

CODE OF THE COUNTY OF YORK

Chapter 23.2

Chesapeake Bay Preservation Areas

CONTENTS

Sec. 23.2-1. **Statement of Intent.** ..... 23.2 - 2

Sec. 23.2-2. **Definitions.**..... 23.2 - 2

Sec. 23.2-2.1. **Chesapeake Bay Board established** ..... 23.2 - 4

Sec. 23.2-3. **Applicability.**..... 23.2 - 4

Sec. 23.2-4. **Use regulations.** ..... 23.2 - 4

Sec. 23.2-5. **Policies and Guidelines for Administering Chesapeake Bay Preservation Areas.**..... 23.2 - 4

Sec. 23.2-6. **Natural Resources Inventory requirements** ..... 23.2 - 5

Sec. 23.2-7. **Special performance standards.** ..... 23.2 - 5

Sec. 23.2-8. **Water Quality Impact Assessments (WQIA)**..... 23.2 - 7

Sec. 23.2-9. **RPA buffer area requirements**..... 23.2 - 8

Sec. 23.2-10. **Allowable Land Development in RPA.** ..... 23.2 - 10

Sec. 23.2-11. **Exemptions in Resource Protection Areas (RPA).** ..... 23.2 - 11

Sec. 23.2-12. **Noncomplying use and development waivers.** ..... 23.2 - 12

Sec. 23.2-13. **Exceptions.** ..... 23.2 - 12

Sec. 23.2-14. **Applications for exceptions.** ..... 23.2 - 13

Sec. 23.2-15. **Granting Exceptions.**..... 23.2 - 14

Sec. 23.2-16. **Appeals.** ..... 23.2 - 14

Sec. 23.2-17. **Violations** ..... 23.2 - 14

Sec. 23.2-18. **Civil Penalties**..... 23.2 - 15

**Sec. 23.2-1. Statement of intent.**

In accordance with the objectives of the comprehensive plan, and pursuant to the authority of Section 10.1-2100 et seq. of the Code of Virginia, this chapter is established and intended to promote the proper use, management and protection of the vast amounts of sensitive and unique lands which contribute to the economy of the region and the environmental quality of the county and especially the Chesapeake Bay. Specifically, these provisions are intended to implement the requirements of the Chesapeake Bay Preservation Act and to address the following objectives:

- (a) Protect existing high quality state waters;
- (b) Restore all other state waters to a condition or quality that will permit all reasonable public uses and will support the propagation and growth of all aquatic life, including game fish, which might reasonably be expected to inhabit them;
- (c) Safeguard the clean waters of the Commonwealth from pollution;
- (d) Prevent any increase in pollution;
- (e) Reduce existing pollution; and
- (f) Promote resource conservation in order to provide for the health, safety, and welfare of the present and future citizens of the county.

The effect of these provisions is not necessarily to preclude development or use of such areas but rather to ensure that the types of development permitted by the underlying zoning district will be undertaken with a deliberate and professionally responsible recognition of the particular environmental qualities and conditions of a proposed development site.

**Sec. 23.2-2. Definitions.**

For the purposes of this chapter, the following terms shall have the following meanings unless the context clearly indicates otherwise:

*Buffer Guidelines.* Guidelines established in accordance with section 23.2-5 below that provide guidance concerning permissible activities within the resource protection area buffer.

*Best management practices (BMPs).* A practice, or a combination of practices, that is determined by a state agency or the Hampton Roads Planning District Commission to be the most effective, practicable means of preventing or reducing the amount of pollution generated by nonpoint sources to a level compatible with water quality goals.

*CBPA Manager.* The County Administrator, or his designated agent, who shall be responsible for certain reviews, analyses and decisions as specified in this chapter.

*Chesapeake Bay Board, York County.* The York County Chesapeake Bay Board shall be that board established pursuant to section 23.2-2.1 below.

*Chesapeake Bay Preservation Area (CBPA).* Any land designated by the county pursuant to the Chesapeake Bay Preservation Area Designation and Management Regulations, (9 VAC 10-20-70 et seq.), and sections 10.1-2107, et seq., Code of Virginia of the Chesapeake Preservation Act, as they may be amended from time to time. The Chesapeake Bay Preservation Area consists of a Resource Protection Area (RPA) and a Resource Management Area (RMA).

*Chesapeake Bay Preservation Area Map (CBPA Map).* A map to be used as a guide that shows the general location of CBPA areas. The map is on file in the office of the CBPA Manager and is hereby adopted by reference and declared to be part of this chapter. The Natural Resources Inventory will determine the exact boundaries of the CBPA.

*Development.* Any man-made change to improved or unimproved real estate including but not limited to buildings or other structures, excavating, mining, filling, grading or paving.

*Development review process.* The process for site plan, subdivision, land disturbing and building permit review to ensure compliance with section 10.1-2109, Code of Virginia and the York County Code, prior to any clearing or grading of a site or the issuance of a building or land disturbing permit.

*Floodplain.* All lands which likely would be inundated by floodwater as a result of a storm event of a 100-year return interval.

