

ADOPTED

AUG 6 1990

ORDINANCE NO. 183

BOARD OF SUPERVISORS  
JAMES CITY COUNTY  
VIRGINIA

AN ORDINANCE TO ADD CHAPTER 19B, CHESAPEAKE BAY PRESERVATION, TO THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY ADDING SECTIONS 19B-1 THROUGH 19B-17.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 19B, Chesapeake Bay Preservation, is hereby amended and reordained by adding Section 19B-1. Short Title, Section 19B-2. Statement of Intent, Section 19B-3. Definitions, Section 19B-4. Designation of Chesapeake Bay Preservation Area (CBPA), Section 19B-5. Permitted uses, Section 19B-6. Lot size, Section 19B-7. Required conditions, Section 19B-8. Determining resource protection area boundaries, Section 19B-9. Performance standards, Section 19B-10. Plan of development, Section 19B-11. Water quality impact assessment, Section 19B-12. Waivers, Section 19B-13. Exemptions, Section 19B-14. Exceptions, Section 19B-15. Applications for waivers or exceptions, Section 19B-16. Granting waivers or exceptions, and Section 19B-17. Appeals.

Chapter 19B. Chesapeake Bay Preservation.

Section 19B-1. Short title.

This Chapter shall be known and may be cited as The Chesapeake Bay Preservation Ordinance (Ordinance).

Section 19B-2. Statement of Intent

The Chesapeake Bay Preservation Act (Act), Chapter 21 of the Code of Virginia recognizes that healthy state and local economies are integrally related to each other and the environmental health of the Chesapeake Bay. The

purpose of this Chapter is to control and regulate runoff at the source to protect against and minimize pollution and deposition of sediment in wetlands, streams and lakes in James City County which are tributaries of the Chesapeake Bay. This Chapter is intended to assist in protection of the Chesapeake Bay and its tributaries from nonpoint source pollution from land uses or appurtenances within the Chesapeake Bay drainage area. Regulations in this Chapter are necessary for: 1) protection of existing high quality state waters and restoration of 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; 2) safeguarding the clean waters of the Commonwealth from pollution; 3) prevention of any increase in pollution; 4) reduction of existing pollution; and 5) promotion of water resource conservation in order to provide for the health, safety and welfare of present and future citizens of the Commonwealth. This Chapter establishes criteria used by James City County in granting, denying or modifying requests to subdivide or develop land in Chesapeake Bay Preservation Areas.

### Section 19B-3. Definitions.

For the purpose of this Chapter, the following words and phrases shall have the meanings ascribed below:

Agricultural Lands mean those lands used for tilling soil, planting and harvesting crops or plant growth of any kind in the open; pasture; horticulture; dairying; floriculture; or raising poultry and-or livestock. Buildings and structures are not included in this definition.

Best Management Practice (BMP) means a practice, or combination of practices, that is determined by a state, local or regional agency 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.

Buffer Area means an area of natural or established vegetation managed to protect other components of Resource Protection Areas and County and State waters from significant degradation due to land disturbances or uses.

Caliper means the diameter of a tree trunk measured six (6) inches above the ground for nursery stock.

Chesapeake Bay Preservation Area (CBPA) means all land in James City County designated by the Board of Supervisors pursuant to Part III of the Chesapeake Bay Regulations and the Code of Virginia Section 10.1-2107 of the Act. Chesapeake Bay Preservation Area (CBPA) shall consist of Resource Protection Areas (RPAs) and Resource Management Areas (RMAs).

Development means the construction or substantial alteration of residential, commercial, industrial, institutional, recreational, transportation, or utility facilities or structures.

Dripline means a vertical projection to the ground surface from the furthest lateral extent of a tree's leaf canopy.

Floodplain means all lands that would be inundated by flood water as a result of a storm event of a 100-year return interval.

