August 5, 2023

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RE: Flood Preparedness and Protection Grants - Draft Manuals for Public Comment

On behalf of Audubon Society of Northern Virginia, Chesapeake Bay Foundation, Chesapeake Climate Action, Clean Fairfax Council, Environmental Defense Fund, Friends of the Rappahannock, James River Association, Lynnhaven River NOW, Natural Resources Defense Council, SERCAP, Inc, Sierra Club Virginia Chapter, Southern Environmental Law Center, The Nature Conservancy, Virginia Conservation Network, Virginia Interfaith Power and Light, and Wetlands Watch, we jointly offer these comments on the draft manuals for the Community Flood Preparedness Fund (CFPF) and the Resilient Virginia Revolving Fund (RVRF). The manuals that guide the implementation of these two important flood resilience funding programs play a crucial role in determining their effectiveness and in effectuating key priorities that are included in the statutes that establish them. We therefore appreciate the opportunity to comment on the draft manuals and hope that you will closely consider our comments.

We commend the great strides the Commonwealth has made in the last several years by distributing nearly $100 million to localities statewide for flood resilience planning and implementation grants. As the Department of Conservation and Recreation (DCR) prepares to issue a new application round for both Funds, we urge you to stay on track with the application and award timeline outlined during the recent Annual Virginia Flood Preparedness Coordination Meeting so that communities can continue accessing these critical funds.

The following is a bulleted list of our comments and recommendations on the two draft manuals. The comments are listed in the order in which they appear in the manual(s).

**Comments that apply to both the CFPF and RVRF Draft Manuals:**

- Although we appreciate the opportunity for local governments and Tribes to receive a variety of funding and financing opportunities through these two programs, **we are concerned about DCR over-emphasizing loans at this point in time.** As many localities are just beginning resilience planning work – and some are still planning projects that are not yet shovel-ready – grants can serve as a critical catalyst for local governments that may not have the resources or sufficient comfort with project implementation to apply for a loan without prior proof-of-concept. Until localities are more established with resilience plans and project ideas, we recommend DCR maintain the CFPF’s prior emphasis on grants since they are much more accessible for the vast majority of localities than loans and can help convince local leaders to invest their own resources and set up financing for resilience projects at a later time.
• We strongly support the 25% low-income set-aside and emphasis on nature-based solutions required by the CFPF’s enacting statute. We also support incorporating the same emphases into the RVRF, along with a stated preference for capacity building and planning applications. However, past CFPF rounds have failed to award funding to several capacity building and nature-based projects despite those applications scoring well, so the extent to which application scores affect funding decisions has not been clear. **We believe it is essential that verified application scores for both the CFPF and RVRF be the primary, if not exclusive, determinant of which applications are selected for funding.** Using scores as an exclusive determinant makes the application process more transparent and accessible, by providing time-restricted localities with a frame of reference around which to build their application. We urge DCR to include clarifications in the manuals that will ensure the funding awards made under both programs will closely align with the verified scores that applications receive under the manuals’ scoring methodologies.

• **The addition to the “locality-certified floodplain manager” definition is confusing and should be clarified to allow localities to contract with external agents.** It is unclear in the draft manuals when an external consultant or contractor with a Certified Floodplain Manager (CFM) credential could be utilized by a local government to meet CFPF requirements. We appreciate the reference to the permissibility of localities sharing the cost of a regionally employed CFM, but at this time many regions and communities depend on outside consultants. This dependence is due to the limited CFM training that is available in VA and the significant barriers that travel costs, time, and administration present to localities that would otherwise be interested in sending staff to CFM courses to become certified. A rough estimate from the Virginia Floodplain Management Association (VFMA) shows that only 20% of VA localities have a CFM on staff. We recommend clarifying this new language to allow applicants to contract CFMs outside the employ of the locality or regional group of localities. Likewise, we urge DCR to provide more CFM training resources **statewide.** Additionally, the finalized CFPF manual should reestablish the CFM certification as a priority use for the Capacity Building and Planning category funds.  
  o Reference for both manuals: Part I: Introduction and Overview, Section B. Definitions, “Locality-certified floodplain manager”