*Impervious cover.* A surface composed of any material that significantly impedes or prevents natural infiltration of water into the soil. Impervious surfaces include, but are not limited to: roofs, buildings, decks, streets, parking areas, and any concrete, asphalt, or compacted aggregate surface.

*Intensely developed area (IDA).* CBPAs where development is concentrated and meets the conditions outlined in 9VAC 10-20-100 and so indicated on the CBPA map adopted by the Board of Supervisors and approved by the Chesapeake Bay Local Assistance Board.

*Nonpoint source pollution.* Pollution consisting of constituents such as sediment, nutrients, and organic and toxic substances from diffuse sources, such as runoff from agricultural and urban land use and development.

*Nontidal wetlands.* Those wetlands, other than tidal wetlands, that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, as defined by the US Environmental Protection Agency pursuant to Section 404 of the Federal Clean Water Act in 33 CFR 328.3b, as may be amended from time to time.

*Noxious weeds.* Weeds that are difficult to control effectively such as Johnson Grass, Kudzu, and multiflora rose.

*Public Road.* A publicly owned road and the appurtenant structures designed and constructed by the Virginia Department of Transportation.

*Redevelopment.* The process of developing land that is or has been previously developed.

*Resource Management Area (RMA).* That component of the Chesapeake Bay Preservation Area that is not classified as the Resource Protection Area or the Intensely Developed Area. The RMA is contiguous to and 500-foot landward of the Resource Protection Area or the extent of the 100-year floodplain, whichever is greater.

*Resource Protection Area (RPA).* That component of the Chesapeake Bay Preservation Area comprised of tidal wetlands; nontidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow; tidal shores; and a vegetated buffer not less than 100-feet in width located adjacent to and landward of the components listed above and along both sides of any water body with perennial flow. These lands have an intrinsic water quality value due to the ecological and biological processes they perform or are sensitive to impacts, which may result in significant degradation to the quality of state waters.

*Silvicultural Activities.* Forest management activities, including but not limited to the harvesting of timber, the construction of roads and trails for forest management purposes, and the preparation of property for reforestation that are conducted in accordance with the silvicultural best management practices developed and enforced by the State Forester pursuant to Section 10.1-1105 of the Code of Virginia and are located on property defined as real estate devoted to forest use under Section 58.1-3230 of the Code of Virginia.

*Tidal shore (shore).* Land contiguous to a tidal body of water between the mean low water level and the mean high water level.

*Tidal wetlands.* Vegetated and nonvegetated wetlands as defined in Section 28.2-1300 of the Code of Virginia.

*Water Body with Perennial Flow.* A body of water flowing in a natural or manmade channel year-round during a year of normal rainfall. This includes, but is not limited to, streams, estuaries, and tidal embayments and may include drainage ditches or canals constructed in wetlands or from former natural drainage ways, which convey perennial flow. Lakes and ponds, through which a perennial stream flows, are a part of the perennial stream. Generally, the water table is located above the streambed for most of the year and

groundwater is the primary source for stream flow.

*Water-dependent facility.* A development of land that cannot exist outside of the Resource Protection Area and must be located on the shoreline by reason of the intrinsic nature of its operation. These facilities include, but are not limited to, ports, the intake and outfall structures of power plants, water treatment plants, sewage treatment plants, and storm sewers; marinas and other boat-docking structures; beaches and other public water-oriented recreation areas; and fisheries or other marine resources facilities.

*Wetlands.* Includes tidal and nontidal wetlands.  
(Ord. No. 09-25(R), 11/17/09)

**Sec. 23.2-2.1. Chesapeake Bay Board established. (Effective February 1, 2010)**

- (a) There is hereby established the York County Chesapeake Bay Board, which shall be comprised of seven regular members and two alternates named by the board of supervisors. There shall be one member appointed from each district, and two at-large members. At the time of their initial appointment, the board shall appoint one member to serve a one-year term, two members to serve two-year terms, two members to serve three-year terms, two members to serve terms of four years, and two alternate members to serve four-year terms. Thereafter, successors shall be appointed to terms of four years. No person shall be appointed to more than two successive full terms of four years, not taking into account initial appointments of less than four years. In the event of a vacancy, the board of supervisors shall appoint an individual to serve the remainder of an unexpired term. At its first meeting, and thereafter annually at its first meeting in each calendar year, the Chesapeake Bay Board shall select from among its regular members a chair and a vice-chair. The chair, or the vice-chair in the chair's absence, shall preside at meetings. Members of the Chesapeake Bay Board may be removed from their office at any time by the board of supervisors.
- (b) In the event a regular member is unable to attend a meeting or knows that he will have to abstain from consideration of the matters being presented, such member shall notify the chair, who shall select an alternate to attend and serve in such regular member's place, and the records of the Chesapeake Bay Board shall so state.

