

**DEPARTMENT OF ENVIRONMENTAL QUALITY
CHESAPEAKE BAY PRESERVATION ACT PROGRAM
COMPLIANCE REVIEW- REVISED CORRECTIVE ACTION AGREEMENT**

TOWN OF CAPE CHARLES

Local Coordinator: Katie Nunez, Zoning Administrator

DEQ Liaison: Maura Christian, Bay Act Locality Liaison

Background

Pursuant to § 62.1-44.15:19 of the State Water Control Law and 9 VAC 25-830-260 of the Chesapeake Bay Preservation Area Designation and Management Regulations (Regulations), Department of Environmental Quality (DEQ) staff has conducted a compliance review of the Town of Cape Charles' Chesapeake Bay Preservation Act (Bay Act) program from June 21, 2024 through March 18, 2025, in accordance with DEQ's Chesapeake Bay Preservation Act Compliance Review Procedures Manual. DEQ staff identified five deficiencies regarding certain aspects of the Town's Bay Act Program implementation that do not fully comply with the Bay Act and Regulations. The Town is required to undertake actions to address the five deficiencies contained in this staff report no later than March 31, 2026, with three of the conditions requiring completion by August 31, 2025. Since March 18, 2025, the Town has undertaken actions to address the deficiencies.

A virtual meeting was conducted on August 28, 2025 to discuss the Town's progress on the five corrective actions. Work to address the Plan of Development Review Process, RPA Development Criteria, and Regulatory Relief Requirements conditions with an August 31, 2025 deadline is underway, but are not fully completed by the August 2025 deadline. The required Comprehensive Plan and Ordinance edits are also underway, with a March 31, 2026 deadline.

As of March 18, 2025, the Town has begun updating the Town's implementation tools to ensure documentation of site-specific RPA determinations, is developing a violation procedures manual and calendar, has delivered correspondence to developers with the list of plan requirements that must be included in submissions, and proposed a plan to amend the existing Board of Zoning Appeals(BZA) manual to include an appendix that addresses BZA authority to approve CBPA exceptions.

Staff Recommendation

DEQ staff has conducted a review of the corrective action conditions as outlined in the March 18, 2025 Corrective Action Agreement and upon meeting with Town staff on August 28, 2025, has determined that a revised CAA that extends all corrective action deadlines to March 31, 2026 is warranted. The remaining compliance issues and updated compliance deadlines are detailed below.

Staff Analysis

Deficiency #1 - Plan of Development Review Process

As required by 9 VAC 25-830-60(A)(6), 9 VAC 25-830-130(3), and 9 VAC25-830-190(A) and Appendix B Section 4, Article VII Section 7.9, 7.12(B), of the Cape Charles Town Code, the Town of Cape Charles shall consistently implement the requirements outlined in its Chesapeake Bay Preservation ordinance in a manner that protects the quality of state and local waters. This includes consistent documentation of site-specific Resource Protection Area determinations and their confirmation by staff; and consistent depiction of site plan and plat notation requirements including RPA and RMA boundaries, retention of an undisturbed and vegetated 100-foot buffer,

and the permissibility of only water dependent facilities or redevelopment in Resource Protection Areas.

As required by 9 VAC25-830-140(6) of the Regulations and Article VII Section 7.7(B) and 7.11 of the Cape Charles Town Code, the Town of Cape Charles must consistently implement and enforce mitigation requirements for permitted RPA buffer encroachments, modifications, and violations as specified in the water quality impact assessment and as based upon the area of land disturbance within the RPA. Such implementation and enforcement shall include ensuring the planting of approved vegetative mitigation within a reasonable time frame and documenting survival of required plantings for at least one year.

The Town is in the process of revising the existing zoning checklist to include a section that documents Town field visits to confirm RPA delineations, including photo documentation and a narrative write-up. DEQ has shared examples of other locality implementation measures, including checklists, applications, and procedures to be used as examples. DEQ is awaiting to receive a copy of the updated zoning checklist and any other implementation tools. Official correspondence was sent out by the Town to surveyors and developers with a list of plan requirements that must be included in site plan and plat submissions. DEQ is awaiting to receive a copy of the correspondence that was sent out, and to see implemented examples that demonstrate consistent depictions of site plan and plat notations. These actions and additional documentation will need to be reviewed by DEQ by March 31, 2026 to ensure the tools result in the accurate, consistent application of the plan of development review process.

