



Department of Environmental Quality

**Chesapeake Bay Preservation Act
Compliance Review Procedures Manual**

2024

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Appendix A: Department of Conservation and Recreation (DCR) – Department of Forestry (DOF) Memorandum of Understanding, January 20th, 2010

I. Introduction to the Compliance Review

The Department of Environmental Quality (DEQ) Office of Watersheds and Local Government Assistance Programs (OWLGAP) is responsible for the oversight of local implementation of the [Chesapeake Bay Preservation Act \(Bay Act\)](#) and the [Chesapeake Bay Preservation Area Designation and Management Regulations \(Regulations\)](#) by the 84 jurisdictions subject to their requirements. The *Compliance Review Procedures Manual* (Compliance Review Manual) provides guidance to OWLGAP staff when conducting periodic compliance reviews to ensure consistency in the review process, including adequate documentation of all activities associated with that process. It will also be shared with localities to assist them with understanding the Compliance Review process.

The *Compliance Review Manual* complements other tools developed to facilitate the review of various Bay Act program elements, such as templates for checklists, communication with local officials, staff reports, and enforcement documentation.

II. Key Steps in the Compliance Review Process

The compliance review tasks listed below provide the foundation for the review process and the steps DEQ staff (or liaisons) will take during the review to ensure consistency for all 84 Bay Act locality reviews.

- A. Preparing for a compliance review, including completion of the *Required Program Information Checklist*
- B. Communicating with local governments
- C. Meetings with local government staff
- D. Completing the *Site Plan, File Review & Field Investigation* and *RPA Determination Checklists*
- E. Completing the *Consolidated Checklist*
- F. Developing the draft staff report summarizing staff observations during the Compliance Review
- G. Internal review and sharing draft with local government staff
- H. Close-out procedures, including development of a Corrective Action Agreement (CAA), if necessary, and sending draft staff report and CAA to locality
- I. Hold close-out meeting with locality
- J. Conduct condition review, including drafting and sending condition review staff report and appropriate template letter to locality
- K. CAA and Notice of Violation (NOV) development, if necessary

DEQ has developed a series of review tools described in Section III, Description of Review Tools, which include the checklists mentioned above, process flow charts, and template letters for official communications with local officials to address a range of typical outcomes. All of these tools are fully described in Section III Description of DEQ Review Tools.

A. Preparing for the Compliance Review

The following activities should be undertaken by DEQ staff in the approximate timeframes indicated prior to the start of a local government's compliance review process:

1. Six weeks prior to the anticipated date for the initial compliance review meeting with local staff:
 - a. Complete the *Required Program Information Checklist* which represents a compilation of the locality's programmatic elements that were found to be in compliance with the Regulations at the close of the previous compliance review (including those elements corrected or created in response to a condition during the review). This checklist includes adoption dates and description of the local Chesapeake Bay Preservation Areas (CBPA) map and comprehensive plan; adoption dates and code citations for Bay Act, subdivision, erosion and sediment control ordinances; and a list of applications and checklists the locality uses during the plan of development review process.
 - b. Send a *Compliance Review Initiation Letter* to the local government's Bay Act program coordinator with a copy to the locality's chief administrative officer (CAO). Enclose a copy of the *Required Elements Checklist - Round 3*, with instructions for local staff to verify the checklist content and provide updates of any changes made to the local program documents since the previous review, if applicable. If the comprehensive plan was updated since the last review, provide a blank *Comprehensive Plan Requirements Checklist* and request that local staff complete the checklist and return it to the identified liaison along with copies or digital links to all local Bay Act program documents and a list of approved site plans, subdivision plats, and building permits issued within the RPA in the past two to five years (the timeframe is at the liaison's discretion and based upon the volume of plans and permits typically approved annually by the locality) no later than one week in advance of the initial meeting.
 - c. Enter the new compliance review data into the Round 3 Compliance Review Tracking Spreadsheet to compile the results of the compliance review process.
 - d. Create a digital subfolder within the locality's local program folder for the current compliance review, clearly naming the folder (Round 3) so that it can be distinguished from previous compliance reviews.
 - e. Complete the following tasks in advance of the initial meeting:
 - Review the checklists and other documents completed for Round 2; understand conditions and actions taken to meet the conditions.
 - Compile a list of known ordinance or plan amendments that have been adopted post-compliance review conditions.
 - Compile a list of any suspected or potential program inconsistencies revealed through liaison contact with technical assistance requests, review of environmental impact assessments, citizen complaints, and/or potential violations within the past five years.
 - Compile a list of wetland permits of interest (source: CEDS, ECM and VMRC) for projects located within the locality's designated RPA and approved within the past two to five years.
2. Four weeks prior to the anticipated date for the initial compliance review meeting with the locality, the DEQ liaison will contact the local government's Chesapeake Bay Preservation

Act Program Coordinator to schedule the date for the initial compliance review meeting. The liaison should ask that all local staff involved with the various components of the locality's Bay Act program be invited to the initial meeting. Whether contact is made by phone call or email, DEQ staff should remind local staff to provide the information noted on the *Required Program Information* and *Comprehensive Plan Requirements* (if applicable) checklists no later than one week prior to the initial meeting. Local staff should also provide copies of any updated or newly developed ordinances, plans, or supplementary documentation, and the list of approved site plans, subdivision plats, and building permits issued for projects located within the RPA in the past two to five years as was requested in the *Compliance Review Initiation Letter*.

3. Two weeks prior to the initial meeting, send a reminder email to the local Bay Act coordinator of the upcoming meeting and the deadline for return of the checklists and documentation. Begin review of the documentation provided by local staff.
4. One week prior to the initial meeting, continue to review the documentation provided by local staff in preparation for the initial meeting.

B. Official Communication with Local Governments

DEQ staff must remain in close communication with the local Bay Act contact throughout the entirety of a compliance review via email and/or telephone calls, as well as meetings, as necessary. Template letters for official communications between DEQ and local officials have been developed for use at pivotal points during the review. All template letters and documents generated by the review (e.g., staff report, Corrective Action Agreements (CAA), Warning Letter, Notice of Violation (NOV), etc. must be sent to the local CAO with a copy to the Bay Act coordinator. The template letters include:

- Compliance Review Initiation Letter
- Template #1 No deficiencies identified
- Template #2 Compliance conditions identified – CAA attached
- Template #3 Compliance conditions addressed – all items on CAA completed
- Template #4 two versions of a warning letter:
 - compliance conditions not addressed adequately – CAA items not completed by deadline
 - compliance conditions not addressed adequately – CAA not signed by locality
- Template #5 Compliance conditions not addressed adequately – NOV attached

DEQ liaisons will sign the *Compliance Review Initiation Letter* and the DEQ Director of the Office of Watersheds and Local Government Assistance Programs will sign all other letters. Template letters are more fully described in Section III, Description of Review Tools.

C. Meetings with Local Government Staff

The review process for the majority of localities typically involves four separate meetings with local staff as described below: the initial compliance review meeting, the site plan and file review session, the field investigation, and the closeout meeting. The closeout meeting may be waived if no deficiencies are identified during the review and the locality informs the liaison that they do not feel the need for a meeting.

1. Initial Meeting - The specific objectives of the initial compliance review meeting are as follows:
 - a. Summarize the regulatory basis and steps in the compliance review process with local staff. Explain that there is an emphasis on program implementation including the performance criteria, regulatory relief processes, plan of development review process, annual reporting, and septic pump out enforcement. Identify any known obstacles to implementing the performance criteria that exist within local ordinances and/or policies, and changes to the DEQ enforcement process from the previous (Round 2) compliance review. Discuss changes and local progress on the 2020 regulatory amendments addressing climate resiliency and mature trees. Discuss the process flowchart sent to the locality and expectations around timing and responses.
 - b. Review the verified/updated *Required Program Information Checklist – Round 3* and the *Comprehensive Plan Requirements Checklist*, if submitted, with local staff and determine if the local government has additional processes or policies not previously identified that provide for minimizing land disturbance and impervious cover and/or preserving indigenous vegetation.
 - c. Gather copies of additional information regarding administration and implementation of the local program not explicitly referenced in the *Required Program Information Checklist – Round 3*, which may be in use by local staff to guide the review process. Examples may include policy or procedural documentation such as public facilities manuals, environmental compliance manuals, etc.
 - d. Provide local staff with a copy of the *Locality Guidance for Selecting Projects for Site Plan, File Review & Field Investigations* (Site Plan Review Locality Guidance) document and discuss selection of appropriate projects for plan and file review. Locality staff will be requested to provide a list of approved site plans, subdivision plats, and building permits issued during the past two to five years for projects located on parcels with designated RPA.
 - e. DEQ staff will select projects for review based upon that list as well as from DEQs files addressing technical assistance provided, citizen complaints received, violations investigated, wetland and stormwater permits, and an aerial / satellite imagery review of the locality. (If available, liaisons should supply this list to locality staff prior to the initial meeting.) DEQ staff will review a minimum of five projects (if available) located within designated RPAs and approved within the past two to five years. If there are no projects with RPA activity, DEQ staff will review projects that occurred within the RMA.
 - f. Following the initial meeting, DEQ staff will begin filling out the *Consolidated Checklist* and will contact the DEQ Watershed Specialist to identify available dates for attending the field investigation components of the compliance review.
 - g. Schedule the site plan/file review and field investigation meetings and provide local staff with specific deadlines to meet for the submission of requested information.
2. Site Plan and File Review Session(s) - The purpose of the site plan and file review session(s) is to verify that the local Bay Act program is being implemented appropriately and that approved development activities are consistent with the requirements of the Regulations and the local ordinance. The DEQ Watershed Specialist may participate in the