(Ord. No. 09-25(R), 11/17/09)

**Sec. 23.2-3. Applicability.**

The special provisions established in this chapter shall apply to the areas designated by the Board of Supervisors as Chesapeake Bay Preservation Areas (CBPA) composed of Resource Protection Areas (RPA), Resource Management Areas (RMA) and Intensely Developed Areas (IDA). Such areas are designated, in general, on the CBPA Map, which is hereby adopted and made a part of this chapter by reference. The CBPA Map shows only the general location of the Chesapeake Bay Preservation Areas. It should be consulted by persons contemplating activities within the county prior to engaging in a regulated activity; however, the specific onsite location of the Chesapeake Bay Preservation Areas shall be delineated by the Natural Resources Inventory as required by section 23.2-6, below.

**Sec. 23.2-4. Use regulations.**

Permitted uses, special permit uses, accessory uses, dimensional standards and special requirements shall be as established by the underlying zoning district, as established by Chapter 24.1, Zoning, of this Code.

**Sec. 23.2-5. Policies and Guidelines for Administering Chesapeake Bay Preservation Areas.**

The CBPA Manager shall prepare such policies and guidelines not inconsistent with this chapter as may be necessary to ensure the proper use, management, and protection of the designated Chesapeake Bay Preservation Areas. Such policies and guidelines shall be subject to approval by the Board of Supervisors, shall be kept on file in the CBPA Manager's office and may be amended by resolution of the Board from time

to time as conditions warrant. In the event situations arise that necessitate adjustments or supplements to such policies, the CBPA Manager may promulgate interim guidelines. Such interim guidelines shall be submitted to the Board of Supervisors within 180 days after establishment and shall stand until the Board actually approves, disapproves or modifies such interim guidelines.

### **Sec. 23.2-6. Natural Resources Inventory requirements.**

Natural Resources Inventory: An inventory of site conditions and environmental features, prepared and submitted in accordance with the provisions established herein, shall be required for all properties proposed for development.

- (a) The inventory shall be prepared and certified by a professional qualified to perform environmental inventories. Evidence of the professional qualifications of the person preparing the inventory shall be submitted as a part of the inventory. In the case of construction of individual single-family detached dwellings, the inventory shall be required; however, professional preparation or certification shall not be required except for perennial stream flow determination or unless professional involvement is deemed necessary by the CBPA Manager because of the magnitude of land disturbance or the particular sensitivity of the location. Subdivisions effected through the Subdivision Ordinance shall comply fully with the terms of this chapter.
- (b) The inventory shall contain a plan sheet that clearly depicts the extent and location of any of the following features: manmade and natural bodies of water including but not limited to rivers, creeks, streams, channels, ditches, lakes and ponds; floodplains; tidal and nontidal wetlands; and tidal shores.
- (c) The applicant is responsible for having a site-specific in-field determination for perennial flow made by a qualified professional. The CBPA Manager shall confirm the site-specific in-field perennial flow determination. For the purpose of determining whether water bodies have perennial flow, a state approved, scientifically valid system of in-field indicators of perennial flow must be used.
- (d) The inventory shall contain a classification of any wetlands present on the site. Wetlands delineations shall be performed in accordance with the comprehensive onsite determination method specified in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, 1987, as it may be amended from time to time.
- (e) The exact boundaries of the RPA and RMA shall be adjusted, as necessary, based on the site-specific in-field evaluation and the Inventory and shall be depicted on the plan.
- (f) The Inventory shall be submitted to the CBPA Manager for review and approval prior to or concurrent with the submission of applications for site plans, subdivision plans, land disturbing permits, building permits or any other activity that constitutes development. The CBPA Manager shall not approve the submitted documents unless the site conditions and environmental features inherent on the site have been identified as deemed appropriate by the CBPA Manager.

### **Sec. 23.2-7. Special performance standards.**

Proposed development or redevelopment within Chesapeake Bay Preservation Areas shall be planned and undertaken in accordance with the following standards, depending on the type(s) of natural features and resources present on the site:

- (a) All provisions of chapter 23.1, Wetlands, County Code, shall be observed where applicable.
- (b) All construction within flood plain areas shall be in accordance with the requirements of section 24.1-373 of the County Code, the Uniform Statewide Building Code and any special requirements of the National Flood Insurance Program applicable to such area.
- (c) *Lot size.* Lot size shall be subject to the requirements of the underlying zoning district(s), provided, however, that any newly created lot shall have sufficient area outside the RPA within which to accommodate the intended development in full accordance with the performance standards in this chapter so that no land disturbance will occur in the RPA, except for such development otherwise

specifically allowed in the RPA by this chapter. On newly created lots, principal buildings shall be located at least ten (10) feet from the RPA buffer.