Highly Erodible Soils means soils (excluding vegetation) with an erodibility index (EI) from sheet and rill erosion equal to or greater than eight. The erodibility index for any soil is defined as the product of the formula  $RKLS-T$ , as defined by the "Food Security Act (F.S.A.) Manual" of August, 1988 in the "Field Office Technical Guide" of the U. S. Department of Agriculture Soil Conservation Service, where K is the soil susceptibility to water erosion in the surface layer; R is the rainfall and runoff; LS is the combined effects of slope length and steepness; and T is the soil loss tolerance.

Highly Permeable Soils means soils with a given potential to transmit water through the soil profile. Highly permeable soils are identified as any soil having a permeability equal to or greater than six inches of water movement per hour in any part of the soil profile to a depth of 72 inches (permeability groups "rapid" and "very rapid") as found in the "National Soils Handbook" of July 1983, in the "Field Office Technical Guide" of the U.S. Department of Agriculture Soil Conservation Service.

Hydric Soils means soils that are saturated, flooded or ponded long enough during the growing season to support wetland vegetation.

Impervious Cover means 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, streets, parking areas, and any concrete, asphalt, or compacted aggregate surface.

Nonpoint Source Pollution (NSP) includes, but is not limited to the following stormwater borne pollutants resulting from land use activities: 1) Sediment; 2) Nutrients such as phosphorous and nitrogen; 3) Bacteria; 4) Viruses; 5) Oxygen Depletion; 6) Hydrocarbons such as fuels and lubricants; 7) Toxic metals such as lead, zinc, copper; 8) Toxic Chemicals; 9) Chlorides; and 10) Increases in water temperature.

Nontidal Wetlands means 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 U.S. Environmental Protection Agency pursuant to Section 804 of the Federal Clean Water Act, in 33 C.F.R. 328.3b dated November 13, 1986.

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

Plan of Development means site plans; subdivision plans, or other plans submitted pursuant to 19B-10 to ensure compliance with this ordinance.

Redevelopment means the process of developing land that is or has been previously developed.

Resource Management Area (RMA) means that component of the CBPA that is not classified as the Resource Protection Area. Lands of particular sensitivity within RMAs include but are not limited to nontidal wetlands not in RPAs, floodplains, highly erodible soils, highly permeable soils and hydric soils.

Resource Protection Area (RPA) means that component of a (CBPA) comprised of lands at or near the shoreline that 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. RPAs shall include tidal wetlands, tidal shores, nontidal wetlands connected by surface flow and contiguous to tidal wetlands or to tributary streams, and a 100-foot wide buffer area as defined in this Chapter, adjacent to and landward of other RPA components.

Substantial Alteration means expansion or modification of a building or development which would result in a disturbance of land exceeding an area of 2,500 square feet in the RMA only.

Tidal Shore or "shore" means land contiguous to a tidal body of water between the mean low water level and the mean high water level.

Tidal Wetlands means vegetated and nonvegetated wetlands as defined in Section 62.1-13.2 of the Code of Virginia.

Tributary Stream means any perennial stream that is so depicted on the most recent U.S. Geological Survey 7-1-2 minute topographic quadrangle map (scale 1:24,000).

Water-Dependent Facility means a development of land that cannot exist outside of the RPA and must be located on the shoreline because of the intrinsic nature of its operation. These facilities include, but are not limited to: 1) ports; 2) the intake and outfall structures of power plants, water treatment plants, sewage treatment plants and storm sewers; 3) marinas and other boat docking structures; 4) beaches and other public water-oriented recreation areas; and, 5) fisheries or other marine resources facilities.

Wetlands means tidal and nontidal wetlands.

#### Section 19B-4. Designation of Chesapeake Bay Preservation Area (CBPA).

The Board of Supervisors hereby designates all of James City County, Virginia, as a CBPA. The CBPA is further delineated on the CBPA Map as Resource Protection Areas (RPAs) and Resource Management Areas (RMAs). The CBPA Map shows general locations of RPAs and RMAs and should be consulted by persons contemplating development.