site plan and file review session(s) or be provided files prior to the field investigations to verify whether the RPA observed in the field is accurately depicted on site plans, subdivision plats, and/or building permits, and vice versa. The Watershed Specialist will review site-specific RPA determination documentation including perennial flow determinations and wetland delineations as needed based upon site plans reviewed. The Watershed Specialist is responsible for completing the *RPA Determination Checklist*.

The amount of DEQ staff time required for site plan and file review will vary based on the number of files reviewed, the complexity of each development, and the overall level and type of development occurring in the locality. DEQ will review no less than five plans or the maximum number of plans if less than five have been approved by the locality during a five year period. It is important to inform local staff of the need for sufficient time when scheduling the site plan and file review sessions. Local staff should also be available to respond to questions that may arise during the review. In some cases, the site plan and file review process may require more than one visit to ensure a complete review of site plans and project files. Many localities have transitioned to electronic submission and filing for all site plan documents. In such cases, the locality may provide DEQ staff with electronic copies, thus negating the need for travel to the locality for the site plan review component, and often the plans can be sent earlier in the review process.

DEQ has developed the *Site Plan Review Locality Guidance* document to assist local staff in the site selection process. DEQ staff will select a minimum of five projects, or if less than five have been approved, all the plans available during a five year period to be evaluated as part of the compliance review from the list provided by the locality. In addition to the sites identified by the locality, DEQ staff should request specific types of files, plats and plans reviewed as part of previous technical assistance requests since the previous compliance review or for which they have received a citizen complaint, if applicable. In addition, DEQ staff should review replanting plans and installation of mitigation plantings for known violation cases, or a sample if multiple cases exist. The *Site Plan, File Review & Field Investigation Checklist* and the *RPA Development Criteria Checklist* help DEQ staff determine whether a project is in compliance with each performance criterion.

3. Field Investigations - Field investigations by the liaison and DEQ Watershed Specialist, as needed, should be undertaken for the site plans and files reviewed. A subset of the site plans and files may have to be selected if numerous projects were reviewed, with priority given to those projects with RPA on site. The number of field investigations undertaken should be a representative sample of the approved projects reviewed by DEQ staff. Liaison observations during the field investigations are to be noted on the *Site Plan, File Review & Field Investigation Checklists* for each site visited. The DEQ Watershed Specialist is responsible for completing the *RPA Determination Checklist* summarizing the observations, including photographs, made during the field investigation for each site visited, including any issues or areas of potential non-compliance identified. The completed checklist should be shared with the DEQ liaison for inclusion in the compliance review file.

Local staff should be made aware of the need for field visits and for local staff's participation early in the review process. Appropriate coordination will be necessary in order to determine which sites are visited and how each site will be accessed. Gaining site access will be the responsibility of local staff who should use reasonable efforts to do so. Appropriate personal protective equipment (PPE) is to be worn at all times on sites where required. DEQ staff must have their DEQ badges visible or available, and should have business cards available for distribution, if available and as appropriate.

On occasion, permission to access private property may be denied. In those cases, DEQ should review the documentation provided by local staff and determine if it is sufficient without a field investigation to ensure the project meets the performance criteria. If the documentation is not sufficient, DEQ should identify, with local assistance, another site for review.

Prior to the field investigation meeting, DEQ staff should request that hard copies of site plans and subdivision plats for each development project be available during the field investigation. Any significant discrepancies between the project as approved on paper and actual field conditions should be noted on the review checklists. If discrepancies are noted, DEQ staff must ask the local Bay Act coordinator if documentation exists reflecting approval of the change. Discussions regarding any inconsistencies between approved site plans/subdivision plats and field conditions may occur during the field investigation, at the discretion of the DEQ staff and as appropriate. However, a follow-up email reviewing questions raised during the field investigation is important for documentation purposes. Follow-up correspondence should occur as soon as possible after the field investigation.

Time stamped digital photographs showing all pertinent aspects of the site and development are to be taken during the field investigation. (Liaisons may use their DEQ-issued iPhones to take photographs and videos; however, the *time/date/location data will only be available in the metadata of each photo/video* and will not be stamped on the photo/video itself. Only the staff camera – Canon PowerShot - has the ability to actually timestamp a photograph.) In particular, any issues identified during the site plan and file review sessions and/or during the field investigation will require photographic documentation. Localities are allowed to take pictures of a field investigation as well, if they so choose and may be provided in addition to or in lieu of pictures taken by DEQ staff.

4. Close-Out Meeting - A compliance review close-out meeting will occur following the plan, file and field investigation sessions and after the liaison has completed all checklists and the draft staff report, unless waived by the locality if no compliance issues are identified. The purpose of the close-out meeting is to discuss the draft staff report, observed compliance issues that resulted in a deficiency, actions necessary for the locality to be found compliant, and the proposed deadline for compliance. If deficiencies are identified, the draft staff report and CAA should be provided to local staff for review at least one week prior to the close-out meeting. Local staff will have a week (or an agreed upon deadline) following the close-out meeting to provide additional information that may affect the draft staff report and CAA, including the deadline for addressing deficiencies. At the end of this time, DEQ staff will finalize the staff report and CAA, incorporating any appropriate

changes based upon information or requests from the locality, and forward both documents to the locality's CAO for review and signature with a copy to the Bay Act coordinator. The CAA should be fully executed by both the CAO and DEQ within two weeks of the close-out meeting.

D. Completing the *Site Plan, File Review & Field Investigation Checklists*

A separate *Site Plan, File Review & Field Investigation Checklist* is to be used for each individual local development project reviewed. Information collected on the *Site Plan, File Review & Field Investigation Checklist* provides documentation of the adequacy of implementation of local Bay Act program components. The *Field Investigation* portion of the *Site Plan, File Review & Field Investigation Checklist* is required only for those projects chosen for a field visit. The template *Site Plan, File Review & Field Investigation Checklist* can be adapted to create extra space for additional information beyond the basic yes and no answers.

DEQ staff observations and photographs should be documented on both the *Site Plan, File Review & Field Investigation Checklist* and the *RPA Determination Checklist*, as appropriate for each project. Photographs should be clearly labeled and dated with brief descriptive captions for each photo. Copies of checklists and documentation such as site plans, wetland permits, WQIAs, mitigation plans, locality comments, approval letters, etc. should be saved into the digital folders created for each project reviewed.

E. Completing the *Consolidated Checklist*

During the third round of compliance reviews, DEQ staff will focus on the implementation of local Bay Act programs and their compliance with the Regulations. Compliance will be determined by the review of the plan approval process (building permits, site plans, subdivision plats, etc.), regulatory relief processes (exemptions, exceptions and administrative waivers), site-specific determinations (perennial flow determinations and wetland delineations), and water quality impact assessments (WQIA) through the site plan reviews and field investigations. In addition, DEQ staff will review local ordinances for amendments reflecting the recent regulatory changes that should be completed by October 2025, at the earliest. These include climate change resilience and adaptation criteria (9 VAC 25-830-155); mature tree requirements (9 VAC 25-830-40, 9 VAC 25-830-130, and 9 VAC 25-830-140); and the requirement that each local government publish on its website the elements and criteria adopted to implement the local government's local Bay Act program (9 VAC 25-830-60(B)). *The required ordinance amendments for coastal resiliency and mature trees will be considered advisory only until the October 2025 deadline, at the earliest; however, the website requirements have been in effect since adoption of the regulatory amendments and therefore are considered mandatory for the compliance review.*

NOTE that the review of local Bay Act program implementation may reveal additional improvements to ordinances, comprehensive plans, policies, procedures and other documentation necessary for compliance; however, these documents will not be the focus of the compliance review.

