



## Land Development Services

# Technical Bulletin

**Subject:** Amendments to the Chesapeake Bay Preservation Ordinance (CBPO) regarding Mature Trees and Coastal Resilience and Adaptation to Sea Level Rise      **Date:** October 9, 2024      **No.:** 24-10

**Summary:** On October 8, 2024, the Board of Supervisors (Board) adopted amendments to the Chesapeake Bay Preservation Ordinance (CBPO) regarding the preservation of mature trees and coastal resilience and adaptation to sea level rise. A copy of the amendments is posted on the Land Development Services website under [Recently Adopted Amendments](#).

### **Effective Date:**

The amendments became effective October 9, 2024, at 12:01 a.m.

- The requirements apply to all new plans and applications submitted on or after this date, except all previously approved Water Quality Impact Assessments (WQIAs) and Resource Protection Area (RPA) exception and exemption requests remain valid for the period indicated in the approval.
- Applicants who submitted a plan or application prior to the effective date that is then accepted for review without further modification may continue to use the criteria in effect at the time of the submission. However, the plan or application must reach approval within six months of the effective date. Any previously approved WQIAs and RPA exception and exemption approvals remain valid for the time period granted in the approval.

### **Background:**

During the 2020 legislative session, the Chesapeake Bay Preservation Act (Bay Act) was amended to direct the State Water Control Board (SWCB) to adopt regulations that encourage and promote:

- 1) coastal resilience and adaptation to sea-level rise and climate change; and,
- 2) the preservation of mature trees or planting of trees as a water quality protection tool and to provide other natural resource benefits.

In June 2021, the SWCB adopted amendments to the Chesapeake Bay Preservation Area Designation and Management Regulations (Regulations). The first amendment requires an assessment of the impacts of sea level rise and storm surge on projects within the RPA. The second amendment includes provisions related to the preservation of mature trees.

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**Amendment Summary:**

Below is a summary of the amendments including impacts to the land development plan submission and review process.

**Adaptation Measures**

Nature-based adaptation measures and activities are an allowed use within the RPA, subject to criteria and limitations on the use of fill in the RPA as part of the adaptation measure in accordance with 118-3-3(g).

**Resilience Assessment**

A Resilience Assessment, as defined in CBPO §118-4-3(g), that assesses the impacts of climate change and sea-level rise is required for any proposed land development within the RPA. The [WQIA Application Form](#) has been revised to include questions regarding the Resilience Assessment.

- For projects not within the potential sea level rise, storm surge or flooding impact area as shown on the [Interactive Map Viewer](#), the applicant must indicate that on the WQIA Application Form and should skip the questions regarding a Resilience Assessment.
- For projects within the potential impact area, the applicant must complete all questions on the WQIA Application Form regarding the Resilience Assessment. The questions seek description and assessment of the potential impacts from sea-level rise, storm surge, or flooding during the 30-year timeframe, and identifying any condition, alteration, or adaptation measure necessary to address the potential impacts.

**Preservation of Mature Trees**

Language was added to section 118-3-2(b) to clarify that compliance with Chapter 122 of the County Code (Tree Conservation Ordinance) demonstrates compliance with the preservation of mature tree requirements of CBPO § 118-3-2(b). In addition, the amendment specifies that where RPA buffer will be established, trees must be incorporated as appropriate, and native species are preferred.

**Living Shoreline**

Clarification was added to assure that project designs must be consistent with the state code and guidelines regarding tidal wetlands. In addition, the Director may exempt a living shoreline, as defined in Va. Code § 28.2-104.1, from additional performance criteria requirements, including a WQIA, in accordance with § 118-3-3(i). The exemption request may be submitted separately or incorporated within the plan proposing construction of the living shoreline in the RPA for Director approval. Such requests must demonstrate that:

- The project minimizes land disturbance and maintains or establishes a vegetative buffer inland of the living shoreline,
- The project complies with the fill conditions in CBPO § 118-3-3(g)(3),
- A Resilience Assessment, as described in CBPO § 118-4-3(g)(1)-(6), is conducted to assess the impacts of climate change and sea-level rise,
- The project receives approval from the Virginia Marine Resources Commission or the Fairfax County Wetlands Board as applicable, and

- The county approves the project.

**Minor Changes and Edits**

Additional changes include adding new and revised definitions, clarifying time limits for appeals of decisions made by the Board, updating names and code citations to federal, state and local laws and regulations and edits.

For additional assistance, please contact Jerry Stonefield with the Site Code Research and Development Branch, at [Jerry.Stonefield@fairfaxcounty.gov](mailto:Jerry.Stonefield@fairfaxcounty.gov) or 703-324-5175, TTY 711.

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