

## **REGULATORY REVIEW PACKAGE**

### **Chesapeake Bay Local Assistance Board Chesapeake Bay Preservation Area Designation and Management Regulations 9VAC10-20-10 et seq.**

#### **ITEM 1**

A copy of the proposed amendments to the existing regulation is attached (Attachment 1).

#### **ITEM 2**

- (i) **Statutory Authority:** ' ' 10.1-2103 and 10.1-2107 of the Code of Virginia (Chesapeake Bay Preservation Act, Attachment 2, hereinafter referred to as Athe Act@)

**Basis:** Section 10.1-2103 of the Act sets forth the powers and duties of the Board. Subsection 4 authorizes the Board to promulgate regulations pursuant to the Administrative Process Act, and subsection 5 authorizes the Board to develop, promulgate and keep current the criteria required by ' 10.1-2107 of the Act.

Section 10.1-2107 of the Act states that AIn order to implement the provisions of this chapter 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 which 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 which establish criteria for use by local governments in granting, denying, or modifying requests to rezone, subdivide, or to use and develop land in these areas.@

- (ii) **Purpose:** The purpose of the proposed regulation is to amend the existing regulation to accomplish the following:
1. Achieve greater clarity in all regulatory language to minimize confusion and misinterpretation.
  2. Eliminate any conflicts and unnecessary redundancies between the requirements in the regulations and those in other related state and federal laws and regulations, while still providing for maximum water quality protection. Specific issues under consideration where conflicts or redundancies are perceived to exist are as follows:
    - a. Stormwater management criteria;
    - b. Erosion and Sediment Control criteria;
    - c. Septic system criteria;
    - d. Agricultural criteria;
    - e. Silvicultural criteria; and

3. Improve vegetative buffer area criteria to provide greater clarity as well as consistency with the riparian forest buffer policy developed by the Executive Council of the Regional Chesapeake Bay Program.
4. Improve agricultural conservation criteria to correct the inability to meet the existing conservation plan approval deadline, reduce administrative overhead and result in more water quality protection practices on the land.
5. Add criteria regarding a board/department process to review local program implementation for consistency with the regulations.
6. Accomplish numerous technical amendments necessitated by changes in terminology and numbering protocols. A regulation numbering matrix is attached to cross-reference the old regulation numbering with the Virginia Administrative Code (VAC) numbering protocol of the existing regulations and of the proposed amended regulation (Attachment 3).

Need: The Chesapeake Bay Preservation Act was passed by the Virginia General Assembly in 1988 and final regulations for its implementation were adopted in November 1990. The Chesapeake Bay Local Assistance Board, established to implement the Act in partnership with Tidewater Virginia local governments, anticipated from the outset that this new state-local partnership program would require recurrent review and adjustment to maximize its effectiveness. This amendment process is proposed to address recommendations resulting from two stakeholder evaluations of the regulations (1992 and 1994), a legislative study of state stormwater management programs (1993-94), and two separate agency reviews (1995) mandated by the General Assembly and the Governor.

(iii) Substance: An explanation of all proposed amendments is attached (Attachment 4). However, the following is a brief overview of key provisions:

1. Language is amended at several places to clarify the intended meaning of vegetative buffer criteria, both for purposes of designation of Resource Protection Areas and for purposes of determining appropriate uses and encroachments within the buffer. These changes are in response to numerous questions from local governments regarding clarifications or interpretations of the buffer requirements.
2. Language is added setting forth the Board's policy regarding the sufficient extent of designation of local Resource Management Areas.
3. Three general performance criteria are being clarified, replacing ambiguous terms consistently with more concrete terms of art.

4. Septic system performance criteria are being amended to add some flexibility and compliance options for local governments and, ultimately, landowners.
5. The stormwater management performance criteria are being amended to reference the water quality provisions of the DCR stormwater management regulations, for the purpose of consistency. The several agencies of the Natural Resources Secretariat have been working for several years to develop a set of stormwater management standards that all of the agencies could agree to use in their separate programs. This process has involved oversight from the General Assembly and several advisory committees composed of representatives of all affected interest groups. The goal has been to eliminate any conflicts and confusion generated by having different standards and criteria in each agency. The reconciled water quality standard being proposed by DCR is the result of a consensus reached by all interested parties and agencies after considerable public comment. All of the agencies have agreed that the Virginia Stormwater Management Regulations, under the authority of the Department of Conservation and Recreation, should be the location of these new standards and that the other agencies will stipulate their stormwater management requirements by reference to the DCR regulations. DCR is in the process of amending its regulations at this time and is slightly ahead of the CBLAB amendment process.