Section 19B-5. Permitted Uses.

Permitted uses, special permit uses, accessory uses, and special requirements shall be as established by the zoning district for that lot, parcel or acreage as specified in Chapter 20 of this Code, unless specifically modified by the requirements set forth herein. All land disturbing activities shall be prohibited on slopes of 25% or greater unless permitted in other sections of this Chapter and determined by the Director of Code Compliance to be consistent with the intent of this Chapter.

Section 19B-6. Lot Size.

Lot size shall be subject to the requirements of the Zoning Ordinance, provided that any lot shall have sufficient area outside the RPA to accommodate an intended use, in accordance with performance standards in Section 19B-9, when this use is not otherwise allowed in the RPA.

Section 19B-7. Required Conditions.

- A. All development and redevelopment exceeding 2,500 square feet of land disturbance shall be subject to a plan of development review process, including the approval of a site plan in accordance with the provisions of the Zoning Ordinance or a subdivision plan in accordance with the Subdivision Ordinance.
- B. Development in RPAs may be allowed only if it: (i) is water-dependent; or (ii) constitutes redevelopment.
- C. A water quality impact assessment shall be required for any proposed development or redevelopment within RPAs and for any other development within RMAs when required by the Director of Code Compliance because of the unique characteristics of the site or intensity of development or potential impacts on water quality or RPAs.
- D. Plans of development or water quality impact statements are not required for agricultural lands.

Section 19B-8. Determining Resource Protection Area Boundaries

The CBPA Map shall be used as a guide to the general location of RPAs. Site specific boundaries of the RPA shall be determined by the applicant through the performance of an environmental inventory. Site specific boundaries determined by the applicant shall be reviewed and approved by the Director of Code Compliance.

Section 19B-9. Performance Standards.

- A. Purpose and Intent.

The performance standards establish the means to minimize erosion and sedimentation potential, reduce land application of nutrients and toxics, and maximize rainwater infiltration. Natural ground cover, especially woody vegetation, is most efficient in holding soil in place and preventing site erosion. Indigenous vegetation, with its adaptability to local conditions without the use of harmful fertilizers or pesticides, filters stormwater runoff. Keeping impervious cover to a minimum enhances rainwater infiltration and effectively reduces stormwater runoff potential.

The purpose and intent of these requirements is also to implement the following objectives: prevent a net increase in nonpoint source pollution from new development; achieve a 10% reduction in nonpoint source pollution from redevelopment; and achieve a 40% reduction in nonpoint source pollution from agricultural and silvicultural uses.

B. General Performance Standards.

1. Land disturbance shall be limited to the area necessary to provide for the desired use or development.
  - a. In accordance with an approved plan of development, the limits of clearing and/or grading shall be clearly defined. These limits shall be clearly shown on submitted plans and physically marked on the development site in accordance with 2.b. below.
  - b. Impervious cover shall not exceed 60% of the site.
  - c. Ingress and egress during construction shall be limited to one access point, unless otherwise approved by the Director of Code Compliance.
2. Indigenous vegetation shall be preserved to the maximum extent possible consistent with the use and development permitted by an approved Plan of Development.
  - a. Existing trees over twelve inches in diameter at breast height shall be preserved except in impervious areas. Diseased trees or trees weakened by age, storm, fire, or other injury may be removed, provided that when such removal results in a 20% or greater reduction in existing tree canopy, a sufficient number of trees with a 2-1-2 inch caliper shall be planted to restore the full canopy.
  - b. Prior to clearing or grading, suitable protective barriers, such as safety fencing or chain link fencing, shall be erected outside of the dripline of any tree or stand of trees to be preserved unless otherwise approved on the clearing plan. Protective barriers shall remain so erected throughout all phases

of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.