The *Consolidated Checklist* is used to compile all of the information from the many sources available to liaisons into one document to assist with staff report development. The checklist will

be completed by DEQ staff based on information provided by local staff in the verified/updated *Required Program Information Checklist* and the *Comprehensive Plan Requirements Checklist*, as applicable, as well as information available in DEQ files, additional documents and materials provided by local staff, discussions with local staff, and the site plan/file review and the field investigations. The *Consolidated Checklist* consists of five review parts:

- Elements of the Local Program (CBPA map, ordinance(s), and comprehensive plan)
- Chesapeake Bay Preservation Area Designation Criteria (local RPA, RMA and IDA designations, as applicable)
- Land Use and Development Performance Criteria (general performance criteria, RPA development criteria, septic pump-out programs, and regulatory relief mechanisms-exceptions/waivers)
- Program Administration and Enforcement (development review mechanisms, complaint and violations review process, website requirements, and Annual Reports)
- Site Plan, File Reviews and Field Investigations

The following instructions for reviewing all facets of a locality's Bay Act program are intended to ensure adherence to the review strategies and compliance requirements.

1. CBPA Map – Localities must have a current, accurate map of locally designated CBPAs for use by both local staff and the general public and be able to provide a copy of the adopted map to the DEQ liaison. Maps originally approved by the Board in the early 1990's were paper maps generated using readily available information. Some of these maps were adopted as stand-alone maps, others were adopted as part of a locality's comprehensive plan. Many original maps remain in use and have never been updated or improved, nevertheless they continue to represent the locality's adopted CBPA map and as such meet the regulatory requirement. The required adopted CBPA map may be of any format so long as, together with the CBPA ordinance, it provides enough information to enable identification of the general location of a locality's designated CBPAs.

Many localities have developed electronic Geographic Information System (GIS) CBPA layers (e.g., streams and waterbodies, wetlands, soils, floodplains, topography, etc.) to improve the ability of staff to review development projects within the context of Bay Act requirements. Some localities have made CBPA GIS data available for public use, while others continue to require the information be obtained directly from the locality. Localities with adequate staffing and financial resources have created GIS "working maps" that can be updated as RPA/RMA boundaries are approved by staff. Though a valuable resource, it is not typical for GIS mapping to be the official, adopted version of the CBPA map because it tends to be fluid, changing as site-specific CBPA determinations are approved, and new layers are incorporated.

As of August 2023, DEQ is working with localities to obtain digital copies of local CBPA maps to create a Bay Act-wide layer of CBPA data available through DEQs website. It is hoped that locality-specific GIS mapping will also be provided on each locality website, as part of the requirement that each local government make the elements and criteria adopted to implement the local government's local Bay Act program available on its website.

Liaisons must determine whether any changes have been made to the adopted map since the last compliance review to ensure that, at a minimum, the RPA continues to be shown adjacent to streams and other known RPA features and that the RMA is located contiguous to the entire inland boundary of the RPA. If a liaison determines during the compliance review that a locality's CBPA map does not meet regulatory requirements, then a deficiency would be noted.

2. CBPA Ordinance – Localities must have an ordinance that incorporates measures (e.g., performance criteria) that protect the quality of state waters and requires that land disturbance or development within CBPAs comply with the performance criteria. By 2015 all locality ordinances had undergone an Advisory Review that identified the presence or absence of certain ordinance provisions for plan and plat notations necessary for compliance with the Regulations. During the most recent compliance review (Round 2), ordinances were reviewed to determine whether the required notations were adopted, remained in local ordinances, and whether there were any obstacles to performance criteria implementation. The previous compliance review may have identified additional ordinance inconsistencies that were given a condition if they resulted in non-compliance with one or more of the performance criteria.

If a comprehensive review of local ordinance's consistency with the Regulations was not performed during the previous compliance review, one should be performed during the current round. If the liaison determines that ordinance inconsistencies led to instances of non-compliance during the site plan, file review, and field investigations, then a deficiency would be noted.

3. Comprehensive Plan – As described in 9 VAC 25-830-170, comprehensive plans must maintain a current information base to support land use and development policies that will ensure the protection of state waters. This section of the Regulations lists the elements originally approved by the Chesapeake Bay Local Assistance Board that provide this information base.

Local governments are required by law to undertake a review of their comprehensive plan every five years to determine if the plan needs to be revised with updated information and/or data. If the Round 2 compliance review did not incorporate a review of a local comprehensive plan and/or amendments to the comprehensive plan have been made since completion of the prior review, then local staff must complete the *Comprehensive Plan Requirements Checklist* before the initial meeting. The checklist should describe the extent to which elements required by 9 VAC 25-830-170(1) and (2) are addressed in the current comprehensive plan. As part of this review, local staff should review the current status of Bay Act implementation measures (goals, objectives, policies, strategies or action items, as appropriate) contained in the comprehensive plan, and if a measure has not yet been implemented, an updated timeframe for its accomplishment should be provided in the plan, as per 9 VAC 25-830-170(iv).

Additionally, either within or as an addendum to the *Comprehensive Plan Requirements Checklist*, local staff shall provide a statement for each of the policy issues listed in 9 VAC 25-830-170(2) describing the scope and importance of the issue for the locality and a description of how the local policy(ies) will be implemented by describing the relationship between the plan, existing and proposed land use, public services, and capital improvement plans and budgets to ensure a consistent local policy, as per 9 VAC 25-830-170(2)(c) and (d). Finally, the locality shall provide a statement describing how ordinances and regulations were adopted or amended to ensure consistency with the water quality protection goals, objectives, policies, and implementation strategies identified in the local comprehensive plan, as per 9 VAC 25-830-190(B)(3), and referencing the location of these requirements and elements in the current comprehensive plan. In providing statements, localities may provide a reference to the existing Comprehensive Plan where these requirements and elements are located

The *Comprehensive Plan Requirements Checklist* and implementation statement may be returned to DEQ via email (preferred) or as a hard copy and will be maintained in the appropriate compliance review folder.

DEQ staff will be responsible for reviewing the documentation provided by local staff and selected sections of the comprehensive plan, if necessary, to determine continued compliance with regulatory requirements. If the liaison determines during a review of the comprehensive plan, that it does not meet regulatory requirements, then a deficiency would be noted.

4. General Performance Criteria

a. *Minimize land disturbance, preserve indigenous vegetation, and minimize impervious surfaces* - A determination of a locality's effective implementation of the general performance criteria requiring a minimization of land disturbance, minimization of impervious surfaces, and preservation of indigenous vegetation is based on the following:

- The extent to which the locality can demonstrate that existing ordinance provisions, processes, and policies are consistently applied during the plan of development review process to ensure that performance criteria are achieved.
- Verification that the required plat and plan notations remain in adopted ordinances.
- An assessment of the extent to which any newly adopted ordinance provisions enhance the locality's implementation of the regulatory requirements, based upon the review of site plans and files of approved projects and field investigations.
- An assessment of the extent to which approved development plans and projects meet the performance criteria, based upon the review of site plans and project files of approved projects.
- An assessment of the extent to which the performance criteria are implemented in the field based upon the field investigations of approved projects.

Approaches for determining and documenting the adequacy of a locality's compliance with the above general performance criteria include the following:

- *Verify existing provisions and processes addressing the general performance criteria.* The liaison should confirm that the ordinance provisions that address the general performance criteria concerning minimizing land disturbance and

impervious surfaces and preserving indigenous vegetation have not changed. To determine whether additional provisions and/or processes have been adopted, the liaison should seek clarification from local staff as to whether the local government has adopted any additional processes or policies that provide for the minimization of land disturbance and impervious cover or the preservation of indigenous vegetation. This may include locally adopted policies that pertain to all legislative applications (i.e., rezonings, special use permits, nonconforming uses, etc.), or other similar mechanisms.

- *Ensure that all applicable provisions are appropriately applied.* Using the *Site Plan, File Review & Field Investigation Checklist*, ensure that all applicable provisions relating to the general performance criteria are applied to each development site. Specifically note any checklists or forms used by the locality to ensure the criteria are applied as well as any instances where applicable provisions are not applied.

In order to assist liaisons in making the distinction between necessary and excessive land disturbance, vegetation removal and impervious coverage, examples are provided below:

- *Land Disturbance:* When reviewing for the minimization of land disturbance, the “construction footprint” compared to “limits of clearing and grading” are important elements to consider. If the terms “construction” or “building” footprint are defined by the local government, the terms should be evaluated ***to ensure that the construction footprint described is the minimum amount necessary to allow for the use of the land.*** There should also be a provision (as part of the definition or elsewhere in the ordinance) that land disturbance on a site must be limited to this area. Accordingly, all development should be reviewed for conformance to the specifications of the local definition. If land disturbance on a site exceeds the limits provided by the local definition, the liaison should request information documenting the necessity of this additional disturbance and include that information on the *Site Plan, File Review & Field Investigation Checklist* or the *RPA Determination Checklist*.