• **We urge DCR staff to provide significant training opportunities for applicants on how to use the WebGrants portal.** Both draft manuals require applications to be submitted via the WebGrants portal. Although the Webgrants system can streamline parts of the application process, it can also create a barrier for locality staff who are not familiar with it or with the registration process required to access the application. We urge DCR to offer online training webinars that walk applicants through the Webgrants application process.  
  o Reference for both manuals: Part II: General Department Grant Eligibility Criteria and Application Procedures, Section A: Department Conditions and Limitations for Making Grants and Loans, “Submission and Scope”
• **Those portions of existing staff salaries directly tied to Fund project management should be an eligible use of the Funds to help make them more accessible to low-income communities.** We urge you to reconsider language included in both draft manuals that would make CFPF and RVRF funding unavailable to cover the portion of existing staff salaries allocated to manage plans and projects that are awarded funding under the two programs. In many localities, it is unlikely that the activities that both Funds prioritize can be completed successfully without localities using their existing staff. Allowing CFPF and RVRF funds to be put toward staff salaries, specifically for managing projects awarded CFPF and RVRF funding, would allow localities more flexibility to shift existing staffing resources around to most effectively execute the CFPF/RVRF projects and meet their flood mitigation and resilience planning needs.
  ○ Reference for both manuals: Part II: General Department Grant Eligibility Criteria and Application Procedures, Section A: Department Conditions and Limitations for Making Grants and Loans, “Eligible Costs”

• **Low-income communities should be able to request up to 50% of their full award upfront.** We appreciate that both draft manuals would allow successful applicants for grants and loans for activities in low-income communities to receive funding advances prior to completing the work, as allowed in previous CFPF rounds. However, low-income communities rarely have funds on hand to initiate and maintain projects, making reimbursement-only funding opportunities inaccessible. We recommend that both manuals allow for funding advances of up to 50% for grant awards in low-income geographic areas, reducing barriers to project implementation in localities with high risk. The Community Development Block Grant (CDBG) program could be a model for DCR to emulate. We suggest DCR discuss lessons learned and best practices with the Virginia Department of Housing and Community Development to improve this process for future funding rounds of these programs.
  ○ Reference for both manuals: Part II: General Department Grant Eligibility Criteria and Application Procedures, Section A: Department Conditions and Limitations for Making Grants and Loans, “Disbursement”

• **Maintenance and stewardship expenses should be allowable costs for applicants.** This is particularly important for land acquisition and natural- and nature-based design projects that are able to grow over time but require ongoing maintenance to ensure the nature-based practices are well-established and sustained. Placing the financial responsibility of maintenance costs on the grantee is an unreasonable ask for resource-constrained localities, and it can undermine the priority that resilience funds place on natural and nature-based projects. We urge you to allow the costs and labor necessary to effectively maintain a project to be eligible for funding in all cases in which a maintenance plan is required as this will help ensure the success of the projects that those programs help fund.
  ○ Reference for both manuals: Part II: General Department Grant Eligibility Criteria and Application Procedures, Section A. Department Conditions and Limitations for Making Grants and Loans, “General Conditions”
• We commend DCR for encouraging applicants to provide letters of support from impacted stakeholders as a component of their application package. To further emphasize the need for stakeholder buy-in, DCR should award points to applications when applicants provide letters of support from impacted stakeholders. Garnering community support leads to more successful and accepted projects, so applications that demonstrate this outreach should be rewarded. However, we also understand that this could be an additional burden for some communities, so we suggest that the points awarded for this component be between 3-5 points.

• We appreciate the Administration’s prior commitment to transparency in funding decisions, including the establishment of a Review Committee. However, the finalized manuals should provide more information on the Review Committee, including a list of the specific agency departments and staff that will serve on the committee. Also, we encourage DCR to include staff from other state agencies on the Review Committee to take advantage of the technical expertise they offer, as interagency review panels have been successful for other funding programs, such as those administered by Virginia Land Conservation Foundation.

