

**BOARD OF SUPERVISORS
COUNTY OF NEW KENT
VIRGINIA**

O-04-03(R1)

At the regular meeting of the Board of Supervisors of the County of New Kent in the Boardroom of the Administration Building in New Kent, Virginia, on the 10th day of March 2003:

Present:	Vote:
Rebecca M. Ringley	Aye
James H. Burrell	Aye
Dean E. Raynes	Aye
W. R. "Ray" Davis, Jr.	Aye
Julian T. Lipscomb, Sr.	Aye

Motion was made by Mrs. Ringley, which carried 5:0, to adopt the following ordinance:

**AN ORDINANCE TO REPEAL CHAPTER 94 OF THE CODE OF NEW
KENT COUNTY AND REENACT PROVISIONS FOR WATERWAYS
IMPLEMENTING THE REQUIREMENTS OF THE
CHESAPEAKE BAY PRESERVATION ACT**

WHEREAS, the Chesapeake Bay Local Assistance Board has promulgated new regulations that, among other things, permit inspections of septic systems located in Chesapeake Bay Protection Areas as an alternative to the mandatory pumping requirement of every septic tank at least every five years; and

WHEREAS, the New Kent County Board of Supervisors wish to adopt this alternative and at the same time reorganize the chapter; and

WHEREAS, the Board has conducted a duly advertised public hearing on this ordinance and carefully considered the comments provided at the hearing; and

WHEREAS, in order to assure compliance with §15.2-2286.A.7 of the Code of Virginia, it is stated by the Board that the public purpose for this Ordinance is to further the public necessity, convenience, general welfare and good planning and zoning practices in the County of New Kent and that approval will further these public purposes,

NOW THEREFORE BE IT ORDAINED this, the 10th day of March 2003, by the New Kent County Board of Supervisors that Chapter 94 of the Code of New Kent County shall be repealed and the reenacted Waterways provisions shall be codified in Code of the County of New Kent, Virginia as follows:

Chapter 94

WATERWAYS*

Article I. - In General

Secs. 94-1-94-30. Reserved.

Article II. - Chesapeake Bay Preservation Areas

- Sec. 94-31. Purpose and Intent of Article
- Sec. 94-32. Conflict of Article with other Regulations and Severability
- Sec. 94-33. Definitions
- Sec. 94-34. Composition
- Sec. 94-35. Designation of Resource Protection Areas
- Sec. 94-36. Designation of Resource Management Areas
- Sec. 94-37. Use Regulations
- Sec. 94-38. Lot Size
- Sec. 94-39. Development Criteria
- Sec. 94-40. Additional Development Criteria for Resource Protection Areas
- Sec. 94-41. Water Quality Impact Assessment

***Cross references** - Community Development, Ch. 18; Buildings and Building Regulations, § 18-31 et seq.; Vegetation, Ch. 74; Environment, Ch. 82; Streets, sidewalks and other public places, Ch. 86; Subdivisions, Ch. 90; Zoning, Ch. 98.

State law reference - Chesapeake Bay Preservation Act, Code of Virginia, § 10.1-2100 et seq.

- Sec. 94-42. Plan of Development Process
- Sec. 94-43. Noncomplying Structures
- Sec. 94-44. Public Use Exemptions
- Sec. 94-45. Exceptions
- Sec. 94-46. Penalties

ARTICLE I. IN GENERAL

Secs. 94-1-94-30. Reserved.

ARTICLE II. - CHESAPEAKE BAY PRESERVATION AREAS

Sec. 94-31. Purpose and Intent of Article.

(a) This Article is enacted to implement the requirements of Code of Virginia, § 10.1-2100 *et seq.*, (1950), as amended. The intent and the purpose of this Article is to:

- (1) Protect existing high quality state waters;
- (2) 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;
- (3) Safeguard the clean waters of the Commonwealth of Virginia from pollution;
- (4) Prevent any increase in pollution;
- (5) Reduce existing pollution; and
- (6) Promote water resource conservation in order to provide for the health, safety and welfare of the present and future citizens of the Commonwealth of Virginia.

(b) This Article establishes the criteria to be used by the County of New Kent, Virginia, in granting, denying, or modifying requests to use, develop or subdivide land in Chesapeake Bay Preservation Areas. In preservation areas, these criteria shall be applied in addition to the requirements of the erosion and sediment control, zoning and subdivision requirements of the New Kent County Code.

