

Wetlands Board Meeting

January 30, 2024 -- 7:00pm



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I. Call to Order and Roll Call



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II. Election of Chair and Vice Chair



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III. Future Tidal Wetlands Outreach in 2024



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County of Fairfax, Virginia

MEMORANDUM

DATE: December 13, 2023

TO: Board of Supervisors

FROM: Larry Zaragoza, D.Env, Chairman 
Environmental Quality Advisory Council

SUBJECT: Tidal Wetlands Outreach

The Environmental Quality Advisory Council (EQAC) recommends the Board of Supervisors provide direct and recurring outreach (e.g. example permit applications, mailers, public meetings) to tidal wetlands property owners and marine contractors to convey their responsibility to protect tidal wetlands and obtain permits for modifications where required.

Regular engagement with owners of tidal wetlands could raise awareness of current regulations, particularly given the significant changes in commonwealth law in 2020. Tidal wetlands are one component of Resource Protection Areas which also includes shorelines of streams, rivers, and other waterways associated with environmentally sensitive land that lie alongside or nearby which drain into the Chesapeake Bay. These resources are a key component of resiliency.

Since 1972, commonwealth law, and later County Code, have called for tidal wetlands to be protected. The County Wetlands Ordinance was updated to coincide with the 2020 commonwealth update to the law including a requirement that living shorelines be used for shoreline erosion protection wherever suitable. Living shoreline methods use natural elements to create effective buffers for absorbing wave energy and protect against shoreline erosion.

To increase public understanding, in 2022 the Fairfax County Wetlands Board developed specific county tidal wetlands guidelines¹ at the request of the Board of Supervisors. Unfortunately, this information only exists passively on a website and there has not been an associated initiative to proactively communicate this information on a recurring basis to relevant homeowners. Concerns have been raised by the Mount Vernon Council of Citizens' Associations and others about the impact of the new law, ordinance, and guidelines. Landowners of tidal wetlands would benefit from additional clarity and targeted outreach on this topic, with the goal of owners better understanding their responsibilities with respect to the wetlands on their property as well as positive outcomes for the protection of tidal wetlands themselves.

IV. Permit Application Coordination with the County Chesapeake Bay Preservation Area Ordinance



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- Chapter 2, Property Under County Control
- Chapter 101, Subdivision Provisions
- Chapter 102, Streets and Sidewalks
- Chapter 104, Erosion and Sediment Control
- Chapter 107, Problem Soils
- Chapter 112, Zoning Ordinance
 - Appendix A: Floodplains
- Chapter 114, Agricultural and Forestal Districts of Statewide Significance
- Chapter 115, Local Agricultural and Forestal Districts
- Chapter 116, Wetlands Zoning Ordinance
- Chapter 117, Expedited Land Development Review
- Chapter 118, Chesapeake Bay Preservation
- Chapter 119, Grass or Lawn Area
- Chapter 120, Heritage, Specimen, Memorial and Street Tree Ordinance
- Chapter 122, Tree Conservation Ordinance
- Chapter 123, Coastal Primary Sand Dune Zoning Ordinance
- Chapter 124, Stormwater Management Ordinance

VIRGINIA ACTS OF ASSEMBLY -- 2020 RECONVENED SESSION

CHAPTER 1207

An Act to amend and reenact § 62.1-44.15:72 of the Code of Virginia, relating to Chesapeake Bay Preservation Areas; mature trees.

[H 504]

Approved April 22, 2020

Be it enacted by the General Assembly of Virginia:

1. That § 62.1-44.15:72 of the Code of Virginia is amended and reenacted as follows:

§ 62.1-44.15:72. Board to develop criteria.

A. In order to implement the provisions of this article and to assist counties, cities, and towns in regulating the use and development of land and in protecting the quality of state waters, the Board shall promulgate regulations that establish criteria for use by local governments to determine the ecological and geographic extent of Chesapeake Bay Preservation Areas. The Board shall also promulgate regulations that establish criteria for use by local governments in granting, denying, or modifying requests to rezone, subdivide, or use and develop land in these areas.