Also, flood control and stormwater management facilities are added as a new use by right in Resource Protection Areas, provided necessary permits can be obtained from the relevant state and federal agencies.

6. The unattainable deadline for completion and approval of all required agricultural conservation plans is being rescinded and replaced with location priorities for agricultural planning. As well, the mandatory conservation plan requirement is being replaced with a conservation assessment process, recognizing that many farmers are already implementing conservation practices and do not need plans developed for these measures. One new agricultural criterion is being added, requiring soil tests for the development of needed nutrient management plans, based on these assessments.
7. Language and requirements regarding nonconformities, exemptions, and exceptions is clarified.
8. For clarity and to improve understanding, the language that currently constitutes Part V of the regulations, addressing criteria for local comprehensive plans, subdivision ordinances, and zoning ordinances, is being subdivided into separate parts and additional criteria and guidance is provided regarding subdivision and zoning ordinances.

9. Language governing local program adoption and implementation is being amended to more accurately reflect the Board=s current three-phase process, and the original adoption deadlines are being rescinded, since the last of the 84 localities in Tidewater Virginia is poised to adopt its local program.
  10. Language is added to clarify that local governments may use civil penalties to enforce requirements of their local Bay Act programs.
  11. New language is being added in Part VIII (Enforcement) describing the Board=s process for reviewing the consistency of local program implementation with the requirements in the regulations.
- (iv) Issues: The list of general issues above is the result of the several reviews mentioned in the previous paragraph. The Board desires to accomplish a comprehensive amendment of the regulations to clarify the meaning of various provisions, provide greater implementation flexibility, and reduce costs for both local governments and members of the public who must comply with the state/local requirements.
- Alternatives: The Board could leave the current regulation in place without change. However, this would result in continued confusion regarding certain definitions and requirements and continued conflict or unnecessary redundancies with some provisions of certain related state and federal laws and regulations.
- (v) Impacts: Tidewater Virginia local governments will experience the most immediate impact of an amendment of these regulations, because each of these local governments has adopted a local program, including adoption or amendment of various ordinances, to implement the provisions of these regulations. Amendments to the regulations will result in each of the 84 Tidewater localities having to enact at least some amendments of its local ordinance(s) and program. This will result in costs to Tidewater Virginia local governments.

While it is difficult to estimate what the actual costs of these amendment processes may be, the Department has provided 108 financial assistance grants totaling slightly more than \$1 million to Tidewater local governments from fiscal year 1991 through the current fiscal year specifically for comprehensive plan and ordinance revisions. These grants were part of the more than \$8.5 million provided in financial assistance to Tidewater localities since the program began.

Since these grants require a 50/50 match and the local match can reflect a broad range of in-kind services, it is also difficult to know whether the local match actually applied to these projects. Furthermore, it is important to recognize that these grants reflect the original development, from scratch, of the local program and implementing ordinance or the original development of a water quality protection component of the local comprehensive plan, including all the needed resource inventories, maps, etc. The future

amendments will apply only to existing ordinances and not the comprehensive plans. Therefore, the needed ordinance amendments should be simpler and less costly to implement. While appropriations for the Board's financial assistance program have decreased somewhat in the last couple of years, the Board still commits approximately \$700,000 per year of combined funds to the competitive grants and technical assistance programs. Localities would be eligible to apply for grants from these funds for their ordinance amendments.

It is also important to recognize that a number of the changes under consideration have been recommended by the local governments themselves. The intention of the amendments is to make the process of complying with these state-mandated local programs more reasonable and cost-efficient to implement and follow without sacrificing water quality protection. Apart from this program, such local ordinance amendments are enacted routinely by local governing bodies as part of the process of managing land use.

Beyond the ordinance amendment process, there should be no additional increases in costs or manpower for local program implementation or compliance, but some reallocation of existing resources may result. The proposed changes will result in no increases in costs or additional manpower requirements for the Chesapeake Bay Local Assistance Department.

