

To: All Affected Stakeholders and Department Divisions

From: Director of Public Utilities

Date: July 8, 2026

Subject: Pre-Adoption Procedures for Proposed Regulation: Chesapeake Bay Preservation Area Regulations

In accordance with Article II, Pre-Adoption Procedures of the Public Notice, Comment, and Hearing Procedures for Rules and Regulations (hereinafter “Public Notice Regulation”), this memorandum outlines the steps taken to develop and prepare the proposed Chesapeake Bay Preservation Area Regulations (hereinafter “CBPA Regulation”) for public review and adoption. This memo fulfills the requirements of Sections 2.01(a) and 2.02(a) of the Public Notice Regulation, ensuring transparency and compliance prior to formal adoption.

Section 2.01(a): Initial Development

1. Identification of Need

The need for this regulation arises from the City Council’s adoption of Ordinance No. 2026-039, which amended City Code §§ 14-181, 14-263, and 14-264 to align Richmond’s Chesapeake Bay Preservation Area (CBPA) program with updated state law under the Chesapeake Bay Preservation Act, Virginia Code § 62.1-44.15:67 et seq., and 9VAC25-830 (Chesapeake Bay Preservation Area Designation and Management Regulations). City Code §§ 14-292 through 14-295 designates the Director of Public Utilities (or designee) as the Administrator responsible for reviewing and approving CBPA site plans, granting exceptions, establishing administrative procedures, and enforcing compliance. While the City Code establishes a substantive framework, it does not provide the detailed implementing standards required for consistent, legally defensible administration of the Director’s discretionary authority.

The CBPA Regulation addresses this gap by establishing standardized procedures, criteria, and methodologies for implementing the Director’s discretionary authority with respect to: resiliency assessments for resource protection area development; adaptation measures within resource protection areas; mature tree protection and removal standards; living shoreline project approvals; buffer area modifications and mitigation; water quality impact assessments; and all administrative review and approval processes. The regulation also implements the Virginia Department of Environmental Quality’s (DEQ) Chesapeake Bay Preservation Act Resiliency Guidance (June 17, 2025, or most current version), including model ordinance provisions, resiliency assessment templates, and adaptation measure checklists, and is subject to DEQ certification for consistency with state criteria.

2. Preliminary Analysis of Potential Impacts

A preliminary analysis indicates the CBPA Regulation will yield positive impacts on water quality protection, ecological resilience, and regulatory consistency across the City’s Chesapeake Bay Preservation Area program. Codified mature tree protection standards under Part II are expected to reduce canopy loss during development by establishing clear necessity standards and requiring mitigation for authorized removals. The resiliency assessment framework under Part III and adaptation measure standards under Part IV provide structured methodologies for evaluating and approving nature-based solutions and climate adaptation projects in resource protection areas,

supporting the City's coastal resilience objectives. Living shoreline approval criteria under Part V and buffer modification standards under Part VI reduce administrative uncertainty for property owners and applicants by providing defined pathways and requirements. The water quality impact assessment framework under Part VIII incorporates current calculation methodologies aligned with state standards, improving assessment consistency and defensibility.

Potential short-term impacts include administrative burden on applicants adapting to new procedural requirements and on Department staff implementing the pre-application conference process, standard forms, and annual reporting obligations. These burdens are expected to diminish as staff and applicants become familiar with the new framework. No rate increases are associated with this regulation; applicable fee authority remains governed by existing City Code provisions.

3. Consultation with Affected Department Divisions

Consultations were conducted with the Department of Public Utilities Stormwater Division (as the operational unit responsible for CBPA program administration), the City Attorney's Office, the Department of Planning and Development Review (which administers the plan of development review process under City Code § 14-263), the Department of Public Works, and relevant staff responsible for GIS, zoning administration, and environmental compliance. Feedback informed refinements to the resiliency assessment triggers and thresholds (Part III), adaptation measure eligibility criteria (Part IV), the pre-application conference process (Section 9.02), application completeness and technical review timelines (Sections 9.03 through 9.05), and the annual reporting framework (Section 10.02). Coordination with DEQ staff regarding the Resiliency Guidance model ordinance provisions also informed the structure of Parts III and IV.