3. Land development shall minimize impervious cover to promote infiltration of stormwater into the ground consistent with the use or development permitted.
4. Any land disturbing activity exceeding 2,500 square feet, including construction of all single-family houses, shall comply with the requirements of Chapter 5A of this Code.
5. All on-site sewage disposal systems not requiring a NPDES permit shall be pumped out at least once every five years.
6. A reserve sewage disposal site with a capacity at least equal to that of the primary sewage disposal site shall be provided. This requirement shall not apply to any lot or parcel recorded prior to October 1, 1989, if such lot or parcel is not sufficient in capacity to accommodate a reserve sewage disposal site, as determined by the local Health Department. Building or construction of any impervious surface shall be prohibited on the area of all sewage disposal sites or on an on-site sewage treatment system which operates under a permit issued by the State Water Control Board, until the structure is served by public sewer.
7. For any development or redevelopment, stormwater runoff shall be controlled by the use of BMPs that achieve the following:
  - a. For new development sites, the post-development nonpoint source pollution runoff load shall not exceed the predevelopment load, based on average land cover conditions;
  - b. For redevelopment sites, the nonpoint source pollution load shall be reduced by at least 10 percent. The Director of Code Compliance may waive or modify this requirement for redevelopment sites that originally incorporated best management practices for stormwater runoff quality control, provided the following provisions are satisfied:
    - (1) In no case may the post-development nonpoint source pollution runoff load exceed the predevelopment runoff load;
    - (2) If BMPS are structural, evidence shall be provided that facilities are currently in good working order and performing at the design levels of service. The Director of Code Compliance may require a review of both the original structural

design and maintenance plans to verify this provision. A new maintenance agreement may be required to ensure compliance with this Chapter;

8. Prior to initiating grading or other on-site activities on any portion of a lot or parcel, all wetlands permits required by Federal, State and County laws and regulations shall be obtained and evidence of such submitted to the Director of Code Compliance; and
9. Land upon which agricultural activities are being conducted shall have a soil and water quality conservation plan. Such plans shall be based upon the Field Office Technical Guide of the U.S. Department of Agriculture Soil Conservation Service and accomplish water quality protection consistent with this Chapter. Such a plan shall be approved by the local Soil and Water Conservation District by January 1, 1995.

C. Buffer Area Requirements.

To minimize the adverse effects of human activities on the other components of RPAs, State waters, and aquatic life, a 100-foot buffer area of vegetation that is effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff shall be retained if present and established during development where it does not exist. A buffer area not less than 100 feet in width shall be located adjacent to and landward of other RPA components and along both sides of any tributary stream. The full buffer area shall be designated as the landward component of the RPA. The 100-foot buffer area shall be deemed to achieve a 75% reduction of sediments and a 40% reduction of nutrients. A combination of a buffer area not less than 50 feet in width and appropriate BMPs located landward of the buffer area which collectively achieve water quality protection, pollutant removal, and water resource conservation at least the equivalent of the 100-foot buffer area may be employed in lieu of the 100-foot buffer if approved by the Director of Code Compliance. All subdivision plats submitted for approval after August 6, 1990, shall clearly identify the boundaries of any RPA within the property. Such plat shall contain a statement that all existing vegetation within the RPA shall remain in its undisturbed natural state, except for vegetation weakened by age, storm, fire or other natural cause. Developers shall install signs identifying the landward limit of the RPA. Signs shall be obtained, installed and maintained in accordance with guidelines established by the Director of Code Compliance. The following additional performance criteria shall apply:

1. In order to maintain the functional value of the buffer area, indigenous vegetation may be removed only to provide for reasonable sight lines, access paths, general wood lot management, and BMPs, as follows:

- a. Trees may be pruned or removed as necessary to provide for sight lines and vistas, 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. Any removal of existing vegetation shall require approval following review of the Plan of Development;
  - b. Access paths shall be constructed and surfaced so as to effectively control erosion;
  - c. Dead, diseased, or dying trees or shrubbery may be removed at the discretion of the landowner, based upon the approval of the Director of Code Compliance, who may require a recommendation by a professional forester or arborist; and
  - d. For shoreline erosion control projects, 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 and applicable permit conditions or requirements.
2. When application of the buffer area would result in the loss of a buildable area on a lot or parcel recorded prior to October 1, 1989, modifications to the width of the buffer area may be allowed in accordance with the following criteria:
- a. modifications to the buffer area shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities;
  - b. where possible, an area equal to the area encroaching the buffer area shall be established elsewhere on the lot or parcel in a way to maximize water quality protection; and
  - c. in no case shall the reduced portion of the buffer area be less than 50 feet in width.
3. On agricultural lands, 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. The agricultural buffer area may be reduced as follows:
- a. To a minimum width of 50 feet when the adjacent land is enrolled in a federal, state, or locally-funded agricultural BMP program, and the program is being implemented, provided that the combination of the

reduced buffer area and BMPs achieve water quality protection, pollutant removal, and water resource conservation at least the equivalent of the 100-foot buffer area;

- b. To a minimum width of 25 feet when a soil and water quality conservation plan, as approved by the local Soil and Water Conservation District, has been implemented on the adjacent land, provided that the portion of the plan being implemented for the CBPA achieve water quality protection at least the equivalent of that provided by the 100-foot buffer area in the opinion of the local Soil and Water Conservation District Board. Such plan shall be based upon the Field Office Technical Guide of the U.S. Department of Agriculture Soil Conservation Service and accomplish water quality protection consistent with the Act and the regulations adopted pursuant to the Act.
- c. The buffer area is not required for agricultural drainage ditches if the adjacent agricultural land has in place BMPs in accordance with a conservation plan approved by the local Soil and Water Conservation District.

#### Section 19B-10. Plan of Development.

Any development or redevelopment exceeding 2,500 square feet of land disturbance in the CBPA shall be accomplished through a plan of development process prior to any clearing or grading of the site or the issuance of any building permit, unless the Director of Code Compliance determines that due to the scope and nature of the proposed development certain of the required information is unnecessary. Administration of the Plan of Development process shall be in accordance with Chapter 20 of this Code for site plans and Chapter 17 of this Code for subdivision plans. The following plans or studies shall be submitted, unless otherwise provided for:

- A. Site plans in accordance with the provisions of Chapter 20 of this Code or subdivision plans in accordance with Chapter 17 of this Code;
- B. Environmental Inventory.

An environmental inventory shall be submitted in conjunction with preliminary site plan or preliminary subdivision plan approval applications. This requirement may be waived by the Director of Code Compliance when the proposed use or development would result in less than 5,000 square feet of disturbed area.

For existing single-family lots in a RPA, showing Items 1.a through d. below on the plat plan normally required as part of the Building permit application, shall satisfy the requirements for an Environmental Inventory. An Environmental Inventory is not required for existing single-family lots in the RMA.

1. The environmental inventory shall be drawn to scale clearly delineating the following components:
  - a. Tidal wetlands;
  - b. Tidal shores;
  - c. Nontidal wetlands in RPA;
  - d. A 100-foot buffer area located adjacent to and landward of the components listed in subsections a through c above, and along both sides of any tributary stream;
  - e. Nontidal wetlands in RMA;
  - f. Hydric soils; and
  - g. Slopes 25% or greater.
2. Wetlands delineations shall be performed consistent with the procedures specified in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, 1989.
3. The environmental inventory shall be drawn at the same scale as the preliminary site plan or subdivision plan, and shall be certified as complete and accurate by a person or firm competent to make the inventory.

C. Clearing Plan.

A clearing plan shall be submitted in conjunction with site plan review or subdivision plan review. No clearing or grading of any lot or parcel shall be permitted without an approved clearing plan. For existing single-family lots, a clearing line shown on the plat plan normally submitted as part of the Building Permit Application shall satisfy clearing plan requirement. No clearing or grading shall occur on existing single-family lots until the building permit is obtained.