For example, if a development has proposed additional clearing and grading within required open space areas, it is the responsibility of the local government to allow extra clearing only where necessary to permit the permissible land use under the local zoning ordinance. If it is found that several approved plans, plats, or building permits do not contain specific criteria for the minimization of land disturbance or that those criteria are not implemented in the field, this should result in a deficiency.

- *Indigenous Vegetation:* When reviewing for the preservation of indigenous vegetation, the indigenous vegetation existing on a site prior to development is an important element to consider. For example, if a locality allows existing indigenous vegetation to be used towards meeting landscaping requirements and a developer chooses to clear-cut the site and plant new vegetation, the local government should require documentation regarding why existing indigenous vegetation was not preserved on site. If it is found that several of the approved plans, plats, or building permits call for (and/or development in the field results in) clear cutting of all on-

site vegetation, or if indigenous vegetation designated for retention is removed, this should result in a deficiency.

- *Impervious Cover:* When reviewing for the minimization of impervious cover, noting the percentage of impervious cover and adherence to local parking requirements are important elements to consider. The local government is expected to ensure that all approved development minimizes impervious cover consistent with the proposed use of the land. For example, if a commercial development has exceeded the local government's parking requirements, the local government should question the need for additional impervious cover. In such an instance, the liaison should find documentation within the project file, which demonstrates why the additional parking was necessary for the particular site. If it is found that the parking criteria are routinely or frequently being exceeded, this should result in a deficiency.

Liaisons should evaluate whether the locality has taken measures to ensure that land disturbance and impervious cover have been minimized and that existing vegetation has been preserved to the maximum extent practicable during the site plan review and field investigations. The following observations should be made and documented, as appropriate, for each project:

- Determine that all existing ordinances, procedures, and policies relating to land disturbance, impervious cover, and protection of existing vegetation have been adhered to.
- Determine if the existing ordinances, procedures, and policies adequately address the regulatory requirement to minimize land disturbance and impervious cover and protect existing vegetation.
- Identify any potential on-site land disturbance, impervious coverage or vegetation clearing in excess of what was approved by the local government, and the basis for that approval.
- Note the area or percentage of existing and proposed land disturbance and impervious surface within designated CBPAs.
- Determine that all open spaces were retained as part of the project and confirm that the actual development met the specifications of the approved plan.
- Note the limits of clearing on site.

Local staff should be asked during the review of site plans and files, and the field investigations to demonstrate how performance criteria have been addressed for each project reviewed, including specific ordinance requirements that are being implemented. Specifically, local staff should be asked to explain, as applicable:

- any approved clearing or grading not associated with the project;
- any approved impervious cover not associated with the project;
- any clearing or grading beyond the construction footprint; and
- the reasoning behind the extent of grading, impervious cover and clearing of vegetation.

If local staff acknowledge that the criteria were not applied on a given project, they should be able to explain any special or extenuating circumstances that led to approval

of the project (e.g., a secondary use/user of parking areas led to approval in excess of the project need). If the performance criteria are not consistently being applied on plans and implemented in the field, then the review would result in a deficiency.

Liaison's observations of individual site plans, files, and field investigations should be noted on the *Site Plan, File Review & Field Investigation Checklists*. For each project, the liaison should make a determination as to whether the amount of land disturbance, impervious cover, and removal of vegetation shown on the approved plans and implemented in the field is that which is necessary to provide for the proposed development. The liaison's conclusions as to how well the locality addressed specific performance criteria should be expressed as a summary analysis on the *Consolidated Checklist*.

- a. *Plan of Development (POD) Review Process* – Localities are required to implement a plan of development review process for land disturbance exceeding 2,500 square feet within designated CBPAs. The liaison's analysis of ordinances, applications, checklists, flowcharts, and/or other documents associated with the POD process should determine whether the available tools and resources ensure that applicable projects are reviewed for compliance with all Bay Act performance criteria. Liaisons should discuss the review and approval process with local staff to determine whether or not appropriate revisions were made to proposals so that only compliant projects were approved.

Liaison's review of site plans and project files, and observations during the field investigation are critical to confirming that the plans approved according to local ordinances are then implemented as approved during the construction process. These observations will be documented on the *Site Plan, File Review & Field Investigation Checklist*.

- b. *Erosion and Sediment Control (ESC) and Stormwater Management Compliance* – Compliance with both ESC and stormwater management regulations is required when land disturbance exceeds 2,500 square feet in a designated CBPA. Compliance with both ESC and stormwater management requirements is addressed by another DEQ division and is not included in the OWLGAP review of local Bay Act programs; however, liaisons should review plans disturbing greater than 2,500 square feet for implementation of both ESC and stormwater management requirements. This includes ensuring the localities are applying these requirements at the 2,500 square feet threshold. Finally, liaisons should check with DEQ regional office staff concerning the status of local ESC and stormwater programs, including the dates the programs were last found to be compliant and complaints or problems DEQ inspectors have found with the projects being reviewed. Issues regarding the implementation of these programs should be coordinated with the respective programs within DEQ.
- c. *Septic Requirements* – Onsite sewage treatment systems not requiring a Virginia Pollutant Discharge Elimination System (VPDES) permit are required to be pumped out at least once every five years. Options in lieu of pump out include inspection by a certified operator or onsite soil evaluator at least once every five years or the installation of a plastic filter subject to conditions established by the local health department.

The Regulations also require provision of a reserve sewage disposal site with a capacity at least equal to that of the primary site for all new construction. If a lot or parcel was recorded prior to October 1, 1989, and the local health department determines that the parcel does not have sufficient capacity to accommodate a reserve site, then the requirement for a reserve sewage disposal site does not apply. Alternatives to the reserve site requirement include installation of an alternating drainfield system meeting certain conditions.

In order to confirm compliance with the pump out requirement, liaisons should review five years of Annual Reports and identify ordinance provisions for enforcement of septic requirements. The locality should provide documentation of their pump out program in the form of a copy of the septic tracking database, notification letters, and/or a description of the notification and enforcement procedures. In the absence of the evidence of enforcement of the septic requirements in the form of regular issuance of pump out notification letters, proof of pump outs accomplished, and enforcement language, would be cause for a deficiency.

Alternative Onsite Sewage Systems (AOSSs) have associated performance requirements that include annual maintenance by a licensed operator (see 12 VAC 5-613-120 et seq.). Owners are required to keep a copy of the O&M Manual on the property, log operator visits to the system, any inspections and maintenance performed on the system, and provide the log to VDH upon request. Any system that is not in compliance with the VDH requirement for annual O&M visits is subject to the Bay Act's five year inspection or pump out requirement. Local staff must contact VDH annually, prior to submission of the Chesapeake Bay Preservation Act Annual Implementation Report, to inquire about the status of each AOSS located within a CBPA. If the VDH has not received inspection/pump out records from AOSS addresses in five years, the owners must be contacted by the locality and required to inspect or pump out their septic system, per 9 VAC 15-830-130(7).

The VDH is now responsible for septic compliance for several localities and this item would not be reviewed for compliance in these localities.

- e. *Agricultural Requirements* – Localities with active agricultural lands located within their jurisdictional boundaries are required to ensure that soil and water quality conservation assessments are being completed for all such lands within Chesapeake Bay Preservation Areas. The conservation assessment must evaluate the effectiveness of existing practices pertaining to soil erosion and sediment control, nutrient management and management of pesticides. If the assessment indicates that existing practices are not protecting water quality, then a conservation plan must be put into place that outlines additional best management practices needed to ensure that water quality protection is being accomplished.

Since the Bay Act and Regulations were enacted, a number of nonpoint source control programs have become available to meet this requirement that are coordinated and directed by DCR's [soil and water conservation staff](#), including [urban nutrient management](#), [agricultural best management practices](#), and [resource management](#)

[planning](#). DCR also provides technical and financial support to Virginia's 47 [Soil and Water Conservation Districts](#) (SWCD), 14 of which cover the 84 Bay Act localities. SWCD assists farmers, urban and suburban landowners, and other land managers with protecting water quality from excess nutrients and sediments.

In 2023, DEQ and DCR staff agreed that the nutrient management plans (NMP), resource management plans (RMP) and conservation plans (CP) conducted either by DCR or SWCD staff equate to the regulatory requirement for a conservation assessment for lands upon which agricultural activities are being conducted. Each year, in response to a request by DEQ for data pertaining to conservation assessments as required by the annual Chesapeake Bay Preservation Act Annual Implementation Report, DCR will provide information concerning the number of plans conducted in each Bay Act locality and the number of acres protected by those plans. No information will be required of localities for the number of completed assessments.

