





Tidal Wetlands Workshop

Chesapeake Bay Preservation Act Amendments & Guidance Update

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Background

Chesapeake Bay Preservation Act Framework

- **Statutory Authority:**

- 1988 - Chesapeake Bay Preservation Act adopted VA Code Title 62.1: *Waters of the State, Ports and Harbors*
Chap. 3.1: *State Water Control Law*
Article 2.5: §§ 62.1-44.15:67 - 15:79

- **Regulatory Authority:**

- 1989 Chesapeake Bay Preservation Area Designation and Management Regulations: 9VAC25-830
- Amendments: 1991, 2001, 2014, 2021

- **Applicability:**

- 84 Tidewater Localities



Recent Bay Act Amendments

- **2020 - Chesapeake Bay Preservation Act (Bay Act) Amendments (2020 General Assembly)**
 - Amended Virginia Code § 62.1-44.15:72 requiring the State Water Control Board to develop criteria enabling local government Bay Act programs to encourage and promote “coastal resilience and adaptation to sea-level rise and climate change” as well as the “preservation of mature trees or planting of trees as a water quality protection tool...”
- **2021 - State Water Control Board approved regulatory amendments to 9 VAC 25-830 in June 2021**
 - Effective: September 29, 2021

Regulatory Amendment: Climate Change Resilience and Adaptation Criteria

- **Overview - 9 VAC 25-830-155**
 - Assessment of climate change impacts
 - Adaptation measures
 - Limitation on granting of exceptions
 - Three year time-frame for adoption of local ordinance amendments

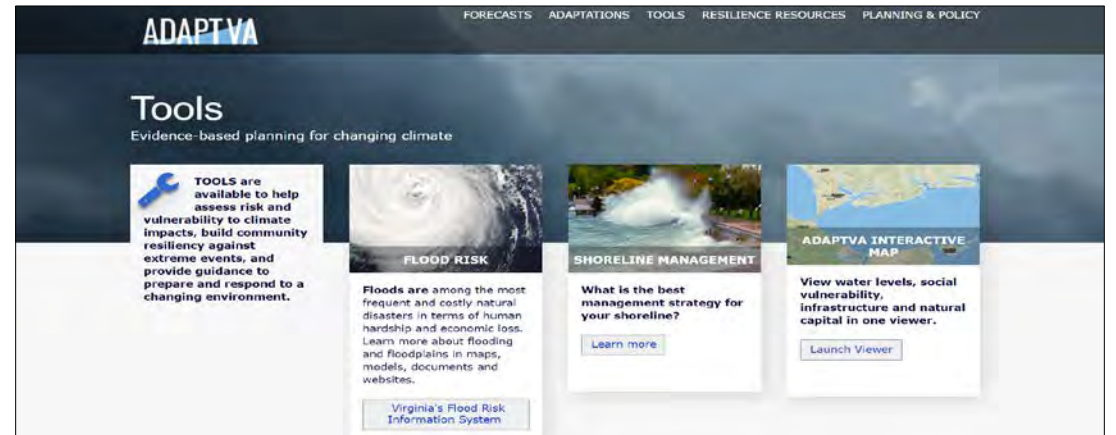
Regulatory Amendment: Resiliency Assessment

- **9 VAC 25-830-155(B)**

- Localities *“shall assess the impacts of climate change and sea level rise on proposed land development in the RPA...”*
- Incorporated into the plan of development or project review process
- Based upon RPA as delineated at time of proposed development
- Based upon a period of 30 years, or lifespan of the project
- Use a model or forecast developed by or on behalf of Commonwealth
- Identify potential impacts on the parcel and project