Clearing plans shall be prepared and/or certified by design professionals practicing within their areas of competence as prescribed by the Code of Virginia.

1. Contents of the Plan.

- a. The clearing plan shall be drawn to scale and clearly delineate the location, size, and description of existing and proposed plant material. All existing trees on the site 12 inches or greater diameter at breast height (DBH) shall be shown on the clearing plan, or where there are groups of trees, the woodlines of the group may be outlined instead. The specific number of trees 12 inches or greater DBH to be preserved outside of the impervious cover and outside the groups shall be indicated on the plan. Trees to be removed and woodlines to be changed to create desired impervious cover shall be clearly delineated on the clearing plan.
  - b. Any required buffer area shall be clearly delineated and any plant material to be added to establish or supplement the buffer area, as required by this Chapter, shall be shown on the clearing plan.
  - c. Within the RPA buffer area, trees to be removed for sight lines, vistas, access paths, and BMPs, as provided for in this Chapter, shall be shown on the plan. Vegetation required by this Chapter to replace any existing trees within the buffer area shall also be shown on the clearing plan.
2. Plant Specifications.
- a. All plant materials necessary to supplement the buffer area or vegetated areas outside the impervious cover shall be installed according to standard planting practices and procedures.
  - b. All supplementary or replacement plant materials shall be living and in healthy condition. Plant materials shall conform to the standards of the most recent edition of the American Standard for Nursery Stock, published by the American Association of Nurserymen.
  - c. Where areas to be preserved, as designated on an approved clearing plan, are encroached, replacement of existing trees and other vegetation will be achieved at a ratio of 2 planted trees to 1 removed. Replacement trees shall be a minimum 2-1-2 inches caliper at the time of planting.
3. Maintenance.
- a. The applicant shall be responsible for the maintenance, repair, and replacement of all vegetation as may be required by the provisions of this Chapter.

- b. In buffer areas and areas outside the impervious cover, plant material shall be tended and maintained in a healthy growing condition and free from refuse and debris. Unhealthy, dying, or dead plant materials shall be replaced during the next planting season, as required by the provisions of this Chapter.

4. Installation and Bonding Requirements.

- a. Where buffer areas are required, no certificate of occupancy shall be issued until the installation of required plant material to establish or supplement the buffer is completed, in accordance with the approved clearing plan.
- b. When the occupancy of a structure is desired prior to the completion of the plan, a certificate of occupancy may be issued only if the applicant provides a form of surety satisfactory to the County Attorney in an amount equal to the costs of the remaining plant materials, related materials, and installation costs.
- c. All required plant material shall be installed and approved by the first planting season following issuance of a certificate of occupancy or the surety may be forfeited.

D. Stormwater Management Plan.

A stormwater management plan shall be submitted as part of the plan of development process required by this Chapter and in conjunction with site plan or subdivision plan preliminary approval. A stormwater management plan is not required for existing single-family lots.

To control stormwater runoff structural BMP's shall be required for site plans with impervious cover exceeding 10% of site area and for subdivisions with more than 0.5 dwelling units per acre. Single-family subdivisions of 5 lots or less shall not be subject to this requirement. Any contiguous property owned by the same subdivider, or deemed by the Director of Code Compliance as a logical part of a contiguous subdivision, cannot be subdivided into greater than five lots without complying with the requirements of this Chapter. BMP's shall be designed and constructed in accordance with guidelines established by the Director of Code Compliance.

Performance assurances shall be provided that all BMPs required in plans of development shall be constructed to comply with the performance criteria set forth therein. The form of agreement and type of bond, letter of credit or other security shall be to the satisfaction of and approved by the County Attorney. The amount of bond, letter of credit or other security and designated length of completion time shall be set by the Director of Code Compliance or his authorized designee.

