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Chesapeake Bay Preservation Act Guidance- Implementing Website Publication Requirements

I. Purpose

The purpose of this Guidance is to assist local governments subject to the Chesapeake Bay Preservation Act (Va. Code §62.1-44.15:67-79) (Bay Act) in adhering to the requirements of Va. Code § 62.1-44.15:67(C), which requires localities subject to the Bay Act to publish on its website the elements and criteria adopted to implement their local plan, including those elements and criteria required by 9 VAC 25-830-60.

II. Electronic Copy

An electronic copy of this Guidance in Portable Document Format (PDF) is available on the Virginia Regulatory Town Hall website.

III. Contact Information

For additional information regarding the Bay Act, please contact Justin Williams, Director, Office of Watersheds and Local Government Assistance Programs, Justin.Williams@deq.virginia.gov.

IV. Certification

As required by Subsection B of § 2.2-4002.1 of the APA, the agency certifies that this guidance document conforms to the definition of a guidance document in § 2.2-4101 of the Code of Virginia.

V. Disclaimer

This document is provided as guidance, and, as such, sets forth standard operating procedures for the agency. However, it does not mandate or prohibit any particular action not otherwise required or prohibited by law or regulation. If alternative proposals are made, such proposals will be reviewed and accepted or denied based on their technical adequacy and compliance with appropriate laws and regulations.

VI. Applicability

Pursuant to Va. Code §62.1-44.15:67, local governments subject to the Bay Act are required to incorporate general water protection measures into their comprehensive plans, zoning ordinances, and subdivision ordinances; and establish programs in accordance with criteria established by the Commonwealth that define and protect Chesapeake Bay Preservation Areas, which if improperly developed may result in substantial damage to the water quality of the Chesapeake Bay and its tributaries. Local governments have the initiative for planning and for implementing these provisions, and the Commonwealth shall act primarily in a supportive role by providing oversight for local government programs, establishing criteria, and by providing those resources necessary to carry out and enforce the provisions of Va. Code §62.1-44.15:67.

In addition, each local government subject to the Bay Act is required to publish the elements and criteria adopted to implement its local plan, including those elements and criteria required by 9VAC25-830-60 for local programs on its website.

Chesapeake Bay Preservation Act Guidance- Implementing Website Publication Requirements

VII. Background

In response to Chapter 207 of the 2022 Virginia Acts of Assembly (HB771), 9 VAC 25-830-60 has been amended to include a requirement directing localities subject to the Bay Act to publish “the elements and criteria adopted to implement its local plan, including those elements and criteria required by subsection A of this section.” Subsection A of 9 VAC 25-830-60, includes the Bay Act local program requirements, or elements, that have been included in the Regulations since their enactment including:

1. A map delineating Chesapeake Bay Preservation Areas.
2. Performance criteria applying in Chesapeake Bay Preservation Areas that employ the requirements in Part IV of 9 VAC 25-830-120 et seq..
3. A comprehensive plan or revision that incorporates the protection of Chesapeake Bay Preservation Areas and the quality of state waters, in accordance with the criteria set forth in Part V of 9 VAC 25-830-160 et seq..
4. A zoning ordinance or revision that (i) incorporates measures to protect the quality of state waters in Chesapeake Bay Preservation Areas, as set forth in Part VI of 9 VAC 25-830-160 et seq. and (ii) requires compliance with all criteria set forth in Part IV of 9 VAC 25-830-120 et seq.
5. A subdivision ordinance or revision that (i) incorporates measures to protect the quality of state waters in Chesapeake Bay Preservation Areas as set forth in Part VI of 9 VAC 25-830-180 et seq., and (ii) assures that all subdivisions in Chesapeake Bay Preservation Areas comply with the criteria set forth in Part IV of 9 VAC 25-830-120 et seq..
6. A plan of development process prior to the issuance of a building permit to assure that use and development of land in Chesapeake Bay Preservation Areas is accomplished in a manner that protects the quality of state waters.

Localities are responsible for ensuring current locality ordinances, CBPA maps, and program requirements are met and in compliance with the Bay Act and Regulations. This guidance does not focus on the implementation or specifics of those program requirements. Additional guidance on specifics of program requirements is available via the Virginia Townhall.

VIII. Required Elements

As outlined in 9 VAC 25-830-60, localities must publish their CBPA program element documents on a publicly available internet site. To ensure this requirement is met, localities must utilize a website that is accessible by the general public and not password protected. Localities may use a standard website format or platform or utilize a publicly available third-party hosted site so long as it connected to the locality and is publicly available across all platforms. For example, a locality may use Facebook or their locality website with a link to another site (such as <https://library.municode.com/va>) or a planning district commission website. Additionally, for some elements, a link or inclusion of the information may be included in a GIS platform.

Localities are highly encourage to develop CBPA specific pages within their locality website which provides all required program elements as well as other information for the public on the program including forms, contacts, and CBPA program information.

The following outlines information regarding the required elements and how localities may post the information:

Chesapeake Bay Preservation Act Guidance- Implementing Website Publication Requirements

A. Map designating Chesapeake Bay Preservation Areas

Localities must have available on a publicly available website a map of their CBPA areas within the jurisdiction. This may be a static posting such as a jpeg or pdf of a hard copy approved map or a specific layer available through the localities GIS platform. Localities should clearly designate that the map or layer is specific to CBPA areas and that it is accessible by the public.

B. Performance Criteria, Process, and Ordinances

Localities must include information on the performance criteria for CBPA areas and applicable ordinances that include the Bay Act and Regulatory criteria requirements. Localities may accomplish providing this information by specifically identifying or linking to ordinance provisions adopted by the locality for CBPA program requirements. This would include provisions to zoning and subdivisions as well as any other ordinance provisions outlining the criteria and program elements adopted by the localities (e.g. specific CBPA ordinances or environmental ordinances). Additionally, localities should provide any applicable forms, applications, and checklist and at minimum an overview of their review process addressing CBPA program requirements. Localities may link to existing pages regarding requirements for issuance of applicable permits such as building permits which incorporate the process for CBPA review.

Localities may utilize a third party source (e.g. <https://library.municode.com/va>) to link to applicable ordinance provisions so long as the information is current and available. Localities are encouraged, if linking to third party sites in particular, to specifically designate or identify which provisions are applicable for the CBPA program elements to ensure easy identification of those provisions and demonstrating compliance with posting of program requirements. For example, a locality may post text on a website outlining the adopted CBPA program provisions in the ordinance with a link to a third-party site for the specific language.

C. Comprehensive Plan

Localities must also ensure a copy of their current adopted comprehensive plan which contains the requirements elements for CBPA is available. Localities may wish to post their entire comprehensive plan online and in doing so they are encouraged to specifically identify otherwise which provisions or language is included to address CBPA program requirements. This is also true if localities wish to utilize a link to their comprehensive plans posted on a third-party site such as Planning District Commission's website for meeting this requirement.

IX. Funding

Funding is available to those localities that require assistance with program implementation requirements including website posting requirements. For additional information regarding potential funding, please contact Justin Williams, Director, Office of Watersheds and Local Government Assistance Programs, Justin.Williams@deq.virginia.gov.