December 8, 2020

Ms. Heather Wood, Chair
State Water Control Board
% Office of Regulatory Affairs
Department of Environmental Quality
P.O. Box 1105

Re: H. B. 504: Chesapeake Bay Preservation Act Regulatory Development

Dear Ms. Wood:

On behalf of the Friends of the Rappahannock (FOR) and Wetlands Watch, we write to ask that the State Water Control Board consider postponing action on the amendments from the Department of Environmental Quality (DEQ) to the regulations implementing the Chesapeake Bay Preservation Act (CBPA). Although HB504 exempts the adoption of these regulations from the requirements of the Administrative Process Act, there is nothing to prevent DEQ from taking a more deliberative and inclusive process. We believe that a more inclusive process would result in the development of new regulations that will better address the challenges of water quality protection and resiliency than the process currently underway and the alarming draft regulations proposed.

Our organizations participated in the single public outreach effort on the proposed draft regulations, a webinar held on October 29, 2020. This webinar was a useful introduction to the issues involved, but does not constitute a deliberative and inclusive process for obtaining input on the regulatory approach that is embodied in these draft regulations. This shortcoming is even more significant when one considers the scope of the task that has been assigned to DEQ by HB 504, which requires that “[t]he criteria adopted by the Board...should encourage and promote...coastal resilience and adaptation to sea-level rise and climate change.” The proposed draft regulations respond only to how adaptation measures installed in the CBPA Resource Protection Area (RPA) can curtail the existing development requirements of the CBPA. The regulations do not establish criteria that actually encourages or promotes adaptation to sea level rise and climate change.

The insertion of climate change considerations into permit decisions in an existing shoreline regulatory statute is something so novel that we cannot find a similar example of this having been undertaken by other states. This “first-in-the-nation” scale of action alone argues for a deliberative approach that involves significant legal and technical input in the drafting of any proposed regulatory changes. We understand such a group will be assisting DEQ in the drafting of subsequent guidelines for these draft regulations, but they should be involved in the initial scoping of the draft regulations to ensure consistency with current regulatory language, protection of the CBPA’s existing purposes, and adherence to the intent of HB 504.
After reviewing the proposed amendments from DEQ to incorporate criteria for coastal resilience and adaptation to sea-level rise and climate change we believe that the proposed amendments undermine the original intent of the Chesapeake Bay Preservation Act.

Section E states that “Local governments may allow adaptation measures or activities within the Resource Protection Area to address climate change including sea level rise subject to the following criteria. These criteria and requirements shall apply to such adaptation measures or activity in lieu of the criteria in 9 VAC 25-830-130 and 140 (emphasis added).” Sections 130 and 140 contain the criteria and restrictions essential to the Chesapeake Bay Protection Act. Section 130, General Performance Criteria, includes the 2,500 sq foot threshold of land disturbing activities that triggers erosion and sediment control requirements and Section 140, Development Criteria for RPAs, includes permitted encroachments/modifications in the buffers and water quality impact assessment requirements. Allowing alternative criteria for these adaptation measures or activities in lieu of critical existing sections of the CBPA threatens the underlying intent and foundational policy of the Act.

We thank you for the opportunity to comment and respectfully request that the State Water Control Board direct the Department of Environmental Quality to postpone any action on these amendments.

Respectfully,

Daria Christian
Executive Director, Friends of the Rappahannock

William A. Stiles, Jr.
Executive Director, Wetlands Watch

Friends of the Rappahannock (FOR) is a non-profit, grassroots conservation organization established in 1985. It’s mission is to be the voice and active force for a healthy and scenic Rappahannock River. With offices in Culpeper, Fredericksburg, and Tappahannock it works watershed-wide to improve water quality, wildlife habitat, and promote resiliency.

Wetlands Watch is a Norfolk-based environmental nonprofit working statewide on the protection of wetlands and shoreline ecosystems. Wetlands Watch has spent most of the last 12 years focused on protecting those ecosystems from the impacts of sea level rise, working almost entirely at the local government level.