

9 VAC25-830-40 Definitions

“Adaptation measure” means a project, practice, or approach to mitigate or address an impact of climate change including sea-level rise, storm surge, and flooding including increased or recurrent flooding.

"Nature-based solution" means an approach that reduces the impacts of sea-level rise, flooding and storm events through the use of environmental processes and natural systems.

9VAC25-830-155 Climate change resilience and adaptation criteria

A. Pursuant to Virginia Code § 62.1-44.15:72, this Section provides criteria and requirements to address coastal resilience and adaptation to sea-level rise and climate change. Adaptation measures may be allowed in the Chesapeake Bay Preservation Areas subject to approval by the local government, in accordance with the conditions set forth in this Chapter.

This Section applies in addition to 9VAC25-830-130 and 9VAC25-830-140. Local governments shall incorporate the requirements of this Section into all relevant ordinances and ensure their enforcement through implementation of appropriate processes and documentation for oversight and enforcement. In doing so, local governments shall ensure that the incorporation is consistent with the water quality protections of the Act.

B. Local governments shall assess the impacts of climate change and sea-level rise on any proposed land development in the Resource Protection Area during the plan of development or project review process. Such assessment shall be based on the Resource Protection Area as delineated at the time of proposed land development. Such assessment shall at minimum:

1. Be based upon a potential impact range of 30 years or the lifespan of the project if less than 30 years;

2. Utilize a model or forecast developed by or on behalf of the Commonwealth;

3. Identify potential impacts:

a. from projected sea-level rise using the 2017 National Oceanographic and Atmospheric Administration (NOAA) Intermediate–High scenario projection curve, or any subsequently updated version thereof, on the project site;

b. from storm surge based upon the most updated NOAA hydrodynamic Sea, Lake, and Overland Surges from Hurricanes model on the project site; and

c. from flooding based upon the most updated Special Flood Hazard Area and the Limit of Moderate Wave Action on the project site. Such assessment of flooding should be in conjunction with the requirements and application of floodplain management requirements and programs.

4. Assess the potential impacts in light of the proposed land development on buffer function including loss of riparian buffer vegetation and vegetation migration; water migration; as well as the potential impacts resulting in additional future land disturbance or development in the Resource Protection Area connected to the proposed land development.

5. Identify conditions, alterations, or adaptation measures for the proposed land development to address these potential impacts as necessary and appropriate based upon site conditions; nature, type, and size of proposed land development including whether such proposed land development is in an Intensely Developed Area overlay; extent of potential impacts, and the necessity to minimize future land disturbance.

6. Local governments may require this assessment to be submitted as part of a Water Quality Impact Assessment. The specific content and procedures for the assessment shall be established by each local government and shall be of sufficient specificity to demonstrate compliance with this requirement.

7. 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 consistent with the requirements of the Act and this Chapter.

C. Local governments may allow adaptation measures within the Resource Protection Area subject to the following criteria and requirements which shall apply in addition to those found in 9 VAC 25-830-130 and 9 VAC 25-830-140, including the requirement for a Water Quality Impact Assessment pursuant to 9 VAC 25-830-140(6). The adaptation measures shall:

1. Be a nature-based solution adaptation measure that uses environmental processes, natural systems, or natural features, is appropriate for site conditions, and is:

a. An Best Management Practice approved by the Chesapeake Bay Program Partnership;

b. An approved Virginia Stormwater Best Management Practice listed in the Virginia Stormwater Best Management Practice Clearinghouse;

c. An approved Shoreline Protection Strategy in accordance with the Tidal Wetlands Guidelines as determined by the Virginia Marine Resource Commission; or

d. A project that is an eligible activity for funding by the Virginia Community Flood Preparedness Fund as determined by the Virginia Department of Conservation and Recreation.

2. Be designed, installed, and maintained in accordance with the applicable adaptation measure specifications in accordance with the type of the adaptation measure identified in 9 VAC 25-830-155(C)(1).

3. Allow for the use of fill only under the following conditions:

a. The grading and slope created by the use of fill shall be no greater than necessary based upon the project specifications and implemented in a manner that minimizes the impact of run-off;

b. The fill must have the necessary biogeochemical characteristics, including sufficient organic content, to support the growth of vegetation and adequate permeability to allow infiltration consistent with the project specifications;

c. The use of fill shall not enhance stormwater runoff from the Resource Protection Area, and any lateral flow onto adjacent properties shall be controlled;

d. Any impacts on the management of stormwater upland of the Resource Protection Area created by the use of fill shall be mitigated as necessary;

e. The use of fill shall not negatively impact septic systems and drainfields; and

f. The use of fill shall be consistent with any applicable federal or state law, including floodplain management requirements in 44 C.F.R. Part 60.

4. Maximize preservation of existing natural vegetation including mature trees and minimize land disturbance consistent with the adaptation measure specifications.

5. Comply with all federal, state, and local requirements including any required permits and conditions.

6. Nothing in this provision shall be construed to authorize approval or allowance of an adaptation measure in contravention of floodplain management requirements, including the National Flood Insurance Program and established floodplain ordinances, or construed to require a locality to approve or allow an adaptation measure in contravention of its participation in the National Flood Insurance Program Community Rating System.

D. Local governments shall ensure that any activity in the Resource Protection Area is consistent with Chapter 13 Title 28.2, Code of Virginia, and the accompanying Tidal Wetlands Guidelines which provide for “minimum standards for the protection and conservation of wetlands,” and “ensure protection of shorelines and sensitive coastal habitat from sea level rise and coastal hazard.” Shoreline management and alteration projects should be coordinated to address the requirements of the most updated Tidal Wetlands Guidelines in conjunction with the requirements of this Chapter including 9 VAC 25-830-140(5)(a)(4).

E. For a living shoreline, as defined in section 28.2-104.1 of the Virginia Code, where the locality otherwise approves of the project, the project minimizes land disturbance and maintains or establishes a vegetative buffer inland of the living shoreline, complies with the fill conditions in (C)(3), and receives approval from the Virginia Marine Resources Commission or the local wetlands board as applicable, the locality may exempt it from additional performance criteria requirements, including a Water Quality Impact Assessment.

F. Local governments shall not grant exceptions to the requirements of 9 VAC 25-830-130, 9VAC25-830-140, or 9VAC25-830-155 where:

1. The assessment of climate change and sea-level rise as outlined in 9 VAC 25-830-155(B) of this section has not occurred; or

2. The proposed adaptation measure allows for the use of fill in a Resource Protection Area in contravention of the requirements of 9 VAC 25-830-155(C)(3).

9VAC25-830-190. Land development ordinances, regulations, and procedures.

C. Local governments shall update and amend their ordinances and regulations to adopt and incorporate updated requirements in Part IV (9VAC25-830-120 et seq.) of this chapter based upon statutory revisions to Virginia Code § 62.1-44.15:72. by (insert date three years after effective date of amendment).