1. Contents of the Plan.

At a minimum, the stormwater management plan shall contain the following:

- a. Location and design of stormwater control devices and BMPs.
- b. Procedures for implementing nonstructural stormwater control practices.

2. The plan shall establish a long-term schedule for inspection and maintenance of stormwater management facilities that includes all maintenance requirements and persons responsible for performing maintenance. If the designated maintenance responsibility is with a party other than James City County, then a maintenance agreement shall be executed between the responsible party and the County.

E. Erosion and sediment control plan in accordance with Chapter 5A of this Code.

F. Landscaping Plan in accordance with Chapter 20 of this Code.

G. Final Plan.

Final site plans or final subdivision plans for all lands within CBPAs shall include the following information:

1. Delineation of the RPA boundary;
2. Delineation of required buffer areas;
3. Delineation of RMA wetlands;
4. All wetlands permits required by law;
5. Delineation of slopes 25% or greater; and
6. BMP maintenance agreement to ensure proper maintenance of BMPs in order to continue their functions.

Section 19B-11. Water Quality Impact Assessment.

A Water Quality Impact Assessment shall be required for any proposed development or redevelopment within RPAs and for development or redevelopment in RMAs, when required by the Director of Code Compliance, because of the unique characteristics of the site or intensity of the proposed development or redevelopment or potential impact on water quality or RPAs. A Water Quality Impact Assessment shall identify impacts of proposed development on water quality and land in RPAs and recommended measures for mitigation of these impacts. Water Quality Impact Assessments shall address NSP components set forth in Section 19B-3 of this Chapter and shall follow guidelines established

by the Director of Code Compliance. Development or redevelopment within an RMA shall not require a water quality impact assessment when impervious cover is less than 40% of the total site area.

Section 19B-12. Waivers.

It is not the intent of this Chapter to prevent beneficial use or minor modification or alteration of structures legally existing prior to adoption of this Chapter, or to prevent the practical use of lots or structures existing prior to adoption of this Chapter whose proximity to a RPA leaves insufficient area suitable for building outside the RPA, or which lacks soil suitable for reserve or alternate drainfields or which contains other factors which make the property practically unusable upon application of the requirements of this Chapter. Waivers to all or part of this Chapter may be granted by the Director of Code Compliance to allow the beneficial use of property provided that:

1. Waivers granted shall be the minimum necessary to provide for buildable area or practical beneficial use;
2. Facilities, to the extent practical, which are not water dependent, shall be located outside of a RPA;
3. Waivers granted shall cause no increase in non point source pollution load;
4. Land disturbances in excess of 2,500 square feet shall comply with Chapter 5A of this Code; and
5. The application for waiver is made pursuant to Section 19B-15.

Section 19B-13. Exemptions.

A. Public Utilities and Facilities

1. Construction, installation, operation, and maintenance of electric, gas, and telephone transmission lines, railroads, and activities of the Virginia Department of Transportation and their appurtenant structures in compliance with the Erosion and Sediment Control Law (Section 10.1-560 et seq. of the Code of Virginia) or an erosion and sediment control plan approved by the Virginia Soil and Water Conservation Board will be deemed to comply with the regulations adopted pursuant to the Act.
2. Construction, installation, and maintenance by public agencies of water and sewer lines shall be exempt from this Chapter provided that:
  - a. to the degree possible the location of such utilities and facilities should be outside RPAs;

- b. no more land shall be disturbed than is necessary to provide for the desired utility installation;
- c. all such construction, installation, and maintenance of such utilities and facilities shall be in compliance with all applicable Federal, State and County permits and designed and conducted in a manner that protects water quality; and
- d. any land disturbance exceeding an area of 2,500 square feet complies with Chapter 5A of this Code.

B. Exemptions for Silvicultural Activities.

Silvicultural activities are exempt from the requirements of this Chapter provided that silvicultural operations adhere to water quality protection procedures prescribed by the Department of Forestry in its Best Management Practices Handbook for Forestry Operations.