- (d) *RPA Boundary Delineation:* The boundary of the RPA shall be delineated by temporary construction fencing on any development site subject to the provisions of this chapter. In addition the property owner/developer shall be responsible for posting permanent signage identifying the landward limits of the RPA. The signs will be provided by the County and shall be posted at such locations as are approved by the County and identified on the site development plan.
- (e) No more land shall be disturbed than is necessary to provide for the proposed use or development.
- (f) All land development shall minimize impervious cover consistent with the proposed use or development.
- (g) Existing vegetation shall be preserved to the maximum extent practicable consistent with the use or development proposed.
- (h) Any activity which will cause more than 2,500 square feet of land disturbance, including construction of single-family houses and installation of septic tanks and drainfields, shall comply with the requirements of chapter 10, Erosion and Sediment Control and all other aspects of the county development review process.
- (i) Stormwater management criteria consistent with the water quality protection provisions (4VAC 3-20-10 et seq.) of the Virginia Stormwater Management Regulations (4 VAC 3-20), as they may be amended from time to time, shall be satisfied.
  1. For new development, the post-development nonpoint source pollution runoff load shall not exceed the predevelopment load, based on the Chesapeake Bay default value for phosphorus loading of 0.45 pounds/acre/year and an equivalent impervious cover of sixteen percent.
  2. For sites within IDA's or other isolated redevelopment sites, the existing nonpoint source pollution load shall be reduced by at least ten percent (10%). The CBPA Manager may waive or modify this requirement for redevelopment sites that originally incorporated best management practices for stormwater runoff quality control, provided, however, that in no case may the post-development nonpoint source pollution runoff load exceed the predevelopment load.
  3. Any maintenance, alteration, use or improvement to an existing structure which does not increase the impervious area nor degrade the quality of surface water discharge, as determined by the CPBA Manager, may be exempted from the requirements of this section.
- (j) The functionality and maintenance of best management practices shall be ensured by the owner or developer through a maintenance agreement, approved as to form by the county attorney, whereby the owner shall covenant to perform perpetual maintenance of any such BMP and grant authority to the county to perform such work at the owner's cost if the owner should default on his obligations. The owner or developer shall cause such agreement to be recorded by the clerk of the circuit court and provide evidence of such recordation to the CBPA Manager.
- (k) All on-site sewage soil absorption systems not requiring a Virginia Pollution Discharge Elimination System (VPDES) permit shall be pumped out at least once every five years or otherwise maintained in accordance with Section 18.1-40(f) of the County Code, and documentation or other proof satisfactory to the CBPA Manager of compliance with this requirement shall be submitted to the CBPA Manager upon request.
- (l) A secondary sewage soil absorption area with a capacity at least equal to that of the primary absorption area shall be provided for every lot proposed for development where public sanitary sewer is not available in accordance with Section 18.1-40(c) of the County Code. Building or construction of any impervious surface shall be prohibited on the area of all sewage disposal sites, including the secondary sewage soil absorption area, until the lot is served by public sewer.

- (m) Land upon which agricultural activities are being conducted, including but not limited to crop production, pasture, dairy and feedlot operations or lands otherwise defined as agricultural, shall have a soil and water quality conservation assessment conducted and approved in accordance with the CBPA Regulations (9VAC10-20-120.9), as may be amended from time to time.
- (n) Silvicultural activities in the CBPA are exempt from this chapter provided that silvicultural operations adhere to water quality protection procedures prescribed by the Virginia Department of Forestry in the "Virginia's Forestry Best Management Practices for Water Quality" as may be amended from time to time.
- (o) Prior to initiating grading or other on-site development activities on any portion of a lot, all wetlands permits required by federal, state, and county laws and regulations shall be obtained and evidence of such submitted to the CBPA Manager.

(Ord. No. 06-32, 12/19/06)

**Sec. 23.2-8. Water Quality Impact Assessments (WQIA).**

- (a) A water quality impact assessment (WQIA) shall be required for:
  - (1) Any proposed land disturbance, development or redevelopment activity within a RPA as permitted by this chapter;
  - (2) Any buffer modification, noncomplying use and development waiver, exception, exemption, allowable land development or encroachment as provided for in this chapter;
  - (3) Any development activity in the RMA as deemed necessary by the CBPA Manager due to the unique site characteristics or intensity of the proposed use or development.
- (b) The purpose of the WQIA is to:
  - (1) Identify the impacts of proposed land disturbance, development or redevelopment on water quality and lands in the RPA and other environmentally sensitive lands;
  - (2) Ensure that where land disturbance, development or redevelopment does take place within the RPA and other sensitive lands, it will occur on those portions of the site and in a manner that will be least disruptive to the natural functions of the RPA and other sensitive lands;
  - (3) Provide documentation for requests for development approval or administrative relief from terms of this chapter when warranted and in accordance with the requirements contained herein; and
  - (4) Specify mitigation that will address water quality protection.
- (c) A WQIA shall include a narrative and site drawings that address the evaluation criteria and that depict, address and includes the following:
  - (1) Location of the components of the RPA;
  - (2) Location and nature of the proposed encroachment, noncomplying use or development waiver, exception, exemption, allowable land development or modification of the buffer area, including: type of paving material; areas of clearing; filling or grading; location of any structures, drives, or other impervious cover; and sewage disposal systems or reserve drainfield sites;
  - (3) Type and location of proposed best management practices and supporting calculations to mitigate any proposed encroachment and/or modification;
  - (4) Location of existing vegetation, including the number and type of trees and other vegetation in the buffer proposed to be removed to accommodate the encroachment, noncomplying use and development waiver, exception, exemption, allowable land development or modification, and number and type of trees to remain;