4. Consideration of Alternatives

Alternatives evaluated included: relying on existing City Code provisions and DEQ guidance documents without supplemental implementing regulations, which was rejected due to the absence of procedural detail needed for consistent, defensible administration of the Director's discretionary authority and the legal exposure that inconsistent decision-making creates under the Chesapeake Bay Preservation Act; adopting DEQ model ordinance language wholesale without local tailoring, which was deemed insufficiently responsive to Richmond's specific geographic conditions, land use patterns, and administrative structure; and implementing program-area updates piecemeal through separate policy documents, which was rejected in favor of a unified regulatory framework to ensure procedural coherence across mature tree protection, resiliency assessments, adaptation measures, living shorelines, buffer modifications, and water quality impact assessments. The chosen approach consolidates all implementing standards into a single regulation organized to mirror the City Code's structure and administrative delegation, while incorporating required DEQ Resiliency Guidance components.

5. Preparation of Draft Language

The draft regulation has been prepared in clear, understandable terms structured to minimize ambiguity, ensure legal precision, and maintain accessibility for regulated parties including property owners, developers, design professionals, environmental consultants, and City staff. The regulation is organized into eleven substantive parts covering: general provisions and definitions; mature tree protection; resiliency assessments; adaptation measures in resource protection areas; living shorelines; buffer area modifications for sight lines, vistas, and access paths; shoreline

erosion control projects; water quality impact assessments; administrative procedures; forms and reporting; and effective date and severability provisions. The administrative procedures in Part IX establish a consistent pre-application conference, application submittal, completeness review, technical review, decision, appeals, and compliance monitoring framework applicable across all program areas.

Section 2.02(a): Required Documents for Public Review

The following materials have been prepared in convenient form for public review, as required by Section 2.02(a) of the Public Notice Regulation:

1. Full Text of the Proposed Rule or Regulation

The complete text of the CBPA Regulation has been finalized and is available for review at the Director's Office, 730 East Broad Street, Richmond, Virginia 23219, during regular business hours, and on the Department's website.

2. Plain Language Summary

A plain language summary has been completed, explaining the regulation in terms understandable to the general public. It describes how the regulation establishes clear, consistent procedures for managing development and land disturbance activities within Chesapeake Bay Preservation Areas—including how the City evaluates requests to remove mature trees, what studies are required for projects near waterways and shorelines, how applicants can propose nature-based flood protection measures, when living shoreline projects qualify for streamlined review, and how the Department processes and decides on CBPA applications, including the right to appeal an adverse decision.

3. Statement of Basis and Purpose

Legal Authority: This regulation is promulgated under the authority granted by City Code §§ 14-181, 14-292, 14-293, 14-294, and 14-295, which designates the Director of Public Utilities as the Administrator responsible for reviewing and approving CBPA site plans, granting exceptions, establishing administrative procedures, and enforcing compliance. The Director's authority to promulgate implementing regulations is established by Richmond City Code Section 28-26. The regulation implements the amended provisions of City Code Article IV, Chapter 14, as enacted by Ordinance No. 2026-039, in accordance with Virginia Code § 62.1-44.15:67 et seq. (Chesapeake Bay Preservation Act), Virginia Code § 62.1-44.15:74 (Local programs and regulations), 9VAC25-830 (Chesapeake Bay Preservation Area Designation and Management Regulations), and the DEQ Chesapeake Bay Preservation Act Resiliency Guidance (June 17, 2025, or most current version). The regulation has been developed to maintain consistency with state criteria under 9VAC25-830, subject to DEQ certification.

Reasons Necessitating the Rule: City Code Article IV, Chapter 14, as amended by Ordinance No. 2026-039, provides foundational authority and substantive standards for the City's CBPA program but does not supply the detailed procedural and technical standards required for consistent, legally defensible administration of the Director's discretionary authority. The absence of codified implementing standards has created procedural ambiguity in areas including mature tree removal necessity determinations, resiliency assessment triggers and methodologies, adaptation measure eligibility criteria, living shoreline exemption standards, and application review timelines. Additionally, DEQ's June 2025 Resiliency Guidance established new model provisions for local

implementation of CBPA resiliency and adaptation requirements that must be incorporated into the City's program to maintain state consistency and certification under 9VAC25-830.

