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## Exempt Action: Proposed Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9 VAC 25-830
<b>VAC Chapter title(s)</b>	Chesapeake Bay Preservation Area Designation and Management Regulations
<b>Action title</b>	Amendment to incorporate coastal resilience and adaptation to sea-level rise and climate change into existing criteria.
<b>Date this document prepared</b>	November 9, 2020

Although a regulatory action may be exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the *Code of Virginia*, the agency is still encouraged to provide information to the public on the Regulatory Town Hall using this form. However, the agency may still be required to comply with the Virginia Register Act, Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

### Brief Summary

*Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.*

Chapter 1207 of the 2020 Acts of Assembly amended the Chesapeake Bay Preservation Act (§ 62.1-44.15:72 of the Code of Virginia) and added “coastal resilience and adaptation to sea-level rise and climate change” to the criteria requirements for regulations to be established by the State Water Control Board for use by local governments under the Chesapeake Bay Preservation Act.

The proposed amendments to the Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC25-830) were developed pursuant to the requirements of Chapter 1207 of the 2020 Acts of Assembly and define specific criteria related to coastal resilience for Tidewater Virginia localities to consider in land development activities.

### Mandate and Impetus

*Identify the mandate for this regulatory change, and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, internal staff review, petition for rulemaking, periodic review, or board decision). "Mandate" is defined as "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."*

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Virginia Code § 62.1-44.15:72 was amended by Chapter 1207 of the 2020 Acts of Assembly. The amendment added "coastal resilience and adaptation to sea-level rise and climate change" to the criteria requirements for regulations to be established by the State Water Control Board for use by local governments under the Chesapeake Bay Preservation Act. The amendment also provided that the State Water Control Board shall promulgate regulations to implement the provision.

### **Acronyms and Definitions**

*Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.*

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CBPA: Chesapeake Bay Preservation Area  
DEQ: Department of Environmental Quality  
RPA: Resource Protection Area  
VAC: Virginia Administrative Code

### **Legal Basis**

*Please identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity's overall regulatory authority.*

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Virginia Code § 62.1-44.15:69 provides the authority for the State Water Control Board to promulgate regulation under the Chesapeake Bay Preservation Act (Virginia Code § 62.1-44.15:67 et. seq.). Virginia § 62.1-44.15:72 provides that the State Water Control Board shall 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.

Virginia Code § 62.1-44.15:72 was amended to add a provision of "coastal resilience and adaptation to sea-level rise and climate change" to the criteria requirements for regulations to be established by the State Water Control Board for use by local governments under the Chesapeake Bay Preservation Act. The amendment also included language that the State Water Control Board adopt regulations to implement the provision.

### **Purpose**

*Please explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.*

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Virginia Code § 62.1-44.15:72 was amended to add a provision of "coastal resilience and adaptation to sea-level rise and climate change" to the criteria requirements for regulations to be established by the State Water Control Board for use by local governments under the Chesapeake Bay Preservation Act.

The amendment also included language that the State Water Control Board adopt regulations to implement the provision. This regulatory amendment provides the requirements in the criteria necessary to accomplish the statutory change.

### Substance

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.*

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The proposed amendment provides clarity that climate change adaptation and resilience measures are a permitted activity within Chesapeake Bay Preservation Areas. Consistent with the language in the statutory amendment, the proposed regulatory amendment provides criteria for considering climate change impacts for land development in the RPA, identifies the use of a model for consideration of impacts in proposed land development projects, and provides the ability for conditions by locality on proposed development in light of the impacts. The proposed amendment provides exclusions from the exceptions allowance for activity with the RPA. The proposed amendment also provides for an allowance of activity within the RPA for climate adaptation measures or activities with certain conditions.

### Issues

*Please identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.*

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There are a number of advantages that result from the amendments. Overall, as the statutory criteria requirements change, the amendment provides clarity and specifics for local governments who are responsible for implementing the program. It also ensures that projects and development under the CBPA program properly consider climate change impacts while also allowing these activities. This permits individuals to undertake these activities to address these impacts.

There is no disadvantage to the agency or the Commonwealth that will result from the adoption of this final regulation.

### Requirements More Restrictive than Federal

*Please identify and describe any requirement of the regulatory change that is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.*

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The amendments are based upon statutory changes in the Chesapeake Bay Preservation Act, which is a state only program. There is no federal equivalent requirement.

**Agencies, Localities, and Other Entities Particularly Affected**

*Please identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact, which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.*

Other State Agencies Particularly Affected:

No state agencies are known to be particularly affected.