- (5) Revegetation plan that supplements the existing buffer vegetation and specifies the proposed replacement vegetation in accordance with the Buffer Guidelines;
  - (6) Erosion and sediment control and construction sequencing; and
  - (7) A copy of all required permits from all applicable agencies necessary to develop the project or a status of the acquisition of each.
- (d) The WQIA shall be submitted to the CBPA Manager for review and approval concurrent with the submission of applications for review and approval of site plans, subdivision plans, applications for land disturbing activity permits, building permits, buffer modification, buffer encroachment, noncomplying use and development waiver, allowable land development, exemptions or exceptions.
- (e) Upon completing review of a WQIA the CBPA Manager will determine whether the proposed buffer modification, buffer encroachment, noncomplying use and development waiver, allowable land development, exemption, or application for a exception is consistent with the provisions of this chapter and make a finding based upon the following evaluation criteria:
- (f) The CPBA Manager may require additional mitigation where potential impacts have not been adequately addressed.

**Sec. 23.2-9. RPA buffer area requirements.**

- (a) To minimize the adverse effects of human activities on the other components of the RPA, state waters, and aquatic life, a 100-foot wide buffer area of vegetation as described in the Buffer Guidelines shall be provided. The purpose of the buffer is to retard runoff, prevent erosion, and filter nonpoint source pollution from runoff and it shall be retained if present and established where it does not exist in accordance with the Buffer Guidelines.
- (b) For purposes of calculating the impact of the proposed development on water quality, the required 100-foot wide RPA buffer area shall be deemed to achieve a 75 percent reduction of sediments and a 40 percent reduction of nutrients.
- (c) Where land uses such as agriculture or silviculture within the area of the buffer cease and the lands are proposed to be converted to other uses, the full 100-foot wide buffer shall be reestablished. In reestablishing the buffer, management measures shall be undertaken to provide woody vegetation that assures the buffer functions set forth in this chapter. Reestablishment must be accomplished in accordance with the Buffer Guidelines, as may be amended from time to time.
- (d) Permitted modifications of the buffer area:

Existing woody vegetation may be removed to provide for reasonable sight lines, access paths, and shoreline erosion control best management practices, if authorized by the CBPA Manager, on a case-by-case basis, upon submittal of a WQIA documenting that the RPA buffer functions will be maintained and vegetation will be replaced.

- (1) Trees may be thinned and pruned for sight lines, provided that where removed, they shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff in accordance with the Buffer Guidelines.
- (2) Any access path shall be constructed and surfaced so as to effectively control erosion and aligned to minimize tree removal and environmental impact.
- (3) For approved shoreline erosion control best management practices, trees and woody vegetation may be removed, necessary control techniques employed, and appropriate vegetation established to protect or stabilize the shoreline in accordance with the best available technical advice, applicable permit conditions or requirements and in accordance with the Buffer Guidelines.

- (4) Dead or diseased trees or shrubbery may be removed pursuant to sound horticultural practice in accordance with the Buffer Guidelines.
- (5) The following modifications to the buffer do not require a WQIA or plan approval if performed as described in the Buffer Guidelines:
  - a. Home landscaping such as pruning, mowing, mulching; and
  - b. Removal of noxious weeds provided they are replaced with vegetation equally suited for the growing environment and no land disturbance takes place.
- (e) On land used for agricultural purposes, the agricultural buffer area shall be managed to prevent concentrated flows of surface water from breaching the buffer area and noxious weeds from invading the buffer area. Agricultural activities may encroach into the buffer area provided that the provisions of Virginia's Chesapeake Bay Preservation Area Designation and Management Regulations (Section 9 VAC 10-20-130.5b 1-5 and 10-20-120.9) as they may be amended from time to time, are met.
- (f) Permitted encroachments into the buffer area:
  - (1) When the application of the RPA buffer would result in the loss of an adequate, as determined by the CBPA Manager, buildable area on a lot or parcel legally created prior to October 1, 1989, the CBPA Manager may permit an encroachment into the buffer area in accordance with following criteria:
    - a. Encroachments into the buffer area shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities. Detached accessory structures shall not be eligible for encroachment authorizations.
    - b. Where practicable, a vegetated area that will maximize water quality protection, mitigate the effects of the buffer encroachment, and is equal to the area of encroachment into the buffer area shall be established elsewhere on the lot.
    - c. The encroachment may not extend into the seaward 50 feet of the buffer area.
    - d. Encroachments into the buffer processed through an administrative review shall be subject to the findings required by subsection 23.2-13 but without the requirement for a public hearing, such findings to be made instead by the CBPA Manager.
  - (2) When the application of the buffer area would result in the loss of a buildable area on a lot or parcel recorded between October 1, 1989 and March 1, 2002, or on a lot or parcel legally created prior to January 1, 2004, and effected by a perennial stream determination, encroachments into the buffer area may be allowed through an administrative process in accordance with the following criteria:
    - a. The lot or parcel was created as a result of a legal process conducted in conformity with the County's subdivision regulations;
    - b. Conditions or mitigation measures imposed through a previously approved exception shall be met;
    - c. If the use of a BMP was previously required, the BMP shall be evaluated to determine if it continues to function effectively and if necessary the BMP shall be reestablished or repaired and maintained as required; and
    - d. The criteria of subdivision (f)(1) of this section shall be met.
- (g) Redevelopment within IDA's may be exempt from the RPA buffer requirement in accordance with the development review process, provided that the water quality standards found in section 23.2-7 Performance Standards, can be achieved.

