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Exempt Action: Proposed Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9 VAC 25-830
VAC Chapter title(s)	Chesapeake Bay Preservation Area Designation and Management Regulations
Action title	Amendment to incorporate additional requirements related to preservation of mature trees and replanting of trees into existing criteria.
Date this document prepared	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.

This regulatory amendment includes language for performance criteria requirements related to trees and particularly mature trees under the Chesapeake Bay Preservation Act program. It includes requirements to preserve and protect mature trees and where existing vegetation is removed that includes trees and that trees are utilized in reestablishing vegetation to the maximum extent practicable. It also provides that where vegetation or buffers must be established, the planting of trees should be utilized where practicable.

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the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

Virginia Code § 62.1-44.15:72 was amended by Chapter 1207 of the 2020 Acts of Assembly. The amendment added the preservation of mature trees and replanting of trees 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 for the State Water Control Board to adopt regulations to implement this 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.

CBPA: Chesapeake Bay Preservation Area
 DEQ: Department of Environmental Quality
 IDA: Intensely Developed Areas
 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.

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 "preservation of mature trees or planting of trees as a water quality protection tool and as a means of providing other natural resource benefits" 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 for the State Water Control Board to adopt regulations to implement this 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.

Virginia Code § 62.1-44.15:72 was amended to add a provision of "preservation of mature trees or planting of trees as a water quality protection tool and as a means of providing other natural resource benefits;" 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 for the State Water Control Board to adopt regulations to implement this 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.

This amendment includes requirements to preserve and protect mature trees and where existing vegetation is removed that includes trees, trees are utilized in reestablishing vegetation to the maximum extent practicable. It also provides that where vegetation or buffers must be established, the planting of trees should be utilized where practicable.

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.

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 responsible for implementing the program. It also ensures that policy of recognizing the water quality protection value of mature trees is recognized.

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.

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.

The primary alternative considered was to leave the regulation unchanged as the regulations already require the preservation of indigenous vegetation; however, given the statutory change in the criteria requirements and the amendment language to adopt regulations to implement the provision, this alternative was not pursued given the particularly emphasis placed on mature trees in the new statutory language.

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. 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 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 13th or 14th 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.

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
9 VAC 25-830-130		Indigenous vegetation shall be preserved to the maximum extent practicable	Mature trees shall only be removed where determined to be necessary to provide for the proposed use or development and protected during development to the maximum extent practicable. The intent is to specifically recognize the preservation and protection of mature trees is consistent with the change in the statutory criteria requirement.
9 VAC 25-830-140		Allowance for tree pruning or removal for sight lines and vistas	Mature trees should be preserved and not removed to the maximum extent practicable and where trees are removed they should be replaced by trees. The intent is to emphasize that mature trees should not be removed to the maximum extent practicable consistent with the change in the statutory criteria requirement and that trees should be utilized in replacing removed trees.
9 VAC 25-830-140		The alignment and design of the road or driveway are optimized, consistent with other applicable	The alignment and design of the road or driveway are optimized, consistent with other applicable requirements, to minimize (i) encroachment in the

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
		requirements, to minimize (i) encroachment in the Resource Protection Area and (ii) adverse effects on water quality	Resource Protection Area and (ii) adverse effects on water quality; and (iii) removal of mature trees. The intent is to include this consideration consistent with the statutory criteria.
9 VAC 25-830-140		Requirement to reestablish buffer	Where such buffer must be established, the planting of trees should be utilized to the maximum extent practicable and appropriate to site conditions. The intent is to include this consideration consistent with the statutory criteria.
9 VAC 25-830-140		Requirement to reestablish buffer on agricultural land converted to other uses	Such measures should include, to the maximum extent practicable and appropriate to site conditions, the planting of trees in reestablishing the buffer. The intent is to include trees consistent with the statutory criteria.
9 VAC 25-830-140		Requirement of vegetated areas on certain permitted encroachment parcels	Such vegetated area where established should include the planting of trees to the maximum extent practicable. The intent is to include trees consistent with the statutory criteria.
9 VAC 25-830-140		Allowance for removal of trees for sight lines and vistas	Mature trees should be preserved and not removed to the maximum extent practicable under this provision. When trees are removed, the other vegetation to replace the tree should be a tree, to maximum extent practicable. The intent is to be consistent with the statutory criteria.
9 VAC 25-830-140		Allowance for tree removal for shoreline erosion projects	Mature trees should be preserved to the maximum extent practicable consistent with the best available technical advice and permit conditions or requirements and trees should be utilized in the projects to the maximum extent practicable. The intent is to preserve mature trees consistent with the statutory criteria.
9 VAC 25-830-140		Consideration of implementing measures for establishing vegetated areas in IDAs	In considering such measures, the local government should consider the planting of trees as a part of any such measures. The intent is to include trees consistent with the statutory criteria.

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.