Locality staff should be able to document how they, in cooperation with either DCR or SWCD staff, recommend compliance schedules to landowners in cases where agricultural activities are causing pollution of a nearby water body or violate performance standards pertaining to the vegetated buffer area, including when owners of such lands refuse assistance in addressing the pollution. Local staff should be able to provide a list of any violations or complaints in the previous five years and a description of how the violations were verified and resolved. The locality should demonstrate that they cooperate with the local SWCD in developing compliance measures and schedules to correct these problems

- d. *Silvicultural Exemption Criteria* - The Regulations state that silvicultural activities in CBPAs are exempt from the Regulations provided the activities adhere to water quality protection procedures prescribed by the Fifth Edition (March 2011) of the Virginia Department of Forestry's (VDOF) *Virginia's Forestry Best Management Practices for Water Quality Technical Manual* (Manual). In addition, VDOF oversees and documents installation of best management practices and monitors in-stream impacts of forestry operations in Chesapeake Bay Preservation Areas. The Regulations define silvicultural activities as, "forest management activities, including but not limited to the harvesting of timber, the construction of roads and trails for forest management purposes, and the preparation of property for reforestation that are conducted in accordance with the silvicultural best management practices developed and enforced by the State Forester pursuant to §10.1-1105 of the Code of Virginia and are located on property defined as real estate devoted to forest use under §58.1-3230 of the Code of Virginia."

Silvicultural activities that abide by the forestry BMP guidance are exempt from the Regulations, in part, because they do not represent a permanent change of the landscape. New residential, commercial, and industrial development that replaces forests and farmlands with large areas of impervious surfaces and greatly reduces the capability of the land to provide for removal of pollutants, sediments, and nutrients from stormwater flow are not exempt from the Regulations. A change in land use, from

silviculture to land development, and failure of an operator to properly install or maintain appropriate forestry BMPs within a CBPA automatically eliminates the silvicultural exemption status under the Regulations and may subject the property owner to penalties under the local Bay Act program and possible enforcement actions.

Pursuant to a Memorandum of Understanding (see Appendix B) between DEQ and VDOF, dated January 20, 2010, VDOF staff are to notify local government Bay Act program coordinators and DEQ staff when a silvicultural operation is inspected by VDOF staff, and it is determined that the water quality protection procedures have not been followed. Upon notification by VDOF staff, local staff must determine whether the RPA buffer has been encroached upon and, if so, implement appropriate procedures for addressing Bay Act violations.

Localities must be able to demonstrate that they have an established relationship with their regional forester and a process in place to respond to notifications from VDOF regarding the lack of proper installation and maintenance of forestry best management practices. In cases where the locality has not been receiving notices from VDOF, they must confirm or reestablish a relationship with the regional forester and be able to describe how they intend to address the enforcement requirement, when necessary. Local staff must be able to demonstrate that procedures are in place to require the reestablishment of the RPA buffer with woody vegetation when silvicultural activities cease, there is a change in land use, and the buffer has been encroached upon.

If the liaison determines that regulatory requirements for the general performance criteria are not being met consistently, then a deficiency should be noted for any specific criterion found to be out of compliance.

5. RPA Development Criteria

Land development within the RPA is limited and subject to a number of performance criteria intended to protect the quality of state and local waters. The Regulations identify a number of criteria for development in the RPA which include a listing of specific uses and activities that are permitted by right, exempt activities, and permitted buffer encroachments and modifications. Each of these categories of development require a site-specific RPA determination, submission of a WQIA, compliance with the general performance criteria, and mitigation for the proposed encroachment. Local governments have established processes to review RPA encroachment applications for compliance with the performance criteria, approving them only if the encroachment is minimized, mitigated, and meets the required conditions. Proposed encroachments can be reviewed through one of two paths: an administrative approval or waiver issued by local staff (administrative waiver), or an exception which requires a public hearing before a formal review body (formal exception). Both review processes require conditions for approval and mitigation depending upon the circumstances, as outlined in the regulatory relief mechanisms section of this guidance document.

In addition to the above requirements, the Regulations outline a number of conditions for each type of encroachment, as described in 9 VAC 25-830-140. Liaisons should review

project files and plans to ensure that development applications were reviewed through the appropriate process, that only permitted activities were approved, and that the conditions and performance criteria for each type of activity were met. Liaisons should also ensure that all required documentation was submitted, such as evidence of wetland permits, site specific CBPA determinations, and WQIAs. Field investigations should confirm that land disturbance and impervious surfaces within the RPA were minimized, indigenous vegetation was preserved to the extent practicable given the proposed use or development, approval conditions were met, and vegetative mitigation measures were installed and survived.

If the liaison determines that regulatory requirements for the RPA development criteria are not being met consistently, then a deficiency should be noted for any specific criterion found to be out of compliance.

6. Regulatory Relief Mechanisms

As noted above, the Regulations provide for two types of approval processes: administrative waivers and exceptions.

- a. *Administrative approvals* – Often called administrative or land use and development “waivers”, administrative approvals may be granted for exceptions to the general performance criteria as described in 9 VAC 25-830-140 for RPA encroachments that are: 1) permitted by right, such as water dependent uses, redevelopment, private roads and driveways, or flood control and stormwater management facilities; 2) exempt activities in the RPA, such as water wells, passive recreation facilities, and historic preservation or archaeological activities; 3) permitted buffer encroachments, such as new principal structures and necessary utilities on pre-Bay Act lots when application of the RPA buffer area would result in the loss of a buildable area or the expansion of existing, nonconforming structures; and 4) permitted buffer modifications, such as provision of sight lines and vistas, access paths, management of buffer vegetation, shoreline erosion control projects, agricultural best management practices, and adaptation measures to address coastal resiliency. The types of activities and uses that qualify for administrative approval and the conditions that apply to those approvals are further described in 9 VAC 25-830-140 and 9 VAC 25-830-155 (adaptation measures).

Localities must develop processes and procedures for ensuring all required information is submitted by the applicant and reviewed by staff. The required documentation should be retained in the project files for liaison examination during compliance reviews. Localities must have a process for reviewing all proposed land disturbance within the RPA, including land disturbance for less than 2,500 square feet, for compliance with Bay Act requirements. Liaisons should review the project files and approved plans for compliance with the following, as applicable:

- Regulatory conditions specific to the type of buffer encroachment or modification.
- Compliance with the general performance criteria.
- Evidence of the required RPA and septic plat notations, designation of the RPA and RMA boundaries, and depiction of the buildable area(s).

- Documentation of staff consideration of the required findings when appropriate, such as for the expansion of nonconforming structures into the RPA or construction of new principal structures on pre-Bay Act lots.
- Documentation of an accurate, current (generally within five years and reflective of current site conditions) site-specific RPA determination, inclusive of a perennial flow determination and a wetland delineation, as necessary.
- Submittal of a complete WQIA with a vegetative mitigation plan for the area of proposed land disturbance within the RPA.
- Verification of the installation and survival of vegetative mitigation and/or the installation and effectiveness of other BMPs.
- Verification of the implementation of agricultural BMPs, compliance with silvicultural streamside management zone BMPs, compliance with an agricultural conservation plan, or reestablishment of the RPA buffer where it has been reduced due to silvicultural or agricultural land uses when a change in land use is proposed.
- Encroachments on pre-Bay Act lots for principal structures and necessary utilities within the seaward 50 feet require an exception.
- Accessory structures proposed anywhere in the RPA require an exception.

As noted in the POD Review Process section of this guidance document, liaisons should also review applications, checklists, and local policies and procedures to ensure that all regulatory requirements are reflected in the implementation tools used by applicants and staff.

- b. *Exceptions* may be considered and acted upon following a public hearing by the local legislative body (e.g., town council, city council, board of supervisors), the local planning commission, or a special committee, board or commission established or designated by the local government to implement Bay Act requirements. The appointed body must have access to all of the application information outlined above under administrative approvals and documentation of the application, consideration of the findings, and the review body's decision must be retained in the file.

Local staff should consider the development of a template staff report that provides additional pertinent information, such as the date of lot recordation and/or construction of existing structures, date and status of any previously approved waivers or exceptions, documentation of compliance with any previously required conditions for mitigation, staff analysis of the project as it relates to the required findings, and staff recommendation for the project based upon knowledge of the project and their work with the applicant to minimize the RPA encroachment.

If the liaison determines during the site plan, file review, and field investigations process that the review of administrative waivers and exceptions is not in compliance, then a deficiency would be noted.