- (h) Nothing contained herein shall be construed to prevent an RPA buffer area from being used to fulfill minimum open space standards required in chapter 24.1, Zoning, County Code.

**Sec. 23.2-10. Allowable Land Development in RPA**

Land development may be allowed in the RPA, subject to CBPA Manager review and approval, only if it is one or more of the following:

- (a) Is a new or expanded water-dependent facility provided:
  - (1) It does not conflict with the comprehensive plan;
  - (2) It complies with the performance criteria set forth in this chapter;
  - (3) Any non-water-dependent component is located outside of the RPA; and
  - (4) Access through the RPA to the water dependent facility will be provided with the minimum disturbance necessary. Where practicable, a single point of access will be provided.
- (b) Constitutes redevelopment outside of an IDA and there is no increase in impervious area in the RPA, no further encroachment in the RPA and all applicable erosion and sediment control and stormwater management criteria are observed.
- (c) Constitutes development or redevelopment within an IDA.
- (d) Is a new use established pursuant to subsection 23.2-9(f) or is an addition or alteration to a noncomplying structure allowed pursuant to section 23.2-12.
- (e) Is a road or driveway crossing not exempt under section 23.2-11, below, and which complies with the provisions of this chapter, provided further:
  - (1) The CBPA Manager makes a finding that there are no reasonable alternatives to aligning the road or driveway in or across the RPA.
  - (2) The alignment and design of the road or driveway are optimized, consistent with other applicable requirements, to minimize encroachment in the RPA and adverse effects on water quality.
  - (3) The design and construction of the road or driveway satisfies all applicable criteria of this chapter, including submission of a WQIA; and
  - (4) The CBPA Manager reviews the plan for the road or driveway proposed in or across the RPA in conjunction with a site plan, subdivision plan, and land disturbing or building permit application.
- (f) Is a flood control or stormwater management facility that drains or treats water from multiple development projects or from a significant portion of a watershed provided:
  - (1) The county has conclusively established that location of the facility within the RPA is the optimum location;
  - (2) The size of the facility is the minimum necessary to provide necessary flood control, stormwater treatment, or both;
  - (3) The facility must be consistent with a stormwater management program that has been approved by the Chesapeake Bay Local Assistance Board as a Phase I modification to the county's program;
  - (4) All applicable permits for construction in state or federal waters must be obtained from the appropriate local, state and federal agencies, such as the U.S. Army Corps of Engineers,

the Virginia Department of Environmental Quality, the York County Wetlands Board and the Virginia Marine Resources Commission;

- (5) Approval must be received from the County prior to construction; and
  - (6) Routine maintenance is allowed to be performed on such facilities to assure that they continue to function as designed.
  - (7) It is not the intent of this subsection to allow a BMP that collects and treats runoff from only an individual lot or some portion of the lot to be located within a RPA.
- (g) This chapter shall not be construed to prevent pre-existing structures damaged or destroyed as a result of a casualty loss beyond the control of the owner from being reconstructed within Chesapeake Bay Preservation Areas, unless otherwise restricted by County Code.

**Sec. 23.2-11. Exemptions in Resource Protection Areas (RPA)**

- (a) Exemptions for public utilities, railroads, and public roads and facilities.
  - (1) Construction, installation, operation, and maintenance of electric, natural gas, fiber-optic, telephone transmission lines, railroads, and public roads and their appurtenant structures in accordance with regulations promulgated pursuant to the Erosion and Sediment Control Law (section 10.1-560, et seq., Code of Virginia) and the Stormwater Management Act (Section 10.1-603.1 et seq, Code of Virginia) or an erosion and sediment control plan and a stormwater management plan approved by the-Virginia Department of Conservation and Recreation will be deemed to constitute compliance with this chapter. The exemption of public roads is further conditioned on the following:
    - a. Optimization of the public road alignment and design, consistent with other applicable requirements, to prevent or otherwise minimize encroachment in the RPA and adverse effects on water quality.
  - (2) Construction, installation, and maintenance of water, sewer, natural gas and underground telecommunications and cable television lines owned, permitted or both by a local government or regional service authority shall be exempt from the criteria in this part provided that:
    - a. To the degree possible, the location of such utilities and facilities shall be outside the RPA;
    - b. No more land shall be disturbed than is necessary to provide for the proposed utility installation;
    - c. All construction, installation, and maintenance of such utilities and facilities shall be in compliance with all applicable state and federal requirements and shall be designed and conducted in a manner that protects water quality; and
    - d. Any land disturbance exceeding an area of 2,500 square feet shall comply with all erosion and sediment control requirements.
  - (3) Water wells, passive recreation facilities such as publicly, community or homeowner association owned boardwalks, trails, and walkways, and historic preservation and archaeological activities located in the RPA may be exempted from the provisions of this chapter provided that it is demonstrated to the satisfaction of the CBPA Manager that:
    - a. Any required permits, except those to which this exemption specifically applies, have been obtained;
    - b. Sufficient and reasonable proof is submitted to establish that the intended use will not cause a deterioration in water quality;