Objectives: The primary objectives of the CBPA Regulation are to: establish clear, uniform procedures and technical standards for administering the Director's discretionary authority under City Code Article IV, Chapter 14; codify mature tree protection standards that implement City Code § 14-263(3) with defined necessity criteria and mitigation requirements; provide structured resiliency assessment and adaptation measure frameworks consistent with DEQ Resiliency Guidance; create streamlined pathways for living shoreline approvals and buffer modifications that protect water quality while facilitating appropriate uses; establish a comprehensive water quality impact assessment methodology aligned with state standards; implement an administratively consistent application review, decision, and appeals process across all CBPA program areas; satisfy DEQ annual reporting and website publication requirements under 9VAC25-830; and maintain the City's CBPA program certification under 9VAC25-830.

Alternatives Considered: Alternatives included reliance on existing City Code provisions without supplemental implementing regulations, rejected due to lack of procedural specificity and associated legal exposure; adoption of DEQ model ordinance language wholesale without local tailoring, dismissed as insufficiently responsive to Richmond's administrative structure and geographic conditions; and piecemeal policy updates to individual program areas, rejected in favor of a unified regulatory framework. The chosen approach provides a coherent, comprehensive implementing regulation across all CBPA program areas, structured to mirror the City Code's organization and administrative delegation.

4. Impact Analysis

Effects on Customers and Regulated Parties: Property owners and developers in Chesapeake Bay Preservation Areas will benefit from clearly defined application requirements, decision timelines, and appeal procedures. Applicants proposing mature tree removal will have access to defined necessity criteria and mitigation standards, reducing uncertainty in the review process. Property owners seeking to implement nature-based adaptation measures or living shoreline projects will benefit from structured eligibility criteria and streamlined approval pathways. Environmental consultants and design professionals will have access to codified assessment methodologies for resiliency assessments and water quality impact assessments, improving consistency across submittals. Pre-application conference requirements will reduce the risk of incomplete or non-compliant submittals.

Financial Implications: The Department anticipates initial implementation costs associated with staff training, development of standard forms and checklists, and website publication of required materials, offset by projected reductions in application processing time and administrative dispute costs resulting from clearer procedural standards. The regulation does not establish new fees; applicable fee authority remains governed by existing City Code provisions. The \$50 appeal filing fee required by City Code § 14-294 is unchanged.

Operational Changes: Implementation will require training for Stormwater Division staff on the updated application review, technical review, and decision documentation procedures, including the written determination requirements under Section 9.06. Standard forms, checklists, and monitoring report templates must be developed under Part X and published on the City's website. Annual reporting procedures must be established to support the March 31 DEQ submission

requirement under Section 10.02. The pre-application conference process under Section 9.02 represents a new operational step for the program.

Environmental Considerations: The CBPA Regulation is affirmatively protective of water quality, ecological function, and shoreline resilience within Chesapeake Bay Preservation Areas. Mature tree protection standards, living shoreline approval criteria, buffer modification standards, and water quality impact assessment methodologies are all designed to minimize adverse environmental effects of development. Resiliency assessment requirements for projects in resource protection areas will systematically evaluate and address climate-related flood and erosion risks. The regulation aligns with all applicable environmental review requirements under Virginia and federal law.

5. Implementation Plan

Effective Date: The regulation shall become effective upon adoption and filing in the Director's Office in accordance with Richmond City Code Section 28-26, concurrent with the effective date provisions of Ordinance No. 2026-039 as specified in Section 11.01 of the CBPA Regulation.

Transition Procedures: Applications submitted and deemed complete prior to the effective date of the regulation will be processed under the standards in effect at the time of submission. Pending applications will be offered the opportunity to be reviewed under the new standards where those standards are more favorable to the applicant. Approvals issued prior to the effective date remain valid under their existing terms until expiration or renewal. Vested rights are protected as provided in Section 11.04 of the CBPA Regulation and Virginia Code § 62.1-44.15:79.

Customer Notification Methods: Notifications will be issued through postings on the Department's website, social media announcements, and direct outreach to known CBPA program stakeholders including property owners in designated Chesapeake Bay Preservation Areas, design and engineering professionals active in the CBPA program, environmental consultants, and the Virginia Marine Resources Commission. A public hearing will be held during the comment period. All materials will be available in English and translated as requested, with accommodations for accessibility.

Signed by:

Scott morris

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Scott Morris, DBA, P.E.

Director, DPU