7. Development Review Mechanisms

In order to ensure that all conditions for approval and performance criteria are appropriately reviewed as part of the local land development review process (whether a plan of development for land disturbance of greater than 2,500 square feet, or for the review of a building permit – required for projects disturbing greater than 256 square feet), localities must develop policies, procedures, and implementation tools to assist applicants in the preparation of their submissions and staff with their review and approval of projects. These implementation tools should include applications and checklists based upon local ordinance requirements as well as flow charts for more challenging processes, such as whether an administrative waiver or a formal exception is required.

Examples of appropriate implementation tools include applications and checklists for buffer vegetation, building and land disturbance permit applications; site plan and subdivision plat applications and checklists; checklist or template for a WQIA; perennial flow determination and wetland delineation scoring sheets for site specific CBPA determinations; and applications and checklists for permitted buffer encroachments or modifications, nonconforming use or development waivers, and exceptions. Using the Regulations and local ordinances as a guide, liaisons should examine existing local implementation tools to ensure that all performance criteria and conditions can be met when plans are developed and reviewed. In addition, guidance documents developed by the Department should be consulted to ensure consistency between the locality’s program and the Regulations.

Although not required by the Regulations, such development review mechanisms are vital for consistent implementation of and compliance with Bay Act requirements across all jurisdictions, particularly when multiple local agencies are responsible for review of land development projects.

When implementation tools do not account for all regulatory requirements and the inadequacy results in a lack of documentation of compliance with Bay Act requirements, a deficiency would be noted.

8. Complaint and violations review process

Many localities do not have a formal complaint and violations review process in place, and one is not explicitly required by the Regulations; however, complaints and violations do happen, and it is important that a locality be prepared to address both by having a policy in place to direct how they are handled in order to ensure consistency over time and in the advent of staff transitions.

Liaisons should consider how localities address complaints/violations once reported. For example, how quickly is staff able to respond to a complaint? Are notices of violation and stop work orders issued either at the time of inspection or shortly thereafter? Does the locality require the removal of unpermitted impervious surfaces, or do they allow the submission of required applications, checklists, plans, and any required hearings/approvals to occur after the fact?¹ Is mitigation of violations enforced in the form of approval and

¹ It should be noted that so called, “after the fact” approvals cannot meet the required finding of “the exception request is not based upon conditions or circumstances that are self-created or self-imposed,” per 9 VAC 25-830-150(C)(1)(d).

implementation of a landscape mitigation plan? Does the locality require a surety for the implementation of landscape mitigation plans and require the survival of plants over one or two planting seasons? If so, how often is the locality able to inspect the site for vegetation planting and survival? What happens if the site changes hands in the middle of an enforcement action? Does the locality follow the recommendations of the *Riparian Buffer Modification & Mitigation Manual* or a local policy that offers water quality protection greater than or equal to that found in the *Buffer Manual*?

These and other questions of a locality's compliant and violations process can be answered by a statement from the locality explaining how they are handled, specific examples, and follow-up and a liaison review of any implementation tools in use by the locality, inclusive of any enforcement language included in local ordinances and any process flow charts or template letters in use by staff along with a review of any identified examples of violations including locality follow-up.

When liaisons note a lack of documentation of the resolution of violations in the form of mitigation and compliance with Bay Act requirements, a deficiency would be noted.

9. Site plan, file review, and field investigations

Site plan, file review, and field investigations are the primary mechanism for reviewing implementation of a locality's program for Bay Act compliance. Liaisons must know how to interpret regulatory and ordinance requirements, be able to identify requirements on plans, plats, and permits, and identify the implementation of requirements in the field so as to determine whether or not an approved project complies with ordinance provisions. Liaison observations are documented using both the *Site Plan, File Review, and Field Investigation Checklist* and the *RPA Development Criteria Checklist*.

The *Consolidated Checklist* requires the liaison to provide a brief summary of each project reviewed and an analysis of how the project (as approved) complies or does not comply with the locality's Bay Act ordinance and the Regulations. The summary requires an examination of local ordinances, implementation tools and the land development review, approval, and mitigation requirements and processes, as well as the locality's construction inspection and enforcement process. The analysis for each project will identify observed deficiencies and the associated regulatory requirement. Both the observed deficiency and the regulatory requirement must be documented on the *Site Plan, File Review, and Field Investigation Checklist* and on the *Consolidated Checklist* for each project reviewed, as collectively these checklists become foundation for the programmatic deficiencies identified in the staff report. This is one of the primary methods of identifying whether there are deficiencies in a locality's ordinances or within a locality's Bay Act program implementation.

F. Development and Review of the Staff Report and the Corrective Action Agreement (CAA)

After completing the *Consolidated Checklist*, the liaison and the Manager of Watersheds and Local Government Assistance Programs will meet to review and finalize the identified deficiencies and recommendations for how the locality can meet the compliance requirement. Upon completion of the *Consolidated Checklist*, DEQ staff should begin drafting the *Local Program Compliance*

Review Report (staff report). The liaison should consult this Manual when considering the review strategy and compliance standard for each regulatory requirement while finalizing deficiencies and writing the staff report.

The purpose of the staff report is to summarize the status of the local program and describe any areas of non-compliance resulting in deficiencies in local program implementation. Where deficiencies have been identified, the staff report must provide sufficient detail to explain the deficiency, link the deficiency to a regulatory requirement(s), and describe specific actions to be undertaken by the locality to address those deficiencies, which are generally described as follows:

- Ordinance and comprehensive plan deficiencies require the adoption of amendments to the appropriate documents. Proof of the adoption by local town or city councils or county boards of supervisors is necessary in the form of a copy of the final adopted plan or ordinance and the resolution of adoption, meeting agenda, and minutes.
- General performance criteria or RPA development criteria deficiencies require the development of new (or improvement of existing) and use of policies, procedures, flow charts, or other implementation tools such applications, checklists, exception staff reports, etc. Proof of use of these tools during the building permit or plan of development review process entails final copies of the document(s) and the review of at least two projects that demonstrate the use of the new or improved implementation tools.
- Agricultural or silvicultural performance criteria deficiencies require evidence of interaction with SWCD and/or DOF staff (emails) and/or documentation of conservation assessments from DCR (annual reports) or report from DOF staff that a silvicultural operation is not implementing streamside management zone BMPs, as applicable; policy statements from local staff; an implementation plan or memorandum of understanding between SWCD and local staff; documentation of corrective actions for violations, etc.
- Regulatory relief deficiencies require evidence of the development or improvement of administrative or formal exception review procedures and other implementation tools, the review of a minimum of two additional waiver or exception cases by the liaison, and attendance of a minimum of two additional formal exception review body hearings for observation. This review may be varied if a locality does not have two within a 12-month timeframe prior to the compliance review.

Recurring inconsistencies with the local ordinance as revealed during the review of two or more projects should be considered programmatic deficiencies and be included in the staff report as a deficiency. If a deficiency was the subject of a condition in the previous compliance review and has continued to occur despite corrective action, then it rises to the level of a deficiency for the current compliance review; however, if the liaison can provide the Program Manager with sufficient explanation as to why the deficiency is not expected to be repeated, then a deficiency may not be warranted. The Program Manager and liaison will determine if single or isolated inconsistencies are indicators of broader program deficiencies or anomalies that are not expected to be repeated.

Upon agreement of the final list of identified deficiencies with the Program Manager the liaison will draft a Corrective Action Agreement (CAA) that clearly outlines the agreed upon deficiencies, their link to regulatory requirements, actions to be taken for compliance, and a deadline for compliance. Deadlines for compliance are standardized as follows:

- Comprehensive plan or ordinance deficiencies requiring the development of plan or ordinance amendments and their adoption by local boards or commissions have a one-year deadline because of that public process. This one-year deadline may account for specific planned or otherwise updates to the Comprehensive Plan to allow a locality to address both in a singular process.
- All other deficiencies must be met within six months unless there are extenuating circumstances that make that deadline impossible to meet such as staff turnover or a lack of resources such as staff capacity or technical expertise requiring the locality to hire a consultant, or a lack of funding that requires the locality to seek obtain funding elsewhere. If a longer deadline is desired by the locality, a request must be submitted that documents local issues or concerns, the actions being taken to address the concerns, and a requested deadline for consideration by DEQ.

Upon completion of the staff report and the CAA, the liaison will schedule the close-out meeting and forward both documents to local staff and the CAO a week in advance of the meeting. During the close-out meeting, DEQ, CAO, and local staff will discuss the staff report, observed deficiencies, actions necessary for compliance, and the proposed CAA deadline. Following the close-out meeting, agreed upon changes will be made to both the staff report and the CAA, including an adjustment of the deadline if warranted. When complete, the liaison will forward the appropriate template letter, final staff report, and CAA to the locality's CAO and Bay Act coordinator for review and signature. The CAA becomes effective upon signature of the Manager of the Office of Watersheds and Local Government Assistance.