B. In developing and amending the criteria, the Board shall consider all factors relevant to the protection of water quality from significant degradation as a result of the use and development of land. The criteria shall incorporate measures such as performance standards, best management practices, and various planning and zoning concepts to protect the quality of state waters while allowing use and development of land consistent with the provisions of this chapter. The criteria adopted by the Board, operating in conjunction with other state water quality programs, shall encourage and promote (i) protection of existing high quality state waters and restoration of all other state waters to a condition or quality that will permit all reasonable public uses and will support the propagation and growth of all aquatic life, including game fish, ~~which~~ *that* might reasonably be expected to inhabit them; (ii) safeguarding *of* the clean waters of the Commonwealth from pollution; (iii) prevention of any increase in pollution; (iv) reduction of existing pollution; (v) *preservation of mature trees or planting of trees as a water quality protection tool and as a means of providing other natural resource benefits*; (vi) *coastal resilience and adaptation to sea-level rise and climate change*; and ~~(v)~~ (vii) promotion of water resource conservation in order to provide for the health, safety, and welfare of the present and future citizens of the Commonwealth.

C. Prior to the development or amendment of criteria, the Board shall give due consideration to, among other things, the economic and social costs and benefits ~~which~~ *that* can reasonably be expected to obtain as a result of the adoption or amendment of the criteria.

- **9VAC25-830-40.**

- **New Definitions.**

- "Adaptation measure" means a project, practice, or approach to mitigate or address an impact of climate change including sea-level rise, storm surge, and flooding including increased or recurrent flooding.
 - "Nature-based solution" means an approach that reduces the impacts of sea-level rise, flooding and storm events through the use of environmental processes and natural systems.

9VAC25-830-155. Climate change resilience and adaptation criteria.

A. ~~[Pursuant to § 62.1-44.15:72 of the Code of Virginia, this section provides criteria and requirements to address coastal resilience and adaptation to sea-level rise and climate change. Adaptation measures may be allowed in the Chesapeake Bay Preservation Areas subject to approval by the local government, in accordance with the conditions set forth in this chapter.]~~

~~This section applies in addition to 9VAC25-830-130 and 9VAC25-830-140. Local governments shall incorporate [these provisions the requirements of this section] into all relevant ordinances and ensure their enforcement through implementation of appropriate processes and documentation for oversight and enforcement. [Localities In doing so, local governments] shall [update and amend their ordinances to adopt and incorporate these performance criteria by (insert date three years after effective date of this amendment) ensure that the incorporation is consistent with the water quality protections of the Act].~~

~~[B. Land development and adaption measures or activities, including buffer modifications or encroachments necessary to install adaptation measures, mitigation measures, or other actions necessary to address the impacts of climate change, including sea-level rise, recurrent flooding, and storm surge, may be allowed in a Chesapeake Bay Preservation area provided the activity complies with all other applicable provisions of this chapter. Nothing in these provisions shall preclude a locality from adopting requirements or criteria in addition to the requirements of these provisions to address the impacts of climate change and sea-level rise in Chesapeake Bay Preservation areas in the locality, including extension of the Resource Protection Areas, further restrictions on development, or further preservation of existing vegetation.~~

~~€ B.] Local governments shall [consider assess] the impacts of climate change [or and] sea-level rise on any proposed land development in the Resource Protection Area [during the plan of development or project review process], [Based upon this consideration, local governments may require the installation of additional measures or design features as part Such assessment shall be based on the Resource Protection Area as delineated at the time] of the proposed land development [consistent with the requirements of the Act and this chapter. In considering the future impact, local governments shall-Such assessment shall at a minimum]:~~

~~1. [Consider Be based upon] a potential impact range of [no less than] 30 years [or the lifespan of the project if less than 30 years];~~

~~2. Utilize [an appropriate a] model or forecast [to aid in the consideration of developed by or on behalf of the Commonwealth;~~

~~3. Identify potential] impacts [through use of]:~~

~~a. [The most updated From projected sea-level rise using the] 2017 National Oceanographic and Atmospheric Administration (NOAA) Intermediate-High scenario projection curve [or any subsequently updated version thereof, on the project site];~~

4. Assess the potential impacts in light of the proposed land development on buffer function including loss of riparian buffer vegetation and vegetation migration; water level, storm surge, or other impacts in altering migration; as well as the potential impacts resulting in additional future land disturbance or development in the Resource Protection Area or diminishing the protection of water quality due to the proposed development from these impacts; and 4. Identify measures, conditions, or alterations connected to the proposed land development .

5. Identify conditions, alterations, or adaptation measures for the proposed land development to address these potential impacts as necessary and appropriate based upon site conditions nature, type, and size of proposed land development and projected including whether such proposed land development is in an Intensely Developed Area overlay; extent of potential impacts This includes; and the necessity to minimize future land disturbance.