Resiliency Assessment: Model / Forecasting

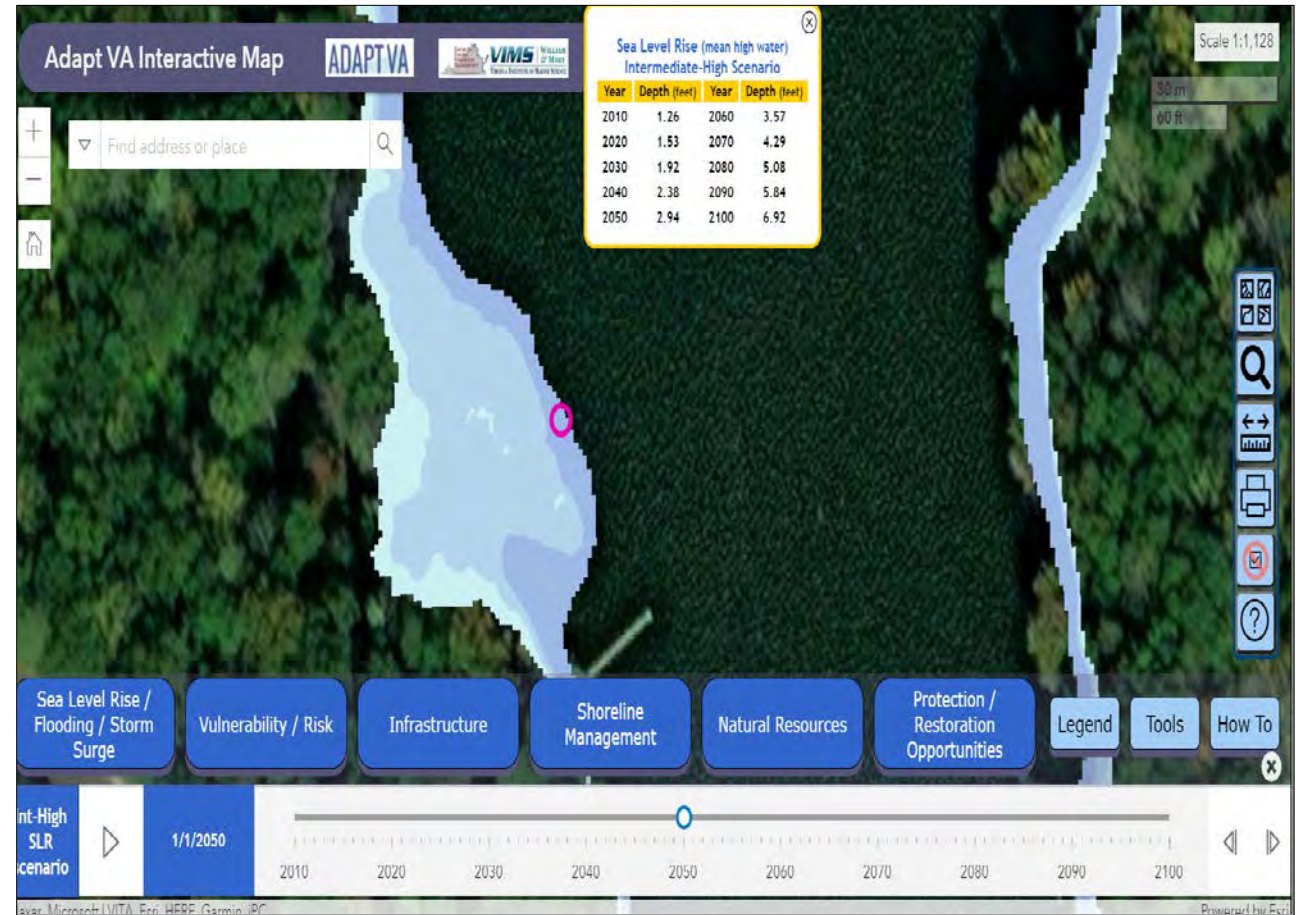
- The Resiliency Assessment is to be based upon a model or forecast used or developed by or on behalf of Commonwealth
- Current models / forecasts include:
 - Virginia Flood Risk Information System
 - AdaptVA



Resiliency Assessment: Model / Forecasting

- **Scope of Impacts**

- Sea-Level Rise
 - 2017 NOAA Intermediate High Curve
- Storm Surge
 - NOAA SLOSH Model
- Flooding
 - Special Flood Hazard Area
 - Limit of Moderate Wave Action



Regulatory Amendment: Resiliency Assessment

- Assess potential impacts in light of proposed development on buffer function
- Identify conditions, alterations to the project, or adaptation measures, as necessary and appropriate
- Can be incorporated into a Water Quality Impact Assessment
- Can be conducted either by the local government or by applicant
- *“Based upon the assessment, local governments shall, as necessary and appropriate, require conditions, alterations, or the installation of adaptation measures as part of the proposed land development...”*

Regulatory Amendment: Adaptation Measures

Must Be:

- Nature-Based solution
- Chesapeake Bay Program Partnership BMP
- Virginia Stormwater BMP
- Shoreline Protection Strategy (VMRC); or
- Eligible activity for funding by the Virginia Community Flood Preparedness Fund

Regulatory Amendment: Adaptation Measures

- Be designed, installed, and maintained in accordance with specifications
- Maximize preservation of existing natural vegetation, including mature trees
- Minimize land disturbance
- Comply with other Bay Act requirements

Regulatory Amendment: Adaptation Measures

Allows for the use of fill with conditions:

- Grading and slope
- Support growth of vegetation
- Address and manage stormwater run-off
- Not negatively impact septic systems and drainfields; and
- Be consistent with any applicable federal or state law, including floodplain management requirements

Regulatory Amendment: Connection with Tidal Wetlands Guidelines and Existing Provisions

- **Adaptation Measures**

9 VAC 25-830-155

- Nature-based solution
- Specific requirements:
 - Stormwater BMP
 - Chesapeake Bay BMP
 - Shoreline Protection Strategy (VMRC)
 - VA Community Flood Preparedness Fund eligible (DCR)

- **Shoreline Erosion Control**

9 VAC 25-830-140

- VMRC Tidal Wetlands Guidelines apply
- Living Shoreline - Default
- Hardened Shoreline Activity requires “active, detrimental erosion” + Living Shoreline not possible
- Hierarchy of options including rip rap revetments, seawalls, bulkheads

Regulatory Amendment: Exception Limitations

- Local governments shall not grant exceptions to the General Performance Criteria and RPA Development Criteria requirements where:
 - A Resiliency Assessment has not been conducted; or
 - An Adaptation Measure proposes the use of fill in a RPA in contravention of the required conditions.

Implementation: Next Steps

- Draft guidance developed by William & Mary Coastal Policy Center and VIMS
- Stakeholder Advisory Group meeting and review – April 2022
- Updating draft guidance for informal public comment – Summer 2022
 - Graphics and example scenarios being developed in conjunction with guidance
- Developing model ordinance language – Fall 2022
- Model Training / User Guide
 - In development with VIMS
 - Fall 2022 - virtual training event (recorded)
 - Spring 2023 - in-person training event at VIMS
- *Buffer Manual* update to address Mature Trees amendment – Fall 2022

Questions?

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