In the event, a locality refuses to sign the CAA, then either a Warning Letter if additional time to sign is warranted is sent or a Notice of Administrative Process Act (APA) Informal Fact Finding (IFF) is developed and an IFF regarding the deficiencies will be scheduled. If the IFF results in a finding of deficiencies, then a CAA for those deficiencies with an established deadline will be sent to the locality (Compliance Review Process Flow Chart B and C).

G. Condition Review

In cases where deficiencies are identified and a deadline for compliance is established, the liaison will send reminders and offers of assistance as appropriate to the local Bay Act contact throughout the compliance period, with a final reminder 90-days in advance of the approaching deadline. Two weeks prior to the deadline, the liaison should begin the condition review process which entails review of actions the locality has taken to address the deficiencies listed in the CAA and an assessment of whether or not each identified deficiency has been met, again consulting with this Manual for assistance when considering the review strategy and compliance standard for each regulatory requirement.

The condition review will be summarized in a *Condition Review Staff Report*, which focuses on the progress made to date and identifies outstanding deficiencies as well as those where compliance has been achieved. The criteria and process for the *Condition Review Staff Report* would be the same as those for the *Compliance Review Staff Report* discussed above, with an emphasis on the deficiencies identified during the compliance review, actions taken by the locality to address the deficiencies, and a conclusion as to whether the actions were deemed sufficient for compliance by DEQ staff.

Upon completion of the condition review with all conditions met, the liaison will transmit drafts of the appropriate template letter and *Condition Review Staff Report*. Upon completion of the condition review, if conditions have not been addressed then a Warning Letter or NOV will be drafted.

Only in cases where a deadline extension is warranted, staff will send a Warning Letter identifying the remaining compliance issues and updated compliance deadlines. If the issues are not resolved during the Warning Letter timeframe, then staff should draft an NOV. If a deadline extension is not warranted, then a NOV will be drafted. All NOVs must be approved by Enforcement, before the liaison forwards it to the locality's CAO, copying the Bay Act coordinator.

H. Enforcement Process (Compliance Review Process Flowchart C)

In the event that the locality does not meet the deadline(s) and a NOV is issued, the DEQ Enforcement Division will usually attempt to negotiate a consent order with the locality. In the event a consent order cannot be negotiated, the Enforcement Director will send a notice of Administrative Process Act (APA) proceedings and proceed with either an informal fact finding pursuant to Va. Code § 2.2-4019 or a formal hearing pursuant to § 2.2-4020. Following an informal fact finding, the DEQ Director can issue a special order pursuant to Va. Code §10.1-1186 with penalties up to \$10,000. After a formal hearing, DEQ can issue a special order pursuant to Va. Code § 62.1-44.15(19) with penalties up to \$ 5,000 per violation with the maximum amount not to exceed \$ 50,000 per order. If DEQ and the locality cannot come to an agreement and DEQ does not want to proceed with an APA proceeding, DEQ has the option of referring the case to the Office of the Attorney General for legal action.

I. Compliance Review Filing Procedures

Throughout the compliance review process, DEQ staff must maintain all information and documentation related to the compliance review in the applicable locality folder in the DEQ internal shared drive, Local Programs, or in DEQ's Electronic Management System (EMS). Folders should be created and clearly labeled. Such folders should contain the following as applicable:

- Copies of the completed checklists: *Required Elements, Comprehensive Plan Requirements, Site Plan, File Review, & Field Investigation, RPA Determination, and Consolidated Checklists*;
- All final formal correspondence including: review initiation letters, notification letters, and DEQ action letters, NOVs;
- Copies of relevant e-mail correspondence;
- Materials received from the locality as part of the compliance review (completed checklists, flow charts, database screen prints, application forms, and staff reports, etc.);
- Relevant documentation in support of issues identified in staff report;
- Final staff reports;
- Relevant follow-up correspondence and documents related to assisting the locality in achieving full compliance during the condition review such comments on program documents generated to achieve compliance and technical assistance on conditions; and
- Upon completion of the compliance review (including any condition review that takes place) delete draft copies of checklists and reports, saving only final copies.

III. Description of DEQ Review Tools

In addition to this *Procedures Manual*, a number of flow charts, spreadsheets, checklists, and templates have been developed to facilitate the compliance review process, as follows:

A. Compliance Review Process Flow Charts

A series of three flow charts have been developed to outline the compliance review process:

1. Chart A, CBPA Round 3 Compliance Review Process, describes the process of sending the initiation letter that opens the review, completing the *Required Elements Checklist* and the *Consolidated Checklist*, conducting the site plan reviews, file reviews, and field inspections, conducting the close-out meeting, and sending final documents to the locality.
2. Chart B, CBPA Program Review Process, describes the process from the close-out meeting through the various DEQ action template letters, and the CAA and NOV templates that may be sent to the locality describing the observations of the local Bay Act Program by DEQ staff.
3. Chart C, CBPA Compliance Review Enforcement Process, describes the enforcement process followed by the program in the event that a locality does not sign the CAA or the Enforcement Division in the event that a locality does not comply with the CAA. The enforcement process begins with sending a Notice of Violation and Notice of Administrative Process Act (APA) proceedings and ends with the potential for the Department to issue a special order with penalties.

B. Compliance Review Tracking Spreadsheet

The *Compliance Review Tracking Spreadsheet* provides space for the date each of the steps in the compliance review process is accomplished (e.g., letters sent, meetings scheduled, documents drafted, etc.) beginning with the sending the initiation letter through the sending of a non-compliant locality to the Enforcement Division). This spreadsheet should be used on a regular basis by liaisons throughout the compliance review process to ensure that all documentation is completed and available for review and/or distribution.

C. Required Program Information Checklist

A new *Required Program Information Checklist* template for Round 3 has been developed to enable the liaison to document the elements of a locality's Bay Act program that were found to be compliant either during the last compliance review or due to locality efforts in response to conditions identified in the previous compliance review. DEQ staff will complete this checklist at the beginning of a Round 3 compliance review using information available in the agency's hardcopy or digital files. The checklist includes information such as adoption dates of ordinances and comprehensive plans, and documents created and/or updated in order to bring the program into compliance following the previous review. The *Required Program Information Checklist* will identify all documents currently in use by local staff for Bay Act program implementation and will be provided to local staff with the letter requesting the initial meeting.

Local staff should review this checklist to confirm that the documents identified in the checklist remain in use and represent the current version in use by local staff. Local staff should provide DEQ information on any changes to the required elements that occurred since completion of the last compliance review. The verified/updated checklist should be returned to DEQ staff no later than one week prior to the initial compliance review meeting. If DEQ staff did not conduct a comprehensive review of the local Bay Act ordinance during the Round 2 Compliance Review, then one should be completed during the Round 3 Compliance Review.

Local staff are to confirm DEQ's findings on the *Required Program Information Checklist* findings and provide copies of any changes to the required elements (ordinance and comprehensive plan) and supporting documents (applications, checklists, and policies or procedures) currently in use by local staff no later than one week prior to the initial compliance review meeting. Specific findings from the required elements review are to be verified and documented by DEQ staff on the *Consolidated Checklist*.

E. Comprehensive Plan Requirements Checklist

The *Comprehensive Plan Requirements Checklist* should be updated following the Round 2 Compliance Review to include any updates to the comprehensive plan that were required, as well as the adoption date of any amendments. A blank copy of the *Comprehensive Plan Requirements Checklist* should be included with the Round 3 initial letter and note the comprehensive plan adoption date based on the DEQ files. The letter should request that if the Plan has been amended since the adoption date of the Plan in DEQ's files, then local staff should complete and submit a new *Comprehensive Plan Requirements Checklist* and a copy of the current Plan prior to the initial compliance review meeting. The checklist serves as a mechanism to assist local staff with identifying and confirming the location of required information in the current comprehensive plan. Specific findings from the comprehensive plan review are to be verified and documented by DEQ staff on the *Consolidated Checklist*.

F. Locality Guidance for Selecting Projects for Site Plan/File Review and Field Investigations

The guidance for selecting projects for site plan review and field investigations will be provided by DEQ staff at the initial meeting. The guidance identifies the types of projects, plans, and documents DEQ staff is interested in reviewing for compliance with Bay Act requirements. Localities were requested to provide a list of approved site plans, subdivision plats, and building permits issued during the past two to five years for projects located on parcels with designated RPA, prior to the initial meeting. DEQ staff will select projects for review from the new list and from DEQs files addressing technical assistance provided, EIRs reviewed, citizen complaints received, violations investigated, and a scan of GIS or GoogleEarth. DEQ staff will review no less than five plans or the maximum number of plans if less than five have been approved by the locality during a five year period.