- c. The intended use does not conflict with nearby planned or approved uses; and
- d. Any land disturbance exceeding an area of 2,500 square feet will comply with chapter 10, Erosion and Sediment Control, of this code.

It is not the intent of this subsection to exempt private boardwalks, trails or walkways on an individual lot from the requirements of this chapter.

**Sec. 23.2-12. Noncomplying use and development waivers.**

The lawful use of a principal building or structure which existed on September 20, 1990, or which exists at the time of any amendment to this chapter, and which is not in compliance with the provisions of this chapter or such amendment thereto, may be continued in accordance with article VIII of chapter 24.1 of the County Code.

No alteration or expansion of any noncomplying structure shall be allowed except in accordance with the following:

- (a) The CBPA Manager may grant a noncomplying use and development waiver for legally existing principal structures on lots not in compliance with CBPA standards to provide for alterations and additions to such noncomplying structures provided that:
  - (1) There will be no increase in the nonpoint source pollution load;
  - (2) Any development or land disturbance exceeding an area of 2,500 square feet complies with all erosion and sediment control requirements of chapter 10, Erosion and Sediment Control, of this code; and
  - (3) Accessory structures or additions to accessory structures shall not be authorized by noncomplying use and development waivers.
- (b) An application for a noncomplying use and development waiver shall be made to the CBPA Manager and shall include, for the purpose of proper enforcement of this section, the following information:
  - (1) Name and address of applicant and property owner;
  - (2) Legal description of the property and type of proposed use and development;
  - (3) A sketch of the dimensions of the lot or parcel, location of buildings and proposed additions relative to the lot lines, and boundary of the resource protection area;
  - (4) Location and description of any existing private water supply or sewage disposal system; and
  - (5) A WQIA, BMP plan and buffer restoration plan as deemed necessary by the CBPA Manager.
- (c) Noncomplying use and development waivers for legally existing principal structures processed through an administrative review of the application shall be subject to the findings required by subsection 23.2-13, such findings to be made by the CBPA Manager, but without the requirement for a public hearing.
- (d) Noncomplying use and development waivers for legally existing principal structures processed through an administrative review of the application shall be subject to the findings required by subsection 23.2-13, such findings to be made by the CBPA Manager, but without the requirement for a public hearing.

(Ord. No. 13-4, 5/21/13)

**Sec. 23.2-13. Exceptions.**

- (a) Requests for exceptions from the CBPA requirements of section 23.2-7, 23.2-8, 23.2-9, 23.2-10 and/or 23.2-11 shall be made by application to the York County Chesapeake Bay Board. The board shall identify the impact of the proposed exception on water quality and on lands within the RPA based on the natural resources inventory, mitigation measures and WQIA which complies with the provisions of this chapter and which shall be submitted by the applicant at the time of application.
- (b) No later than 60 days after receipt of a complete exception application, the Board shall hold a public hearing on the request. The board shall notify the affected public of any such exception requests and shall consider these requests at a public hearing advertised in accordance with the requirements of Section 15.2-2204 of the Code of Virginia, except that only one hearing will be required. Also when giving any required notice to the owners, their agents, or the occupants of abutting property and property immediately across the street or road from the property affected, the notice shall be given by first-class mail to the last known address as shown on the current real estate tax assessment book or records.
- (c) Exceptions to the CBPA requirements may be granted by the Chesapeake Bay Board provided that a finding is made that:
  - (1) The requested exception is the minimum necessary to afford relief;
  - (2) Granting the exception will not confer upon the applicant any special privileges that are denied to other property owners who are subject to these provisions and similarly situated;
  - (3) The exception is in harmony with the purpose and intent of the CBPA Act and is not of substantial detriment to water quality;
  - (4) The exception request is not based upon conditions or circumstances that are self-created or self-imposed;
  - (5) Reasonable and appropriate conditions are imposed, as warranted, that will prevent the allowed activity from causing a degradation of water quality; and
  - (6) Other findings, as recommended by the CBPA Manager and deemed appropriate by the board, are met.
- (d) The board shall review the application for a exception and the submitted natural resources inventory and WQIA and may grant a exception to the requirements provided the above findings are made.
- (e) In granting a exception, the board may impose reasonable and appropriate conditions as the board deems necessary to further the purpose and intent of this chapter and the Chesapeake Bay Preservation Act.