Section 19B-14. Exceptions.

Exceptions to the requirements of this Chapter may be granted by the Director of Code Compliance provided that: i) exceptions to the requirements shall be the minimum necessary to afford relief; and (ii) reasonable and appropriate conditions upon any exception granted shall be imposed as necessary so that the purpose and intent of the Act is preserved.

Exceptions from these requirements may be granted for the following land disturbances in RPAs: i) water wells; ii) passive recreation facilities such as boardwalks, trails, and pathways; and, iii) historic preservation and archaeological activities, provided that it is demonstrated to the satisfaction of the Director of Code Compliance that:

1. Any required permits, except those to which this exception specifically applies, shall have been issued;
2. Sufficient and reasonable proof is submitted that the intended use will not deteriorate water quality; and
3. The intended use does not conflict with nearby planned or approved uses.

Section 19B-15. Applications for Waivers or Exceptions.

Applications for waivers or exceptions shall be made in writing to the Director of Code Compliance 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;

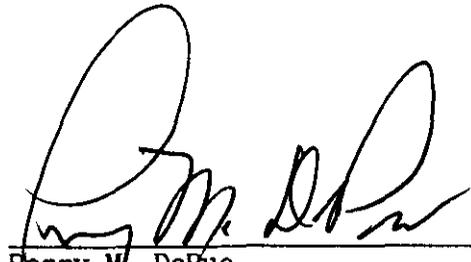
- c. A sketch of the dimensions of the lot or parcel, location of buildings and proposed additions relative to the lot lines, the RPA, slopes greater than 25% and all wetlands; and
- d. Location and description of any existing private water supply or sewage system.

Section 19B-16. Granting Waivers or Exceptions.

The Director of Code Compliance may grant waivers or exceptions as set forth herein. When reviewing applications, the Director will consider written comments from the County Engineer, the Director of Planning and other interested parties. Waivers, or exceptions granted will become null and void if building foundations are not completed within 12 months.

Section 19B-17. Appeals.

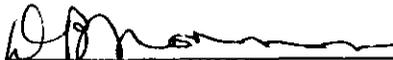
- (a) An owner of property subject to an administrative decision, order or requirement under this Chapter may appeal by submitting a written application for review to the Wetlands Board ("Board") no later than thirty days from the rendering of such decision, order or requirement. The Board shall hear the appeal as soon as practical after receipt of the application. The appellant, the Board of Supervisors, the Director of Code Compliance, the Planning Director and any person or agency expressing an interest in the matter shall be notified by the Board not less than ten days prior to the date of the hearing. Published notice of the Board's public meetings shall state that appeals from decision under the Chesapeake Bay Preservation Ordinance may be heard.
- (b) In rendering its decision, the Board shall balance the hardship to the property owner with the purpose, intent, and objectives of this Chapter. The Board shall not decide in favor of the appellant unless it finds:
  - 1. The hardship is not generally shared by other properties in the vicinity;
  - 2. The Chesapeake Bay, its tributaries and other properties in the vicinity will not be adversely affected; and
  - 3. The appellant acquired the property in good faith and the hardship is not self-inflicted.
- (c) The Board may impose conditions to the granting of any waiver or exception as it may deem necessary in the public interest, and may, to ensure compliance with the imposed conditions require a cash escrow, bond with surety, letter of credit or other security as is acceptable to the County Attorney.



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Perry M. DePue  
Chairman, Board of Supervisors

ATTEST:



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David B. Norman  
Clerk to the Board

<u>SUPERVISOR</u>	<u>VOTE</u>
NORMENT	AYE
TAYLOR	NAY
EDWARDS	AYE
KNUDSON	AYE
DEPUE	AYE

Adopted by the Board of Supervisors of James City County, Virginia,  
this 6th day of August, 1990.

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