Many of the specific changes under consideration should result in clearer, simpler, more flexible, non-conflicting program requirements. These changes are intended and expected to make local programs easier and more cost-efficient to implement. The Board expects that, generally, net costs to the private sector and the citizens of Tidewater Virginia complying with these requirements will, at worst, remain at current levels and, at best, diminish somewhat.

### **ITEM 3**

A statement from the Attorney General that CBLAD possesses, and has not exceeded, its statutory authority to promulgate this regulation, is attached (Attachment 5).

### **ITEM 4**

The Chesapeake Bay Preservation Area Designation and Management Regulations are mandated by state law. Section 10.1-2100 of the Code of Virginia (Chesapeake Bay Preservation Act C see Attachment 2) requires that, in order to protect the public interest in the Chesapeake Bay, its tributaries and other state waters and to promote the general welfare of the people of the Commonwealth, the counties, cities and towns of Tidewater Virginia must incorporate general water quality protection measures into their comprehensive plans and land use ordinances and establish programs, consistent with criteria established by the state, to protect certain critical lands. Section 10.1-2107 requires the Board to promulgate regulations which establish the criteria for use by Tidewater local governments to designate Chesapeake Bay Preservation Areas

and to manage uses and development within those designated areas. Section 10.1-2109 of the Act requires Tidewater localities to ensure that their zoning and subdivision ordinances comply with the Board's regulations and that their comprehensive plans incorporate the protection of the quality of state waters, consistent with the provisions of the Act.

#### **ITEM 5**

The proposed amendments to the Chesapeake Bay Preservation Area Designation and Management Regulations do not exceed specific minimum requirements of a legally binding state or federal mandate.

#### **ITEM 6**

The proposed amendments to the Chesapeake Bay Preservation Area Designation and Management Regulations do not exceed specific minimum requirements of a legally binding state or federal mandate.

#### **ITEM 7**

The Chesapeake Bay Local Assistance Board and Department will initiate a review and reevaluation of this regulation approximately six (6) months prior to the third anniversary of the effective date of this proposed amendment. The purpose of the review and reevaluation will be to determine if the regulation should be continued, amended, or terminated.

The Board and Department have two potential mechanisms available that may be used to measure success regarding this regulation. The first is a ten-year long water quality monitoring project being conducted in a developing watershed in Caroline County, Virginia. By that point in time the data from the study may reveal whether or not the performance criteria in the regulation are effective in protecting the quality of that stream (as a surrogate for other state waters) from the impacts of land development. The goal of this project is to demonstrate that through implementation of the local Bay Act program in a developing watershed, the water quality of the stream system will be protected and will not decline.

The second potential measurement mechanism is the Board's local program implementation review process. This process is conducted to determine the level of program implementation success and effectiveness among Tidewater localities, with the ideal goal that all local Bay Act programs would be correctly and effectively implemented. The process consists of reports and grant deliverables provided by the local governments; field visits, questionnaires and interviews conducted by implementation review staff of the agency; site plan reviews, field visits and other technical assistance provided by agency staff at the request of local governments; and citizen complaints and agency enforcement actions related to local program implementation.

**ITEM 8**

The process of adopting the proposed amendments to the Chesapeake Bay Preservation Area Designation and Management Regulations will comply with the Chesapeake Bay Local Assistance Board=s Public Participation Guidelines (9VAC10-10-10 et seq.). Upon completion of this review and any further changes in the proposed amendments resulting from this review, the Board will publish a Notice of Public Comment (NOPC), consistent with all required procedures.

**Estimated Fiscal Impacts for Implementation and Enforcement:**

The cost to CBLAD to comply with these procedures is estimated to include the following:

- (1) publication of the NOPC in local newspapers and the *Virginia Register of Regulations*;
- (2) printing and distributing the NOPC to interested parties;
- (3) printing and distributing copies of the regulations to interested parties;
- (4) conducting public meetings to solicit comments regarding the proposed regulations;
- (5) printing and distributing to commenters a list of the public comments and agency responses;
- (6) necessary modifications to the *Local Assistance Manual*, the agency=s document which provides guidance and interpretations regarding the regulations; and,
- (7) staff and Board review of local program changes to assure compliance with the regulations.