**Sec. 23.2-14. Applications for exceptions.**

Applications for exceptions shall be made in writing and shall include the following:

- (a) Name and address of applicant and property owner;
- (b) Legal description of the property and type of proposed use and development;
- (c) A sketch of the dimensions of the lot or parcel, location of the buildings and proposed improvements;
- (d) A Water Quality Impact Assessment completed in accordance with Section 23.2-8; and
- (e) A nonrefundable processing fee of \$250.00 shall accompany each application to cover the cost of processing.

**Sec. 23.2-15. Granting Exceptions**

The Chesapeake Bay Board may grant exceptions as set forth herein. The board shall make its determination within 65 days of the hearing; and if the board fails to act within this time frame the application shall be deemed to be approved.

(Ord. No. 13-4, 5/21/13)

**Sec. 23.2-16. Appeals**

(a) An appeal to the Chesapeake Bay Board may be taken by any person aggrieved by any administrative decision, order or requirement under this chapter, by submitting a written application for review to the Chesapeake Bay Board no later than 30 days from the rendering of such decision, order or requirement. The board shall hear the appeal as soon as practical after receipt of the application. A nonrefundable processing fee of \$250.00 shall accompany each application for an appeal.

(b) In rendering its decision, the board shall:

- (1) Examine the language of this chapter to determine whether the language is clear or is subject to more than one interpretation;
- (2) If, in the opinion of the board, the language is clear, the board will require the applicant to show that his case is not within the intent of the regulation. In these cases, the board will assume that the administrative decision is correct and the applicant will bear the burden of proof;
- (3) If the language of this chapter is unclear, the board will inquire as to whether the decision made by the official involved is consistent with previous administrative determinations in similar situations;
- (4) If the administrative decision is consistent with prior decisions, the applicant will prevail only if the administrative decision is not within the intent and purpose of the ordinance and, therefore, so arbitrary or unreasonable that the board must substitute its own interpretation and overturn the administrative decision. If the administrative decision is both consistent and reasonable, the board will uphold it;
- (5) If the administrative decision is inconsistent with prior decisions, the Board will carefully examine all factors involved to ensure that the appearance of an arbitrary decision is overcome by a legitimate attempt to further the intent and purpose of this chapter.

In applying these guidelines, the board will consider any pertinent factors that arise during the public hearing.

(c) Any person aggrieved by a Chesapeake Bay Board decision, order or requirement, may appeal the decision, order or requirement to the Circuit Court by filing a notice of appeal with the Clerk of the Court specifying the grounds on which aggrieved, within thirty days after the final decision by the Chesapeake Bay Board. A copy of the notice shall be provided to each regular member of the Chesapeake Bay Board, to the County Attorney, and to the owner of the subject property if the appellant is not such owner, by hand delivery or by mailing a copy of the notice contemporaneously with its filing by first class mail, postage prepaid.

(Ord. No. 06-1, 1/17/06; Ord. No. 07-14(R), 8/21/07; Ord. No. 08-4, 4/15/08)

**Sec. 23.2-17. Violations**

(a) Any person who engages in development or redevelopment within a CBPA or modifies the buffer within a RPA without first receiving approval for such activity as prescribed by this chapter shall be in violation of this chapter.

- (b) Any person who violates any conditions of an allowed encroachment, buffer modification, noncomplying use and development waiver, exception, exemption or allowable land development or exceeds the scope of any approval of any authorized activity or who fails to comply with any other provision of this chapter shall be in violation of this chapter.

**Sec. 23.2-18. Civil penalties**

- (a) Without limiting the remedies which may be obtained under this section, any person who violates any provision of this chapter or violates, fails, neglects, or refuses to obey any county notice, order, rule, regulation, exception, or permit condition authorized under this chapter shall, upon such finding by an appropriate circuit court, be assessed a civil penalty not to exceed \$5,000 for each day of violation. Such civil penalties may, at the discretion of the court assessing them, be directed to be paid into the treasury of the county for the purpose of abating environmental damage to or restoring the CBPA therein, in such a manner as the court may direct by order, except that where the violator is the county itself or its agent, the court shall direct the penalty to be paid into the state treasury.
- (b) Without limiting the remedies which may be obtained under this section, and with the consent of any person who violates any provision of this chapter or violates, fails, neglects, or refuses to obey any county notice, order, rule, regulation, exception or permit condition authorized under this chapter, the county may provide for the issuance of an order against such person for the one-time payment of civil charges for each violation in specific sums, not to exceed \$10,000 for each violation. Such civil charges shall be paid into the treasury of the county for the purpose of abating environmental damage to or restoring the CBPA, except that where the violator is the county itself or its agent, the civil charges shall be paid into the state treasury. Civil charges shall be in lieu of any appropriate civil penalty that could be imposed under subdivision (a) of this section. Civil charges may be in addition to the cost of any restoration required or ordered by the county.
- (c) In addition to and not in lieu of the penalties prescribed in sections (a) and (b) hereof, the county may apply to the circuit court for an injunction against the continuing violation of any of the provisions of this ordinance and may seek any other remedy authorized by law.

(Ord. No. 06-1, 1/17/06)