• The minimum expected useful life of a project should be extended from 10 years to at least 15 years to maximize the awards provided by these programs, alongside updates to the “Expected Lifespan of Project” scoring criterion. Both draft manuals require projects to have an expected useful life of 10 years or more. In order to maximize the value that the Commonwealth receives in return for its CFPF and RVRF investments, we recommend increasing the expected minimum lifespan to at least 15 years. Of note, current regulatory guidelines for the Chesapeake Bay Preservation Act (CBPA) require a useful lifespan of 30 years when feasible. Since many of the projects likely to be awarded grants and loans from the Funds will require compliance with the CBPA, we recommend aligning these programs with the CBPA requirements to the greatest extent possible. As part of this change, we also recommend adjusting the application scoring criterion for “Expected Lifespan of Project” to eliminate any points for activities with a minimum lifespan of less than 15 years, and increasing the number of points proposed to be awarded for activities with an expected lifespan of over 20 years.
  ○ Reference for RVRF draft manual: Part III: Award Categories, Section B. Hazard Mitigation of Buildings, “Additional Information”
• Soften the requirement that localities replace projects at their own expense or pay back funding they received when projects fail before the projected lifespan. While we appreciate that DCR may want to ensure responsible expenditure of the Funds on effective projects, we have concerns with the requirement for awardees to pay back funds or cover replacement costs at their own expense if a project fails – especially when the project failure may be caused by an “Act of God” or circumstances over which the locality has little to no control. The potential risk of repayment or project replacement could be a strong deterrent for localities to seek these funds, and particularly for those under-resourced localities that do not have the budget to consider undertaking these projects without CPF or RVF funding. This requirement could also undercut the Commonwealth’s stated preference for nature-based projects, as localities generally have less experience implementing and maintaining nature-based solutions than they do with implementing traditional, gray infrastructure projects, and the threat of paying to repair or replace a failed nature-based project may deter them from working to gain that experience. Without the agency staff or resources to commit to monitoring these projects, this requirement will add more burden onto DCR staff who are already stretched thin. **We recommend clarifying that localities are only responsible for the cost of project repair or replacement when a project fails within the first three years after installation and the locality’s improper or negligent installation was clearly responsible for the project’s failure.** Alternatively, DCR could recommend that localities pursue performance-based contracts to help address concerns about potential project failures.
  
  

**Community Flood Preparedness Fund Draft Manual Comments:**

• We appreciate that DCR is attempting to clarify the “community scale project” definition in this updated manual with the intent to fund projects that will provide flood risk reduction benefits to many people. **However, we are concerned that the suggested 10% population threshold could work to exclude projects implemented on public space in a neighborhood (a locally defined, named place, typically made up of multiple streets, with a shared identity) that would provide benefits to the entire neighborhood, as well as other residents of the locality and travelers passing through it.** This is problematic for neighborhood-scale resilience planning efforts, which are underway across the state and an important component of many localities’ flood resilience initiatives.
  

• We appreciate DCR’s transparency regarding match waivers and for increasing the match waiver limit to $50,000 for capacity building and
**Additional Information**

**Award III: Section Reference: III: Flood Part Section**

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- **Reference:** Part III: Award Categories, Sections A-C

- We can understand a number of reasons why DCR is considering capping CFPF grant awards, including to stretch the current resources available in the program and to spread available funding across more localities – and particularly to lower-resourced localities. However, we are concerned that a funding cap could incentivize some localities pursuing projects with costs that exceed the proposed cap to circumvent the CFPF review process altogether and instead make a direct funding request to the General Assembly; this could undermine the priority the CFPF program places on equity and nature based design ultimately result in less favorable outcomes. **To ensure the funding cap is not a barrier to applicants with larger resilience projects in mind, while still encouraging that awards are geographically widespread, we recommend that the cap for grant awards be raised from $5 million to $10 million per applicant.**

  - **Reference:** Part III: Award Categories, Section C. Flood Prevention and Protection Projects, “Minimums and Maximums”

- **Expand the list of entities that may own and maintain acquired lands in perpetuity to include qualified conservation organizations.** Language included on page 20 and in Appendix I of the draft manual indicates that for land acquisition projects, the acquired property must be “owned and maintained by the locality in perpetuity as an open space or conservation area.” We support requiring the land acquired to be held in perpetuity as open space or a conservation area, but we recommend making clear that localities may partner with land conservation organizations that would either own the acquired property or hold a conservation easement on it. Based on our organizations’ conservation work, we know that maintaining acquired conservation properties can be a significant financial burden for localities that may not have the expertise on staff to steward the acquired lands. Many examples of partnerships between localities and conservation groups for this purpose exist in the Commonwealth, and we believe that conservation organizations that have the capacity to do this work should be permitted to hold the acquired lands. We therefore recommend striking the phrase “by the locality” where it appears in the CFPF manual in this context, and recommend making clear in the manual that organizations eligible to own conserved land through the Virginia Conservation Easement Act and the Virginia Open Space Land Act may also hold ownership and easement interests in the acquired property.