(c) This Article is enacted under the authority of Code of Virginia, § 10.1-2100 *et seq.*

(Code 1999, § 9-460)

Sec. 94-32. Conflict of Article with other Regulations and Severability.

(a) In any case where the requirements of this Article conflict with any other provision of this Code or existing state or federal regulations, whichever imposes the more stringent restrictions, shall apply.

(Code 1999, § 9-467)

(b) In the event any portion of this Article is declared void for any reason, such decision shall not affect the remaining portion of the Article, which shall remain in full force and effect, and for this purpose the provisions of this Article are hereby declared to be severable.

Sec. 94-33. Definitions.

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Words and terms not defined in this Article but defined in the Zoning Chapter of the New Kent County Code, shall be given the meanings set forth therein.

Act means the Chesapeake Bay Preservation Act found in Chapter 21 (§ 10.1-2100 *et seq.*) of Title 10.1 of the Code of Virginia.

Agricultural lands means those lands used for the planting and harvesting of crops or plant growth of any kind in the open, pasture, horticulture, dairying, floriculture, or the raising of poultry and/or livestock. Pasture used as an accessory use to a residential use shall not be considered bonifide agriculture land.

Best management practices and BMPs mean a practice, or a combination of practices, that is determined by a state or designated area-wide planning agency to be the most effective, practical means of preventing or reducing the amount of pollution generated by nonpoint sources to a level compatible with water quality goals.

Board means the Board of Supervisors of New Kent County, Virginia.

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

Chesapeake Bay Preservation Area and CBPA mean any land so designated by the Board pursuant to § 10.1-2100, *et seq.*, of the Code of

Virginia, and the Chesapeake Bay Preservation Area Designation and Management Regulations.

Chesapeake Bay Preservation Board means the board established to hear requests for exceptions as set forth in Section 94-44 of this Article and whose members shall be the same as the members of the Wetlands Board with the same terms of appointment. The Chair of the Board of the Wetlands Board shall also serve as the Chair of the Chesapeake Bay Preservation Board.

County means New Kent County, Virginia.

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

Director of Planning means the New Kent County Director of Planning and Community Development or his or her designee.

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 $RKLS/T$, 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.

Health Department means the Virginia Department of Health.

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 Soil Survey Handbook" of November 1996 in the "Field Office Technical Guide" of the U.S. Department of Agriculture Soil Conservation Service.

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 gravel surface.

Infill means utilization of vacant land in previously developed areas.

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

Nontidal wetlands means those wetlands other than tidal wetlands that are inundated or saturated by surface water or groundwater 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.

Nonvegetated wetlands means unvegetated lands lying contiguous to mean low water and between mean low water and mean high water, subject to flooding by normal and wind tides but not hurricane or tropical storm tides.

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

Perennial stream means a water body with water flowing in a natural or man-made channel year-round, except during periods of drought. The term "water bodies" includes estuaries and tidal embankments. Lakes and ponds that are the source of a perennial stream, or through which a perennial stream flows are part of a perennial stream.

Plan of development means the process, prior to any clearing or grading of a site or the issuance of a building permit, for site plan review as required by the zoning regulations of the New Kent County Code, or for subdivision plat review as required by the subdivision regulations of the New Kent County Code, to ensure compliance with Code of Virginia, § 10.1-2109, as all may be amended from time to time.

Public road means a publicly owned road designed and constructed in accordance with water quality protection criteria at least as stringent as requirements applicable to the Virginia Department of Transportation, including regulations promulgated pursuant to (i) the Erosion and Sediment Control Law (§ 1011-560 *et seq.* of the Code of Virginia) and (ii) the Virginia Stormwater Management Act (§ 10.1-603.1 *et seq.* of the Code of Virginia). This definition includes those roads where the Virginia Department of Transportation exercises direct supervision over the design or construction activities, or both, and cases where secondary roads are constructed or maintained, or both, by the County.

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

Regulations means the Chesapeake Bay Preservation Area Designation and Management Regulations, VAC 10-20-10 *et seq.*, promulgated by the Chesapeake Bay Local Assistance Board, as amended.

Resource Management Area and RMA mean that component of the Chesapeake Bay Preservation area that is not classified as a resource protection area. RMA's include land types that, if improperly used or developed, have the potential to cause significant water quality degradation or diminishing the functional value of the Resource Protection Area.