The Town has developed written procedures to address violations and ensure the proper assessment and enforcement of mitigation is conducted. A calendar to track mitigation planting and needed inspections through two planting seasons is underway. DEQ is awaiting to receive a copy of the written violation and mitigation procedures, that ensure the consistent implementation of requirements for violations, buffer encroachments, and buffer modifications that provide mitigation plantings are consistently required and appropriately planted through two growing seasons. This documentation will need to be reviewed by DEQ by March 31, 2026.

Deficiency #2 – RPA Development Criteria

As required by 9 VAC 25-830-80(B) and 9 VAC 25-830-110 and Article VII Section 7.12 of the Cape Charles Code, The Town of Cape Charles must, as part of the plan of development review process or during the review of a water quality impact assessment, ensure or confirm that a reliable, site-specific evaluation is conducted to determine whether water bodies on or adjacent to development sites have perennial flow and that Resource Protection Area boundaries are adjusted, as necessary, based on the site evaluation.

As required by 9 VAC 25-830-140(1)(a) and 9 VAC 25-830-140(6) of the Regulations and Section 7.11(A) of the Cape Charles Code, the Town of Cape Charles must ensure the submission of a water quality impact assessment, inclusive of specific measures for mitigation of identified impacts due to proposed land disturbance or development within the Resource Protection Area.

The Town is in the process of revising the zoning checklist to include a section that confirms a site-specific evaluation was conducted by Town staff, including photo documentation and a write-up of the determination. DEQ has shared examples of other locality implementation measures, including checklists, applications, and procedures to be used as examples. The Town has developed written procedures to address violations and ensure the submission of a water quality impact assessment to determine specific measures for mitigation. DEQ will also evaluate that the zoning checklist ensures the consistent requirement of a water quality impact assessment to determine specific measures for mitigation for any proposed land

disturbance or development within the Resource Protection Area. DEQ is awaiting to receive a copy of the update zoning checklist and examples of WQIA's that have been submitted and specify mitigation requirements. These actions and additional documentation will need to be reviewed by DEQ by March 31, 2026.

Deficiency #3 – Regulatory Relief Requirements

As required by 9 VAC 25-830-150(C) and Article VII Section 7.15 of the Town of Cape Charles Code, the Town must improve its regulatory relief processes to ensure exceptions to buffer area requirements and development criteria for RPA are only made by the BZA based upon the required findings. The Town must properly document the basis for findings prior to a BZA decision.

The Town has proposed a plan to amend the existing BZA manual to include an appendix that ensures formal exceptions are adequately reviewed by the BZA and that decisions are made based upon the required Regulations including findings. DEQ has shared examples of other locality BZA staff reports and application forms as an example. The appendix and any additional training materials necessary to educate the BZA on the authority to approve CBPA exceptions will need to be reviewed by DEQ by March 31, 2026.

Deficiency #4 - Comprehensive Plan

As required by 9VAC25-830-170 of the Regulations, the Town of Cape Charles must amend its comprehensive plan to include mapping of the location of designated Chesapeake Bay Preservation Areas, shoreline and streambank erosion problems, and existing and potential water pollution sources. The Town must also develop implementation measures (such as goals, objectives, and action strategies) and a time frame for accomplishment of the implementation measures.

DEQ has discussed with the Town the necessary updates to bring the December 15, 2022 Town Comprehensive Plan into compliance. The Town has reached out to vendors for GIS mapping services. No deadline extension is necessary at this time. The Town will need to complete comprehensive plans by March 31, 2026.

Deficiency #5 - Ordinance Consistency

As required by Va. Code 62.1-44.15:74 (C) and (D), 9 VAC 25-830-60(A)(4) and (6), and 9 VAC 25-830-190(A)(4) of the Regulations, the Town of Cape Charles must conduct a comprehensive review of the Article VII Chesapeake Bay Preservation Area Overlay District and Appendix B Site Plan Ordinance, to ensure consistency with the Regulations.

DEQ has worked with the Town to provide the required edits to the Article VII Chesapeake Bay Preservation Act Overlay District. Town Council reviewed the edits in September 2025 and intends to have the ordinance amendments officially approved in October 2025, including the new resiliency and mature tree provisions.