The total cost of these procedures is estimated to be approximately **\$127,600**. The actual or estimated costs are dependent on the number of public meetings and the level of interest expressed by the public. At this time, we anticipate that four public meetings will be held, one each in Northern Virginia (Prince William County or Fredericksburg), Richmond, Tidewater (Chesapeake or Virginia Beach) and the Eastern Shore.

The estimated costs are itemized as follows:

1. Publication of the NOPC in newspapers and the Virginia Register: **\$ 2,000**

This figure is based on previous costs for publishing and the anticipated length of the NOPC. This would include publication in the major newspapers which serve Tidewater Virginia: The Richmond Times-Dispatch (est. \$400), the Richmond Free Press (200), the Virginia Pilot (\$400), and either the Washington Post (\$1,000) or a distribution of smaller regional newspapers (equivalent total cost). There is no anticipated cost for publishing in the *Virginia Register of Regulations*.

2. Printing and distributing the NOPC to interested parties: **\$880**

The NOPC is assumed to be several pages in length for the purposes of printing and postage. All copying will most likely be done in-house an approximate cost of \$0.02 per copy. First class postage (\$0.32) is assumed to be adequate for the estimated size of the NOPC. CBLAD will mail the NOPC to its entire mailing list of approximately 2,000 persons, asking them to notify the agency if they want a copy of the proposed amendments or other information.

3. Printing and distributing copies of the regulation to interested parties: **\$670**

We assume approximately 10 percent (200 individuals) of those on our mailing list will want to obtain a copy of the proposed regulations and support documents. We assume that these documents will also be printed by a commercial vendor. Based on the size of these documents, we anticipate the total copying costs will be approximately \$190 and the postage for each package will cost approximately \$2.40 (total mailing cost of \$480).

4. Conducting public meetings to solicit comments regarding the proposed regulation:  
**\$ 6,203**

We will prepare 200 copies of the proposed regulation and support documents as handouts for each of four public meetings. The cost estimate (copying, collating and stapling) provided by a local printer is \$745.

The exact location of each meeting has yet to be determined. In the past, CBLAD has been able to secure meeting rooms in public (state or county-owned) facilities at no cost to the Department. We anticipate the same arrangements for these meetings. The other factors included in the cost of public meetings is associated with CBLAD staff salaries and travel costs. The staffing needs for these meetings is assumed to be four CBLAD staff: the Executive Director, the Regulatory Coordinator, the Chief of Local Planning Assistance, and one other support staff member. In addition, we expect the Board Chairperson, Vice-Chairperson, and two or three additional Board members to attend each meeting, depending upon where it is held. The breakdown of these costs is provided below. Please note that the staff costs include the full cost to CBLAD (salary and benefits) for the number of hours indicated for each meeting. Board costs reflect the per diem rate they are allowed for attending meetings. The meeting cost also includes travel time, meeting set-up and breakdown time. Furthermore, for the Eastern Shore meeting, the cost includes lodging and meals, as provided in the State Travel Regulations.

Meeting location: Richmond (4 hours\*): \$ 798

Staff costs	\$ 548
Board Per Diem (5 members @ \$50/meeting)	250
Travel*	0
Lodging	0
Meals	0

\* Local proximity eliminates the need for additional time for travel or mileage.

Meeting location: Northern Virginia (8 hours): \$ 1,382

Staff costs	\$ 1,094
Board Per Diem (5 members @ \$50/meeting)	250
Travel (200 miles round trip @ .19/mile)	38
Lodging	0
Meals	0

Meeting location: Chesapeake (8 hours): \$ 1,382

Staff costs	\$ 1,094
Board Per Diem (5 members @ \$50/meeting)	250
Travel (200 miles round trip @ .19/mile)	38
Lodging	0
Meals	0

Meeting location: Eastern Shore (12 hours): \$ 2,641

Staff costs	\$ 1,642
Board Per Diem (5 members @ \$50/meeting)	250
Travel (300 miles round trip @ .19/mile)	57
Chesapeake Bay Bridge Tunnel Tolls *	100
Lodging (4 Staff + 4 Board* = 8 x \$55)	440
Meals (4 Staff + 4 Board = 8 x \$19 (dinner/breakfast)*	152

\* One of these Board members lives on the Eastern Shore, so lodging and meals would only apply to the other four members attending.