Resource Protection Area and RPA mean that component of the Chesapeake Bay Preservation area comprised of lands adjacent to water bodies with perennial flow that have 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 means 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 § 10.1-1105 of the Code of Virginia and are located on property defined as real estate devoted for forest use under § 58.1-3230 of the Code of Virginia.

Substantial alteration means expansion or modification of a building or development that would result in a disturbance of land exceeding an area of 2,500 square feet in any Chesapeake Bay Preservation Area.

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 both vegetated and nonvegetated wetlands as defined in § 28.2-1300 of the Code of Virginia.

Use means an activity on the land other than development including, but not limited to, agriculture, horticulture and silviculture.

Vegetated wetlands means lands lying between and contiguous to mean low water and an elevation above mean low water equal to the factor one and one-half times the mean tide range at the site of the proposed project in the County, and upon which is growing any of the following species: saltmarsh cordgrass (*Spartina alterniflora*), saltmeadow hay (*Spartina patens*), saltgrass (*Distichlis spicata*), black needlerush (*Juncus roemerianus*), saltwort (*Salicornia* spp.), sea lavender (*Limonium* spp.), marsh elder (*Iva frutescens*), groundsel

bush (*Baccharis halimifolia*), wax myrtle (*Myrica* sp.), sea oxeye (*Borrchia frutescens*), arrow arum (*Peltandra virginica*), pickerelweed (*Pontederia cordata*), big cordgrass (*Spartina cynosuroides*), rice cutgrass (*Leersia oryzoides*), wildrice (*Zizania aquatica*), bulrush (*Scirpus validus*), spikerush (*Eleocharis* sp.), sea rocket (*Cakile edentula*), southern wildrice (*Zizaniopsis miliacea*), cattail (*Typha* spp.), threesquare (*Scirpus* spp.), buttonbush (*Cephalanthus occidentalis*), bald cypress (*Taxodium distichum*), black gum (*Nyssa sylvatica*), tupelo (*Nyssa aquatica*), dock (*Rumex* spp.), yellow pond lily (*Nuphar* sp.), mardis fleabane (*Pluchea purpurascens*), royal fern (*Osmunda regalis*), marsh hibiscus (*Hibiscus moscheutos*), beggar's tick (*Bidens* sp.), smartweed (*Polygonum* sp.), arrow head (*Sagittaria* spp.), sweet flag (*Acorus calamus*), water hemp (*Amaranthus cannabinus*), reed grass (*Phragmites communis*), or switch grass (*Panicum virgatum*).

Water-dependent facility means 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 (i) ports; (ii) the intake and outfall structures of power plants, water treatment plants, sewage treatment plants and storm sewers; (iii) marinas and other boat docking structures; (iv) beaches and other public water-oriented recreation areas; and (v) fisheries or other marine resources facilities.

Wetlands means tidal and non-tidal, vegetated and nonvegetated wetlands.

(Code 1999, § 9-461)

Cross reference - Definitions generally, § 1-2.

State law reference-Similar provisions, Code of Virginia, § 28.2-1300.

Sec. 94-34. Composition.

A Chesapeake Bay Preservation Area shall consist of a Resource Protection Area and a Resource Management Area. It is not the intent of this Article to require that all lands within the County be designated as Chesapeake Bay Preservation Areas. The extent of the Resource Management Area designation is intended to be based upon the prevalence and relation of the Resource Management Area land types and other appropriate land areas to water quality protection.

(Code 1999, § 9-461)

Sec. 94-35. Designation of Resource Protection Areas (RPA).

(a) At minimum, Resource Protection Areas shall consist of lands adjacent to water bodies with perennial flow that have either an intrinsic water quality value due to the ecological and biological processes they perform or are sensitive to impacts which may cause significant degradation to the quality of state waters. In their natural condition, these lands provide for the removal, reduction or assimilation of sediments, nutrients and potentially harmful or toxic substances in runoff entering the bay and its tributaries. RPAs shall include:

- (1) Tidal wetlands;
- (2) Nontidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow;
- (3) Tidal shores;
- (4) A 100-foot vegetated buffer area located adjacent to and landward of the components listed in subsections (a)(1) through (a)(3) of this section, and along both sides of any water body with perennial flow. The full buffer area shall be designated as the landward component of the RPA notwithstanding the presence of permitted uses, encroachments, and permitted vegetation clearing compliance with Section 94-40; and
- (5) Such other lands considered by the Board to meet the provisions of part (a) of this section and to be necessary to protect the quality of state waters.

