior to creation of another new management program.

Even while reaching this conclusion, the Roundtable's deliberations led it to several other conclusions about activities the Commonwealth can pursue related to nontidal wetlands. These activities may occur in the absence of any new management program and the Roundtable believes the state's interests in its nontidal wetlands resource would be well served by implementation of the following recommendations in addition to those presented above.

Research on Nontidal Wetlands

In the course of its deliberations the Roundtable was made acutely aware of the role scientific/technical information plays in enabling appropriate and effective design and implementation of management programs. In the case of nontidal wetlands the Roundtable finds that

the existing state regulatory programs are focused on the role of nontidal wetlands in maintenance and/or improvement of water quality. This is but one of the many functions of nontidal wetlands which the Roundtable believes to be rationales for the Commonwealth's management interest. Appropriate identification of the public interest in the resource and design of effective management programs therefore depend on continued development of our understanding of the structure and function of nontidal wetlands. In recognition of this finding, the Roundtable recommends that

Recommendation
No. 9

Virginia should encourage and support research on the structure and function of nontidal wetlands with the goal of full elucidation of their functions.

Education

The Roundtable finds that the most successful natural resource management programs are enabled by effective education programs. Reluctance to accept regulation for the purpose of preserving nontidal wetlands can be traced directly to lack of understanding of the functions and values of the resource. It is important that both managers and the regulated public understand the role of nontidal wetlands in the ecosystem. Successful educational efforts can be expected to both ease implementation of management programs and to lessen the necessity for such programs. The Roundtable therefore recommends that

Recommendation
No. 10

the Commonwealth should make an immediate and continuing commitment to education of legislators, administrators, local government officials, and citizens on the scientific, legal, and political aspects of nontidal wetland management.

Maintenance of Current Inventory

The Roundtable was convinced by numerous aspects of its deliberations of the utility and in many cases the necessity of a commitment to establishment and maintenance of a current inventory of the Commonwealth's nontidal wetlands resource. In the case of nontidal wetlands, the Roundtable learned that there is very little up-to-date information regarding the status and trends of the resource. The Department of Conservation and Recreation, Division of Soil and Water Conservation is currently working with the U.S. Fish and Wildlife Service to complete the National Wetland Inventory (NWI) for the western part of Virginia. The Division is interested, and has been encouraged by many state and federal agencies, in undertaking a new NWI inventory for eastern Virginia. Existing NWI maps for this area are out of date and relatively inaccurate. Current information is necessary both for appropriate implementation of existing management efforts and for evaluation of the effectiveness of those efforts. The value of accurate inventories for both managers and the regulated public is self-evident. The Roundtable learned that establishing such inventories is both expensive and difficult, but their utility justifies the necessary commitment of resources. These findings lead the Roundtable to recommend that

Recommendation
No. 11

Virginia should make a commitment to the establishment and maintenance of a current inventory of the Commonwealth's nontidal wetland resources.

In the course of its investigation of inventories, the Roundtable learned that inventory maps should generally be considered only as "guidance" documents for purposes of regulatory programs. It is simply not possible to be precise enough in a state wide mapping effort to generate maps which can define the exact position of a wetland boundary. This, however, does not diminish the utility of

inventories for indicating the need for close examination of individual properties. State wide inventory efforts also provide important information on the status and trends of the resource. The Roundtable learned that this type of information is critical to effective management of natural resources. Accurate information on the general distribution of nontidal wetlands throughout the Commonwealth, and monitoring of natural and man-made changes to the resource are appropriate objectives for a state wide inventory program.

Incentives

Management programs which have a goal of preserving a natural resource, inherently develop a "flavor" of restriction. Activities are proscribed in certain areas, or only certain types of activities are permitted. It is the opinion of the Roundtable that numerous options exist to provide opportunities for preservation of nontidal wetlands which do not require prohibition. The Roundtable has been convinced by a variety of evidence that one positive means for changing behavior detrimental to a valued resource is to provide incentives for alternative behavior. Options for such efforts extend from making it easy to avoid despoliation (e.g. enabling local governments to offer transferable development rights), to encouraging conservation (e.g. tying "use" taxation benefits to appropriate utilization of best management practices), to encouraging preservation (e.g. providing inducements for conservation easements and donations, or direct state acquisition of "sensitive" areas through a trust fund). Voluntary conservation of nontidal wetlands will always be desirable to preservation by regulation. The Roundtable therefore strongly recommends that

Recommendation
No. 12

the Commonwealth should implement as many types of incentives to preserve nontidal wetlands as possible.