5. Printing and distributing to commenters a list of the public comments and agency responses: **\$ 800**

We anticipate receiving comments from approximately 150-200 individuals or organizations, either in written form or provided verbally at the public meetings. We anticipate that the documentation of these comments and the agency responses will comprise approximately 75-80 pages, or 40 pages printed on both sides. The copying of these documents will be done in-house at the rate of approximately .02 per page. Therefore, the total copying cost is estimated at approximately \$320. Postage would be approximately \$2.40 per set, totaling \$480.

6. Necessary modifications to the *Local Assistance Manual*: **\$ 15,680**

The *Local Assistance Manual* is currently provided to anyone upon request at a cost of \$18 unbound, or \$30 with a D-Ring Binder. The needed modifications will involve various members of the agency's program staff from both the Division of Environmental Engineering and the Division of Local Planning Assistance with procurement assistance from one member of the

Administrative Division. The tasks will involve editing existing copy and graphics, writing new copy, creating new graphics, reviewing the changes, setting up the copy with Desktop Publishing software, and procuring printing services. As well, copies of the changes will need to be mailed to the approximately 1,000 current owners of the *Local Assistance Manual* as a free update. In addition, sets of these changes must be printed to be mailed with CBLAD's existing inventory of *Manuals* (approximately 20 copies). We are estimating that the changes will involve approximately 50 pages, printed on both sides. Printing, collating, hole-punching costs are estimated to be \$750. Postage for mailing these updates to current owners is estimated at approximately \$2.40 per package, for a total mailing cost of approximately \$2,400. Future printing costs will be absorbed into the regular costs of reprinting the *Manual* for distribution upon request.

Staff costs for the *Manual* revisions are averaged, as follows, for a total of: \$ 12,530

Program Division Managers @ \$32.10/hour each x 5 weeks total = \$ 6,420  
 Program Staff Members @ \$24.58/hour each x 6 weeks total = \$ 5,900  
 Fiscal Staff Member @ \$26.28/hour x 1 day = \$ 210

7. Review of local program changes to assure compliance with the regulations:  
**\$ 101,388**

As local programs are amended to reflect the changes in the state regulations, the local governments will be submitting the changes to CBLAD for review. Various members of the Division of Local Planning Assistance perform this review function as part of their liaison responsibilities. Each review results in a report and recommendation to one of two Committees of the Board which meet monthly to consider various local program elements (designations, comprehensive plan amendments, ordinance amendments, etc.) submitted by localities implementing the program. These Board Committees then make recommendations to the full Board whether the local program changes are consistent, provisionally consistent (with conditions), or inconsistent with the regulations. The full Board considers these recommendations as a routine part of the agenda of each quarterly meeting.

We estimate that, on average, that the following costs will be involved in the re-review of *each* of the 84 adopted local programs in Tidewater Virginia.

Staff review, report writing, and committee time @ \$24.58/hour x 40 total hours = \$ 983  
 Planning Division Chief oversight @ \$32.10/hour x 4 total hours = \$ 128  
 Executive Director oversight @ \$48.03/hour x 2 total hours = \$ 96

\* There will be no additional cost of Board time, since these meetings are held regularly anyway.

Average total review cost of each program @ \$ 1,207 x 84 programs = \$ 101,388.

### Enforcement of the Amendments

The enforcement of these proposed amendments does not affect the current CBLAD staffing level or operational budget. The amendments also do not affect CBLAD's oversight and enforcement activities regarding State-owned projects, which must be conducted consistent with the local program requirements. The actual enforcement of local program requirements is the responsibility of the local government itself. Since virtually all Tidewater local programs have been adopted, the current level of agency oversight and enforcement is not likely to change, resulting in no fiscal impact.

### Source of Funds to Meet these Costs:

The CBLAD program is the sole focus of the entire agency, consisting of 18 FTEs in three Divisions. The salaries and benefits of two members of the Division of Local Planning Assistance are paid annually with federal grants from the Virginia Coastal Resources Management Program, administered by the Department of Environmental Quality. Both of those staff members will be involved to some degree in the work resulting from this amendment process. The remainder of the agency staff involvement and other amendment-related activities will be paid from the agency's General Fund appropriation.