  - **Reference:** Part III: Award Categories, Section C. Flood Prevention and Protection Projects, “Additional Information”
• We appreciate DCR’s prioritization of acquisition projects that are coupled with restoration efforts for the purposes of flood mitigation. **However, we believe that acquisition projects that include only demolition of structures with permanent protection of the land should be considered a higher priority in the scoring criteria of the CFPF.** Acquiring land and removing structures from high flood risk zones completely eliminates flood risk from both infrastructure and people, and such projects should therefore be awarded more points than currently set forth in the CFPF manual. Of note, the **Community Rating System (CRS) program**, which the CFPF manual references, provides the highest number of points available in its rubric for preserving open space in high flood risk zones alone (1,450 points). We agree that projects that incorporate acquisition, demolition of structures, and restoration are the most effective in restoring the natural floodplain and reducing flood risk; however, projects that include only acquisition and demolition, along with permanent protection of the acquired land, are also a critical first step in restoring natural floodplains. We suggest CFPF projects that include acquisition and demolition scored as under their own category in the “Eligible Projects” portion of Appendix B and be awarded 20 points within the scoring rubric (rather than 10 points included in the draft manual). This way, projects that include restoration are still the top priority of the CFPF program, but acquisition projects alone are scored more favorably than gray infrastructure projects.

• **The Benefit-Cost Analysis (BCA) requirement for Flood Prevention and Protection Projects should be eliminated, as it goes against the CFPF’s prioritization of equity and nature-based solutions.** While BCAs can serve a very useful purpose in many contexts, they often fail to adequately capture many of the often difficult-to-quantify benefits of projects in low-income communities as well as the multiple benefits that nature-based solutions provide to communities and ecosystems. Additionally, requiring a formal BCA is an additional application barrier for under-resourced localities who likely do not have the capacity or expertise on staff to complete it without outside support. We therefore recommend eliminating this requirement. If DCR feels strongly that a BCA should be a component of the application, we urge DCR to commit to making staff available to provide technical assistance for localities that request assistance in developing the BCA. Additionally, if a BCA is to be required, we recommend utilizing the BCA framework from HUD, as it is the most inclusive federal methodology. **Particularly in light of the Biden Administration’s forthcoming guidance on accounting for ecosystem services in benefit-cost analysis to advance and strengthen analyses of regulations and government investments, we recommend DCR revisit this in future manuals.**
  ○ Reference: Part IV: Required Application Components, Section B. Scope of Work Narrative, d. Scope of Work Narrative - Projects, “Project Information”

• **Localities should be eligible to apply for Planning and Capacity Building funds to update their Resilience Plans to incorporate the new requirements for such plans, and the Resilience Plan update requirement should be**
extended from 3 to 5 years. Even if localities have received CFPF funding in prior rounds to create a Resilience Plan, they should still be eligible to apply for additional funding to incorporate the new Resilience Plan components that the proposed revisions to the CFPF manual would require. If DCR continues to alter the requirements for Resilience Plans but does not allow CFPF funding to be allocated to a previously awarded activity, localities will need to address the shifting guidance without an incentive of additional funding to pursue the required changes.
  ○ CFPF Reference: Appendix I: Elements of Resilience Plans

- **We recommend that DCR re-examine and clarify the requirement for localities to identify repetitive loss properties in their study grant applications and Resilience Plans.** The draft manual requires that locality resilience plans include the number and location of repetitive loss and severe repetitive loss properties. According to the Federal Emergency Management Association, identifying the address of repetitive and severe repetitive loss properties is a breach of privacy. Given that CFPF Resilience Plans are publicly available, a requirement that they include the specific locations of such properties could be problematic. We recommend that the manual clarify that this repetitive loss information should be reported as “areas,” rather than by individual location (which is how the requirement is described in the draft manual’s scope of work narrative for studies on Page 24). Additionally, localities are struggling to access repetitive loss and severe repetitive loss lists; we urge DCR to help localities obtain this information from FEMA.
  ○ CFPF Reference: Appendix I: Elements of Resilience Plans; Part IV: Required Application Components, Section B: Scope of Work Narrative, c. Scope of Work Narrative - Studies (6a-i).