Localities Particularly Affected:

- The 84 Tidewater localities required to implement a local government program under the Chesapeake Bay Preservation Act. These 84 localities include: Accomack County; Albemarle County; City of Alexandria; Arlington County; Caroline County; Charles City County; City of Charlottesville; City of Chesapeake; Chesterfield County; Town of Clifton; City of Colonial Heights; Town of Dumfries; Essex County; Fairfax County; City of Fairfax; City of Falls Church; City of Fredericksburg; Gloucester County; Hanover County; Henrico County; Town of Herndon; City of Hopewell; Isle of Wright County; James City County; King and Queen County; King George County; King William County; Lancaster County; Matthews County; Middlesex County; New Kent County; City of Newport News; City of Norfolk; Northhampton County; Northumberland County; City of Petersburg; City of Poquoson; City of Portsmouth; Prince George County; Prince William County; City of Richmond; Spotsylvania County; Stafford County; City of Suffolk; Surry County; Town of Vienna; City of Virginia Beach; Westmoreland County; City of Williamsburg; York County.

Other Entities Particularly Affected:

No other entities are known to be particularly affected.

**Regulatory Flexibility Analysis**

*Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.*

In compliance with the Board's Public Participation Guidelines (9 VAC 25-10-20 C), DEQ will consider all alternatives which are considered to be less burdensome and less intrusive for achieving the essential purpose of the amendment, and any other alternatives presented during the proposed rulemaking.

As this amendment is a result of a statutory change, the alternative of leaving the regulations unchanged was not considered. Additionally, the proposed regulation primarily focuses on additional criteria in the Resource Protection Areas (which are water bodies and adjacent buffer areas) in lieu of all Chesapeake Bay Preservation Areas.

## Public Participation

*Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.*

In addition to any other comments, the State Water Control Board is seeking comments on the costs and benefits of the proposal, the potential impacts of this regulatory proposal and any impacts of the regulation on farm and forest land preservation. The agency/board is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so by mail, email or fax to Justin Williams, VA Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218; Phone: 804-698-4195; Fax: 804-698-4116; Email: [Justin.Williams@deq.virginia.gov](mailto:Justin.Williams@deq.virginia.gov). Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at (<http://www.townhall.virginia.gov>). Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

Additionally, anyone wishing to participate in a Stakeholder Advisory Group (SAG) to discuss the proposed regulation, please notify interest to Justin Williams, VA Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218; Phone: 804-698-4195; Fax: 804-698-4116; Email: [Justin.Williams@deq.virginia.gov](mailto:Justin.Williams@deq.virginia.gov) by March 15, 2021. Interested persons should provide their name, address, phone number, email address and the organization you represent (if any). The SAG will likely meet May 13<sup>th</sup> or 14<sup>th</sup> and selected interested person should be available for meeting on those dates.

## Detail of Changes

*List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. If the regulatory change will be a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory change. Please include citations to the specific section(s) of the regulation that are changing.*

<b>New chapter-section number</b>	<b>New requirements</b>	<b>Other regulations and law that apply</b>	<b>Intent and likely impact of new requirements</b>
9 VAC 20-830-155(A)	Localities must adopt changes into ordinances and programs within three years of effective date.	9 VAC 20-830-10 et. seq.	This is consistent with the requirement to incorporate criteria in locality ordinances and programs and provides a timeframe for doing so. The impact will be on localities that implement the program.
9 VAC 20-830-155(B)	Allowance of climate resiliency and adaptation measures in CBPA areas.	9 VAC 20-830-130; 9 VAC 20-830-140; 9 VAC 20-830-150	This recognizes these activities as specifically allowed. The impact is that these activities will be allowed under the program and thus could be undertaken in CBPA areas.

New chapter-section number	New requirements	Other regulations and law that apply	Intent and likely impact of new requirements
9 VAC 20-830-155(C)	Local governments to consider impact of climate change on projects proposed in Resource Protection	9 VAC 20-830-130; 9 VAC 20-830-140; 9 VAC 20-830-150	The intent is to capture the new criteria requirements to ensure activities properly consider the potential climate change impacts on the project.
9 VAC 20-830-155(D)	Limitation on Local Government exception granting related to climate change impacts and adaptation	9 VAC 20-830-130; 9 VAC 20-830-140; 9 VAC 20-830-150	The intent is to ensure, given the impacts of climate change and sea-level rise particularly in the RPA, projects properly address these impacts and appropriate measures are utilized.
9 VAC 20-830-155(E)	Local governments may allow climate change adaptation and resilience activities in RPA.	9 VAC 20-830-130; 9 VAC 20-830-140; 9 VAC 20-830-150	The intent is to allow climate change adaptation activities to occur within the RPA so long as certain conditions are met. This includes recognition of existing measures such as living shorelines and other best management practices.

Localities are given a three year timeframe from regulatory adoption to incorporate these provisions in their existing ordinances and Chesapeake Bay Preservation Act program.

### Family Impact

*In accordance with § 2.2-606 of the Code of Virginia, please assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

This is no impact on the institution of the family and family stability by this action.