G. Site Plan, File Review, & Field Investigation Checklist

The *Site Plan, File Review, & Field Investigation Checklist* is to be completed by DEQ staff during the site plan and file review session(s) and during field investigations in order to document the following: 1) compliance of approved site plans, plats, and building permits with the performance criteria; and, 2) construction of the project in accordance with the approved

plans. Specific findings from the site plan and file reviews and field investigations are summarized and documented by DEQ staff on the *Consolidated Checklist*.

H. RPA Determination Checklist

The *RPA Determination Checklist* is to be completed by DEQ staff during the site plan and file review session(s), and during field investigations in order to document the following: 1) compliance with specific RPA determination requirements and corresponding performance criteria during the review and approval of building permits, site plans, and subdivision plats; and 2) construction of the project in accordance with the approved plans. Specific findings from the site plan reviews and field investigations are summarized and documented by DEQ staff on the *Consolidated Checklist*.

I. Consolidated Checklist

The *Consolidated Checklist* consists of questions regarding approved compliance review elements, as well as other questions designed to document the requirements and processes of the local program. This checklist is completed by DEQ staff following review of local verification/update to the *Required Elements Checklist* and the *Comprehensive Plan Requirements Checklist*, and completion of the site plan and file review, and field investigations tasks. During completion of this checklist, it is not unusual for DEQ staff to call on local staff for additional documentation or clarification, as, once completed, the *Consolidated Checklist* serves as the basis for specific observations and conclusions as to the status of local Bay Act program compliance. Any elements of the local Bay Act program found to be out of compliance with regulatory requirements will result in a condition for compliance, as identified in the staff report.

J. Staff Report

A *Template Staff Report* to promote consistency among DEQ liaisons with completion of staff reports has been developed. The report includes the description of local implementation of the various elements of local programs, discusses whether the locality meets regulatory requirements, and provides an outline of deficiencies and suggestions for their correction. Staff reports are generated at the completion of the compliance review and again following the review of documents, processes or procedure developed to address any deficiencies identified during the review.

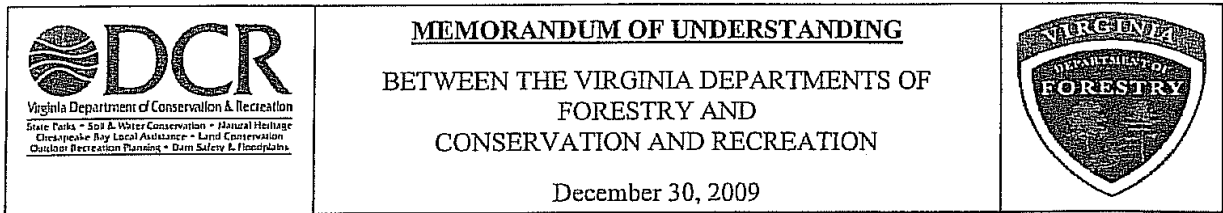
Upon completion of the compliance review and following the close-out meeting with local staff, the appropriate *Template Letter*, a copy of the staff report, and the CAA, if appropriate, will be sent to the local CAO with a copy to the Bay Act coordinator. The context and use of these letters is described in detail under Section II.B, Official Communication with Local Governments.

K. Template Letters for Official Communications

In addition to the checklists itemized above, DEQ has developed a series of *Template Letters* to address the typical official communications between DEQ and local governments during the compliance review process. They are as follows:

1. Compliance Review Initiation Letter – This letter represents official notice to the locality that a compliance review is being initiated, setting forth the expectation that all local staff involved with Bay Act implementation should be at the initial compliance review meeting, and that project files and plans be available for review at subsequent meetings. Enclosed with the letter will be a copy of the Round 2 *Required Program Information Checklist* and a blank *Comprehensive Plan Requirements Checklist* with instructions on their review/completion by local staff and noting a deadline for receipt by DEQ of one week prior to the initial meeting date.
2. No deficiencies identified (Template #1) – Following successful completion of the compliance review, the final staff report is sent to the CAO and the Bay Act coordinator with a notification letter from the DEQ Director of the OWLGAP stating that no deficiencies are noted and including the final agency decision finding the locality compliant with the evaluated program elements. This ends the compliance review for that locality.
3. Compliance deficiencies identified – Corrective Action Agreement (CAA) (Template #2) – Following completion of a compliance review where deficiencies were identified, the final staff report, which outlines conditions for compliance and a time frame for the locality to address the conditions, is sent to the CAO and Bay Act coordinator. Accompanying the staff report will be a notification letter and a CAA listing the identified deficiencies and corrective actions to be taken by the deadline. The Manager of the OWLGAP signs the notification letter.
4. Compliance deficiencies addressed – CAA complete (Template #3) – During the condition review period prior to the CAA deadline, DEQ staff will communicate with local staff and assist them with meeting compliance conditions, as necessary. Once the deadline passes, DEQ staff will evaluate the actions taken and documentation submitted by the locality and determine the extent to which each compliance deficiency has been addressed. If all conditions have been successfully addressed, a condition review staff report is written and is sent to the CAO and Bay Act coordinator with a notification letter from the Director of the OWLGAP. This ends the compliance review for that locality.
5. Compliance deficiencies not addressed adequately – CAA not complete – Extension Warranted (Template #4/Warning Letter) – If DEQ staff in consultation with the Manager of the OWLGAP, determine that an extension of the CAA deadlines is warranted, a Warning Letter will be issued. If DEQ staff in consultation with the Manager of the OWLGAP, determine that an extension of the deadline to sign the CAA is warranted, a Warning Letter will be issued.
6. Compliance deficiencies not addressed adequately - Notice of Violation – No Extension Warranted (Template #5/NOV) – If the CAA contains compliance deficiencies that are not satisfactorily addressed at the end of the compliance deadline, DEQ may issue an NOV specifying deficiencies, required compliance actions, and a compliance schedule.

Appendix A DCR-VDOF Memorandum of Understanding



PURPOSE:

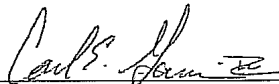
This memorandum is intended to establish agreed upon guidelines for cooperation between the Virginia Departments of Forestry (VDOF) and Conservation and Recreation (DCR) regarding the interaction between the VDOF non-regulatory program for the implementation of Forestry Best Management Practices (BMPs) and the provisions of the Chesapeake Bay Preservation Area Designation and Management Regulations pertaining to silvicultural activities.

The Chesapeake Bay Preservation Act (§10.1-2100 *et seq.* of the Code of Virginia), hereafter referred to as the CBPA or Act, directs local governments within Tidewater Virginia to implement land use restrictions affecting environmentally sensitive corridors draining to the Chesapeake Bay. Section 9 VAC 10-20-120 of the regulations adopted pursuant to the Act (the regulations) states that silvicultural activities are conditionally exempt from local CBPA ordinance requirements provided those operations are conducted using appropriate silvicultural best management practices to protect water quality, consistent with laws and guidance issued and implemented by the VDOF. The regulations further provide that VDOF will oversee and document installation of best management practices and will monitor in-stream impacts of forestry operations in Chesapeake Bay Preservation Areas. An emphasis and goal of the VDOF non-regulatory BMP program is to implement, utilizing silvicultural BMPs, water quality protection similar to that which would be achieved through implementation of the CBPA Resource Protection Area 100-foot buffer requirements.

RESPONSIBILITIES OF THE DCR:

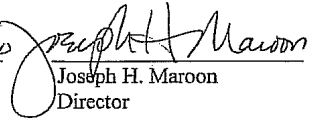
1. DCR will administer the Chesapeake Bay Preservation Act and its implementing regulations.
2. DCR will provide the VDOF with a list of Tidewater Virginia local governments subject to the Chesapeake Bay Preservation Act and those that have opted in to the Bay Act. DCR will also provide periodic updates of DCR's Local Bay Act Program Directory, listing contact persons for each locality.
3. DCR will consult with the VDOF on the development, revision, issuance, and interpretation of silvicultural guidance under the Act.

1. The VDOF and the DCR will work closely together to improve the overall water quality of the Chesapeake Bay and other state waters.
2. This Memorandum shall be effective when signed by both parties.
3. The VDOF and the DCR will review this Memorandum on at least a biennial basis. It may be terminated or modified at any time by agreement of the parties, and may be terminated by either party alone by giving ninety (90) days notice in writing to the other.



Carl E. Garrison, III
State Forester
Department of Forestry

1-12-10
Date



Joseph H. Maroon
Director
Department of Conservation and Recreation

1/6/2010
Date