6. Local governments may require this assessment to be submitted as part of a Water Quality Impact Assessment. The specific content and procedures for the assessment shall be established by each local government and shall be of sufficient specificity to demonstrate compliance with this requirement.

7. Based upon the assessment, local governments shall, as necessary and appropriate, require conditions, alterations, or the installation of adaptation measures such as state or federally recognized or approved best management practices appropriate for part of the site conditions and proposed land development to address such impacts consistent with the requirements of the Act and this chapter .

D. Local governments shall not grant exceptions to the requirements of 9VAC25-830-130, 9VAC250-830-140, or 9VAC20-830-155 where:

1. The impact of climate change, including sea-level rise on the land development is not considered as outlined in subsection C of this section for exceptions in the Resource Protection Area;

2. The exception consists of approval solely for the use of fill or other material to the Resource Protection Area or within 100 feet of the Resource Protection Area; or

3. The exception permits encroachment into seaward 50 feet of the buffer area of the Resource Protection Area notwithstanding permitted modifications and adaptive measures:

F. C. Local governments may allow adaptation measures or activities within the Resource Protection Area to address climate change, including sea-level rise subject to the following criteria these criteria and requirements which shall apply to such adaptation measure or activity in lieu of the criteria addition to those found in 9VAC25-830-130 and 9VAC25-830-140 4. Where the including the requirement for a Water Quality Impact Assessment pursuant to subdivision 6 of 9VAC25-830-140. The adaptation measures or activity is within a Resource Protection Area that has been previously developed, including Intensely Developed Areas, and is not naturally vegetated, the adaptation measure or activity measure shall:

1. Be a nature-based solution adaptation measure that uses environmental processes, natural systems, or natural features, is appropriate for site conditions, and is:

a. A Best Management Practice approved by the Chesapeake Bay Program Partnership;

b. Be designed, implemented An approved Virginia Stormwater Best Management Practice listed in the Virginia Stormwater Best Management Practice Clearinghouse;

c. An approved Shoreline Protection Strategy in accordance with the Tidal Wetlands Guidelines as determined by the Virginia Marine Resource Commission; or

d. A project that is an eligible activity for funding by the Virginia Community Flood Preparedness Fund as determined by the Virginia Department of Conservation and Recreation.

~~_____~~
D. Local governments shall ensure that any activity in the Resource Protection Area is consistent with Chapter 13 Title 28.2, Code of Virginia, and the accompanying Tidal Wetlands Guidelines which provide for "minimum standards for the protection and conservation of wetlands," and "ensure protection of shorelines and sensitive coastal habitat from sea level rise and coastal hazard." Shoreline management and alteration projects should be coordinated to address the requirements of the most updated Tidal Wetlands Guidelines in conjunction with the requirements of this chapter, including subdivision 5 a (4) of 9VAC25-830-140]:

[4. Where the proposed adaptation measure is E. For] a living shoreline [project or related activity, as defined in § 28.2-104.1 of the Code of Virginia, where] the locality otherwise approves of the project, the [projects project minimizes land disturbance and] maintains or establishes a vegetative buffer inland of the living shoreline [to maximum extent practicable, minimizes land disturbance to the maximum extent practicable, and the project, complies with the fill conditions in subdivision C 3 of this section, and] receives approval from the Virginia Marine Resources Commission [including a permit or the local wetlands board] as applicable, [and any other necessary permits or approvals, the adaptation

<https://register.dls.virginia.gov/details.aspx?id=9813>

5/7

1/26/24, 12:35 PM Vol. 38 Iss. 1 (Final) 9VAC25-830, Chesapeake Bay Preservation Area Designation And Management Regulations August 30, 2021

 [VA Register Online](#) [Emergency Regulations](#) [Guidance Documents](#) [Learn](#) [Agency Resources](#)



[F. Local governments shall not grant exceptions to the requirements of 9VAC25-830-130, 9VAC25-830-140, or this section where:

1. The assessment of climate change and sea-level rise as outlined in subsection B of this section has not occurred; or

2. The proposed adaptation measure allows for the use of fill in a Resource Protection Area contravention of the requirements of 9VAC25-830-155 C 3.]

9VAC25-830-190. Land development ordinances, regulations, and procedures.

V. Status Update of Routing Permit Applications



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VI. Meeting Minute Review & Approval



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VII. Public Comment



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CLOSED SESSION



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