Assumption of the Federal Section 404 Authority

Interestingly, the Roundtable received no recommendations from any source that it should seriously recommend Virginia seek to assume the federal nontidal wetlands regulatory authority. The expense and restrictions inherent in assuming the responsibilities of the program currently conducted by the U. S. Army Corps of Engineers and its advisory agencies were viewed as outweighing the potential benefits. Probable differences between federal and state management objectives would compromise opportunities for successful assumption of the 404 regulatory program and it is therefore the recommendation of the Roundtable that

Recommendation
No. 13

Virginia should not pursue assumption of the federal Section 404 regulatory program at the present time.

As the Roundtable investigated issues surrounding nontidal wetlands in the Commonwealth, its discussions led to several findings which may be of future use as the assessment of existing and developing programs progresses. These findings are general in nature, but they represent hard won insight and it is in the spirit of facilitating future efforts that the Roundtable includes them in this report.

Statewide Purview

The Roundtable is of a consensus that any program addressing the Commonwealth's nontidal wetlands

should have statewide purview (this includes the SWCB's 401 certification program). The Roundtable believes appropriate stewardship of the natural resources within the bounds of the Commonwealth cannot and should not be prioritized on the basis of local benefits. Just as Virginia expects other states in the Chesapeake Bay watershed to manage their resources in ways which will ameliorate problems evidenced within the Commonwealth's borders, so Virginia should practice stewardship of resources which can produce effects in other states.

Ability to Evolve

Successful implementation of a "no net loss" policy will place considerable emphasis on the technical information available to support management decisions. No net loss of acreage is relatively easy to achieve through avoidance and compensation. No net loss of function, however, depends on the ability of managers to accurately determine the values of each wetland potentially impacted.

The Roundtable learned that even though current understanding of nontidal wetlands is sufficient to indicate many wetlands are crucial elements of a "healthy" ecosystem, it is not yet possible to describe with certainty all of the functions of any given wetland. Thus, it is not possible to assure a wetland's values are appropriately recognized in a management decision. It is anticipated that the understanding of nontidal wetlands will continue to advance and that management decisions in the future will be afforded greater certainty. Because of the constantly evolving nature of the scientific basis for any management program, the Roundtable agreed that any management program developed for nontidal wetlands should incorporate in its design a capacity to adjust to

new technical understandings. This implies that the goals for the regulatory program should be clearly stated in the enabling legislation, but sufficient latitude should be allowed the implementing agency to adjust procedures and rules to reflect the most current technical information.

Local Government Involvement

It is the belief of Roundtable members that management of nontidal wetlands should provide for "effective" participation of local government. While numerous models for such participation can be found in other state management programs, it is the feeling of the Roundtable that advancing discussions of these models would be premature given the nature of the group's other recommendations. In addition, many members feel future considerations of this issue should not be limited to only extant models. It was recognized by the Roundtable that in almost all options for local government participation there would be a significant need for the state to provide supporting technical resources. The technical resources would need to include expertise to assist in delineation of nontidal wetlands, advice on evaluation of impacts, and continuing education regarding technological advances. In the absence of a strong state commitment to the provision of these resources, local participation can be expected to result in uneven achievement of management goals.

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**ADDENDUM STATEMENT TO NON-TIDAL WETLANDS
ROUND TABLE REPORT**

Robert S. Bloxom
Virginia House of Delegates

I concur with the goals which the Round Table established for management of non-tidal wetlands in Virginia and have signed the report. I deliberated before reaching that decision because of my reluctance to endorse the overall approach. There is no management structure detailed in the Round Table Report, but there is a call for enhancement and review of current state policy which is dictated by the federal interpretation of non-tidal wetlands as waters of the Commonwealth. These areas are land and localities can make more intelligent and effective decisions when dealing with land use decisions. Nor does the current policy allow for legislative direction or review.

The identification of non-tidal wetland is a decision that can only be dealt with in the locality by the local and state officials and the localities should play a more active role in this balanced management approach.

Understanding the resource and developing an appropriate management program is essential in trying to maintain a healthy and balanced ecosystem.

