

APPENDIX 7

Guidance on State Agency Consistency
with the Chesapeake Bay Preservation Act

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Section 62.1-44.15:78 of the Chesapeake Bay Preservation Act (the Bay Act) requires all state agencies to exercise their authorities consistent with comprehensive plans, zoning ordinances, and subdivision ordinances adopted by local governments to comply with the Chesapeake Bay Preservation Area Designation and Management Regulations (the Regulations). In May of 2000, the Bay Act was incorporated as one of the enforceable programs of Virginia's Coastal Zone Management Program (CZM Program). The Governor's Executive Order #21 requires agencies of the Commonwealth to conduct activities in a manner consistent with and supportive of the CZM Program. The Virginia Department of Environmental Quality (DEQ), Water Division, Chesapeake Bay Preservation Act staff is the review authority for determining the consistency of state projects with the requirements of the Bay Act and the Regulations.

Proponent agencies are encouraged to contact the appropriate locality and Bay Act staff during preparation of an environmental impact report (EIR) to ensure that state development projects are consistent with the requirements of the local zoning and subdivision ordinances and comprehensive plans.

Environmental review request documents should include all information necessary to enable Bay Act staff to determine the extent to which a proposed project will impact Chesapeake Bay Preservation Areas (CBPAs), which include Resource Protection Areas (RPAs) and Resource Management Areas (RMAs), as designated by the locality in which the proposed project site is located, and whether the proposed project is consistent with the requirements of the Bay Act and the Regulations. If the environmental review request documents do not include sufficient information, the applicant or proponent agency may be required by Bay Act staff to provide any or all of the following:

- a map or scale drawing showing the limits of RPAs and/or RMAs and the proximity of these features to any existing or proposed land disturbance, development or redevelopment on the site;
- a water quality impact assessment (WQIA), or equivalent information for any proposed land disturbance, development or redevelopment activities in an RPA or RMA, as specified in the local Bay Act ordinance; and
- documentation showing that a site-specific perennial flow and/or nontidal wetland determination has been conducted to determine whether water bodies on or near the proposed development site have perennial flow or nontidal wetlands connected by surface flow, and if necessary, that RPA boundaries have been adjusted on the site, based on current conditions.

The applicant or proponent agency must show that the proposed development meets all the performance criteria under § 4 VAC 50-90-130 of the Regulations, including the

performance standards for RMAs and RPAs that require: a) no more land shall be disturbed than is necessary for the proposed use or development; b) indigenous vegetation shall be preserved to the maximum extent practicable consistent with the use or development proposed; and, c) land development shall minimize impervious cover consistent with the proposed use or development.

A stormwater management plan consistent with the stormwater management criteria and the water quality protection provisions of the Virginia Stormwater Management Regulations § 4 VAC 50-60-10 must be submitted for approval by DEQ Division of Stormwater Permits prior to any construction or land disturbing activities. An Erosion and Sediment Control Plan should be developed according to the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992, and submitted to the DEQ prior to any land disturbance activities.

Pursuant to § 4 VAC 50-90-110 of the Regulations, on-site delineation of the RPA is required for all projects in CBPAs. Because U.S. Geological Survey maps are not always indicative of actual "in-field" conditions, they cannot be used to determine the site-specific boundaries of the RPA. Projects that include any proposed land disturbance, development or redevelopment within the RPA must also satisfy the requirements of § 4 VAC 50-90-140 of the Regulations.

DEQ Bay Act staff provide general comments and guidance at the conceptual stage of review when an environmental review request is initiated and less specific information is available. It is also often necessary for Bay Act staff to request review of final site plans. General comments at the conceptual stage of review typically advise that the applicable requirements in the Regulations must be met, including erosion and sediment control and stormwater management requirements. To ensure that the project complies with the Regulations, applicants or proponent agencies must submit final site plans prior to any land disturbance, development or redevelopment, if requested. Bay Act staff provide final site plan review regarding consistency with the Regulations through direct correspondence with the applicant or proponent agency. Other divisions within DEQ provide similar final site plan review for erosion and sediment control and stormwater management plans.

For further guidance, questions, or concerns, contact:

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