(b) A RPA map is provided but shall be considered a planning tool. RPA boundaries shall be delineated by the applicant during the plan of development process or the water quality impact assessment in accordance with Section 94-41.

(c) Delineation of Resource Protection Areas Boundaries.

- (1) Site-specific information of Chesapeake Bay Preservation Area boundaries. As part of the plan of development process or during the review of the water quality impact assessment pursuant to Section 94-41, applicants must submit site-specific information to the County showing whether water bodies on or adjacent to the development site have perennial flow.
- (2) After the information required in part (1) of this subsection has been submitted to the County, the Director of Planning will confirm that the site specific information reliably shows whether water

bodies on or adjacent to the development site have perennial flow, and will adjust the Resource Protection Area boundaries as necessary, based on this evaluation of the site.

- (3) If an adjusted boundary delineation conducted in subpart (2) of this section is contested by the applicant, the applicant may seek relief by means of an appeal to the Chesapeake Bay Preservation Board. Appeals made under this section shall only be heard after the notice requirements set forth in Section 94-45(b)(2) have been met.

(Code 1999, §§ 9-463, 9-468)

Sec. 94-36. Designation of Resource Management Areas.

(a) Resource Management Areas include land types that, if improperly used or developed, have a potential for causing significant water quality degradation or for diminishing the functional value of the Resource Protection Area. The following land categories shall be included as Resource Management Areas:

- (1) Floodplains;
- (2) Nontidal wetlands which are contiguous to an RPA;
- (3) Highly erodible soils, including steep slopes which are contiguous to an RPA;
- (4) Highly permeable soils which are contiguous to an RPA; and
- (5) A 150-foot land area located along any Resource Protection Area, where none of the components listed in subsections (a)(1) through (a)(4) of this section are present.

(b) If any RMA component is located on a lot or parcel, the entire lot or parcel shall be deemed to be in the RMA, except as provided in subsection (c) of this section.

(c) Development on any lot or parcel may be excluded from the Resource Management Area regulations, provided that:

- (1) There is no Resource Management Area component as defined by this Article in the area to be excluded from the RMA designation.
- (2) A schematic site plan as required by the applicable zoning requirements of the New Kent County Code is submitted accurately demonstrating the absence of Resource Management Area

components, provided that the schematic site plan is prepared by a qualified soil scientist, professional engineer, landscape architect or certified land surveyor.

- (3) Only the area where the absence of Resource Management Area features has been demonstrated will be excluded from the Resource Management Area designation.
- (d) Where the applicant has provided a site-specific delineation of the RMA, the Director of Planning will verify the accuracy of the boundary delineation. In determining the site specific RMA boundary, the Director of Planning may render adjustments to the applicant's boundary delineation. If the adjusted boundary delineation is contested by the applicant, the applicant may seek relief by means of an appeal to the Chesapeake Bay Preservation Board. Appeals made under this section shall only be heard after the notice requirements set forth in Section 94-45(a)(2) have been met.

(Code 1999, § 9-462)

Sec. 94-37. Use Regulations.

Permitted uses, conditionally permitted uses, accessory uses and special requirements shall be as established by the underlying zoning district, unless specifically modified by the requirements set forth in this Article.

(Code 1999, § 9-464)

Sec. 94-38. Lot Size.

Lot size shall be subject to the requirements of the underlying zoning districts, provided that any lot shall have sufficient area outside the RPA to accommodate an intended development, in accordance with the performance standards in section 94-39, when such development is not otherwise allowed in the RPAs.

(Code 1999, § 9-465)

Sec. 94-39. Development Criteria.

The use, development or redevelopment of land the Chesapeake Bay Preservation Areas must meet or exceed the following performance criteria.

- (a) No more land shall be disturbed than is necessary to provide for the proposed use or development.

(b) Indigenous vegetation shall be preserved to the maximum extent practicable, consistent with the use or development proposed.

(c) Where the best management practices utilized require regular or periodic maintenance in order to continue their functions, a maintenance agreement from the owner or developer or some other mechanism that achieves an equivalent objective will be required by the County.

(d) All development exceeding 2,500 square feet of land disturbance shall be accomplished through a plan of development review process consistent with this Article and the applicable subdivision and zoning requirements of the New Kent County Code.

(e) Land development shall minimize impervious cover consistent with the proposed use or development.