**Resilient Virginia Revolving Fund Draft Manual Comments:**

- We appreciate that DCR has emphasized equity in the RVRF draft manual. However, we believe that the priority that the CFPF program places on both equity and nature-based solutions should also be reflected in the RCRF to the greatest extent possible, given that both are key components of the Commonwealth’s Resilience Planning Principles. We therefore recommend that the RVRF manual include a guideline to allocate at least 25% of RVRF funds to under-resourced communities, and that it also include scoring criteria that would help to prioritize projects that reduce high-risk development and restore natural floodplains, utilizing nature-based solutions. In an effort to align flood resilience initiatives, plans, and funding across Virginia, the Commonwealth Resilience Planning Principles should be clearly reflected in the structure and implementation of the RVRF.

- We believe there is an error in the draft RVRF manual section that states: “Grant and loan funds will be disbursed on a reimbursement basis and may be drawn down quarterly or after the completion of milestones identified in the grant agreement. Localities which qualify as low-income communities may request and receive up to 10%
of funds in advance and request monthly draws.” **By their definition, loan funds should not be disbursed on a reimbursement basis.** We recommend using the same language as the CFPF manual for the loan disbursement description: “Project loan and long-term loan funds will be disbursed based on the loan agreement negotiated with VRA and the requirements of the locality. Though also subject to the terms of a loan agreement, Short Term Loans will generally be payable once a loan agreement is finalized and signed.”


- We believe a correction is also warranted in the manual section that states: “Final project deliverables defined in the approved Scope of Work are due to the Department within 30 days following the project end date, unless another date is approved by the Department.” Elsewhere in the document the final project deliverables are due 90 days following the project end date. Therefore, this sentence needs to be corrected from “30 days” to “90 days” to be consistent with the rest of the manual.
  - Reference: Part II: Conditions and Limitations, General Eligibility Criteria and Application Procedures, Section B. Application and Selection Process, 5. Reporting and Close-Out Guidelines for Award Recipients

- **We believe clarification is needed regarding the securities and guarantees required to receive a loan through the RVRF, as well as with the VRA underwriting criteria that may apply.** Additionally, clarification is needed if VRA will charge additional administrative fees beyond what DCR has noted, which is higher than the administrative rate charged by VRA for their existing loan programs. We believe more specificity is needed to clarify what percentage of the loan amount must be secured by a general obligation pledge, certain revenues, or an annual appropriation.
  - Reference: Part III: Award Categories, Section A. Local Match for Federal Grant Programs, “Loan Terms and Limitations”
  - Reference: Part III: Award Categories, Section B. Hazard Mitigation of Buildings, “Terms and Limitations”

- Similar to what is outlined in the CFPF manual, **DCR staff should be prepared to provide assistance to locality staff for obtaining the number of repetitive loss properties that would be covered by their Local Flood Resilience Program.** Obtaining lists of repetitive loss properties from FEMA can be very difficult and cumbersome even for localities familiar with and engaged in the CRS program, so any assistance with this requirement would be a wise investment.
  - Reference: Part IV: Required Application Components, Section B. Scope of Work Narrative, D. Scope of Work Narrative – Capitalization for Local Flood Resilience Programs

Thank you for the opportunity to comment on these important draft manuals. These two Funds are the only statewide flood risk reduction programs that provide resources at a magnitude that
even begins to approach the level of need among Virginia’s localities, soil and water conservation districts, and Tribes. Our organizations feel strongly that the manuals should be designed to maximize the significant flood preparedness and prevention funding opportunities that these two programs provide, while advancing the key priorities that are outlined in the statutes that establish them. We are ready to work alongside DCR and the Youngkin Administration to build awareness of these programs and make them as effective as possible.

Sincerely,

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