STATEMENT

**Richard J. Holland
Senate of Virginia**

I acknowledge receipt of the final draft prepared by the Non-tidal Wetlands Roundtable.

Please be advised that I cannot in good conscience sign-off on the report to be submitted to the Governor and General Assembly. I have strong objections for recommendation number 2 and some reservations about several of the other recommendations.

Please make my comments available to the members of the Final Report Drafting Committee.

COMMENTARY ON THE REPORT OF THE ROUNDTABLE ON NON-TIDAL WETLANDS

Edwin W. Lynch, Jr.
Gunston Land Company

My comments about the report on Non Tidal Wetlands as submitted to the Legislature by the Roundtable are limited to two criticisms. My first criticism relates to the concept of "no net loss". Wetlands are important as an ecological resource for their contribution to water quality and, as such, deserve protection. This is a lofty and laudable goal for public policy. However, the strict interpretation and application of a "no net loss" rule on a case by case basis throughout the State will cost the public and private sectors in Virginia hundreds of millions of dollars. These costs will far outstrip the value of the wetlands protected. There are other approaches which can be much more cost effective for the public. We have to accept the fact that if Virginia is going to grow in population and build roads and other public facilities to serve that population, we are ultimately going to lose a small percentage of our wetlands. We must also admit that some wetlands are less valuable than others. To require every landowner and every public works project to take measures to avoid, mitigate, or replace wetlands in every instance is extreme. In our meetings, we discussed a case in Northern Virginia in which the extension of Van Dorn Street from Franconia Road to Telegraph Road has been stopped in its tracks for the sake of five acres of flood plain which contain non-tidal wetlands. This one project alone has cost Fairfax County in excess of a million dollars. This does not include the cost to the taxpayers for the time they have spent tied up in traffic. It behooves the State to apply some degree of common sense in its interpretation of the "no net loss" rule. Strict application will result in costs far in excess of the value of preserving or replacing wetlands.

Edwin W. Lynch, Jr.
continued

Another aspect of the "no net loss" rule is that the wetland definition as employed by the Environmental Protection Agency does not draw a distinction between natural wetlands and man-made wetlands. The State and Federal Government should not extend their regulatory authority to man-made wetlands such as those which exist in depleted gravel pits. Once again, the Metro Station proposed for Springfield, Va. has incurred millions of dollars in expense in avoiding a beaver pond which has been built in a twenty year old gravel pit.

Secondly, the Roundtable utterly failed to achieve its goals and objectives. When this group was formed, it was with the intention of making recommendations to the General Assembly for legislation which would be submitted for the 1990 session. We wasted too much time talking about the "turf" issues between the regulatory agencies as they exist today. This Roundtable was supposed to be a forum for the public sector, the private sector, and public interest groups to meet, confer and work out their differences on a controversial set of issues. The recommendations as proposed by the Roundtable have done absolutely nothing for the private sector in terms of clarifying the regulatory rules and regulations or for establishing a consensus on a sound regulatory program. Our strongest recommendation is that the State Water Control Board decertify the Corps of Engineers for the National Permit #26, but the VWCB has already moved to decertify the Corps effective November, 1989.

ADDENDUM STATEMENT

Denard Spady
Northampton Planning Commission

I have signed the Nontidal Wetland Roundtable Report indicating general agreement with the "essential features" of the Report. However, regarding the "overall approach" for future action, I believe that the Tidal Wetlands model deserves more emphasis.

The Tidal Wetlands process effectively combines state-level staff and oversight with citizen involvement and local decision-making. The Local Wetlands Boards should operate within a rather tightly drawn set of guidelines created by VIMS and provided to them by VMRC. Local hearings allow citizens easy participation and provide an opportunity for VIMS staff, VMRC representatives, Local Board members, and citizens to all take part in the same discussions at the same time. Following such discussions the local decision-making process is completed. If such local decisions are not consistent with the Board's guidelines, then VMRC (and ultimately, the SWCB) can, and should, veto those decisions. Properly managed, this process combines local involvement with what is effectively state-level control of the managed resource. Those who are not satisfied with the consistency and evenhandedness of such a decision-making process should look to the state-level authorities responsible for its oversight.

While the Roundtable Report's emphasis on assessment, education, and landowner cooperation are all positive, I believe that local government, properly assisted and funded, can make a positive and effective contribution to the management of an important resource.