(f) Any land disturbing activity that exceeds an area of 2,500 square feet (including construction of all single family houses, septic tanks and drainfields, or otherwise as required in § 10.1-560 of the Code of Virginia) shall comply with the applicable erosion and sediment control requirements of the New Kent County Code.

(g) On site sewage treatment systems not requiring a Virginia Pollutant Discharge Elimination System (VPDES) permit shall have pump-out accomplished for all such systems at least once every five years, however, in lieu of requiring proof of septic tank pump-out every five years, owners of on-site sewage treatment systems may submit documentation every five years, certified by a sewage handler permitted by the Virginia Department of Health, that the septic system has been inspected, is functioning properly, and the tank does not need to have the effluent pumped out of it.

(h) Stormwater management criteria consistent with the water quality protection provisions of the Virginia Stormwater Management Regulations 4 VAC 3-20-10 *et seq.* shall be satisfied. The following stormwater management options shall be considered to comply with this Article:

- (1) Incorporation on the site of best management practices that meet the water quality protection requirements set forth in the Regulations. For the purposes of this subsection, the "site" may include multiple projects or properties that are adjacent to one another or lie within the same drainage area where a single best management practice will be utilized by those projects to satisfy water quality protection requirements;
- (2) Compliance with any regional stormwater management program adopted by the County, which may include a Virginia Pollution

Discharge Elimination System (VPDES) permit issued by the Department of Environmental Quality to the County for its municipally owned separate storm sewer system discharges, that is reviewed and found by the Board to achieve water quality protection equivalent to that required by the Chesapeake Bay Regulations; and

- (3) Compliance with a site-specific VPDES permit issued by the Department of Environmental Quality, provided that the Board specifically determines that the permit requires measures that collectively achieve water quality protection equivalent to that required by state law.
 - (4) Any maintenance, alteration, use or improvement to an existing structure that does not degrade the quality of surface water discharge, as determined by the County, may be exempted from the requirements of this subsection.
 - (5) Stormwater management criteria for redevelopment shall apply to any and all redevelopment.
- (i) Land upon which bona fide agricultural activities are being conducted, including but not limited to crop production, pasture, and dairy and feedlot operations, or lands otherwise defined as agricultural land by the County, shall have a soil and water quality conservation assessment conducted by a qualified professional that evaluates the effectiveness of existing practices pertaining to soil erosion and sediment control, nutrient management, and management of pesticides and, where necessary, results in a plan that outlines additional practices needed to ensure that water quality protection is being accomplished consistent with the Act, the Regulations and the requirements of this Article.
- (j) Silvicultural activities in Chesapeake Bay Preservation Areas are exempt from this Article provided that the silvicultural operations adhere to all other applicable provisions of the New Kent County Code and provided water quality protection procedures prescribed by the Virginia Department of Forestry in the current edition of "Forestry Best Management Practices for Water Quality in Virginia Technical Guide." The Virginia Department of Forestry will oversee and document installation of best management practices and will monitor in-stream impacts of forestry operations in Chesapeake Bay Preservation Areas.
- (k) Evidence of all wetlands permits required by law are required before the Director of Planning will authorize grading or other on-site activities to begin.

Sec. 94-40. Additional Development Criteria for Resource Protection Areas.

(a) In addition to the general performance criteria set forth in Section 94-39 of this Article, the criteria in this section are required in all Resource Protection Areas.

- (1) Land development may be allowed in the Resource Protection Area, subject to approval by the County, only if it meets one or more of the criteria below:
 - a. The development is water dependent;
 - b. The development constitutes redevelopment;
 - c. The development is a new or expanded water dependant use established pursuant to subsection (a)(6)(3)of this Section;
 - d. The development is a road or driveway crossing satisfying the conditions set forth in subsection (a)(5) of this Section; or
 - e. The development is a flood control or stormwater management facility satisfying the conditions set forth in subsection (a)(6) of this Section.
- (2) A water quality impact assessment in accordance with Section 94-41 of this Article shall be required for any proposed land disturbance, development or redevelopment within RPAs and for any other development within RMAs when required by the County because of the unique characteristics of the site or intensity of development.
- (3) A new or expanded water-dependent facility may be allowed provided that the following criteria are met:
 - a. it does not conflict with the comprehensive plan;
 - b. it complies with the Development Criteria set forth in Section 94-39;
 - c. any component that is not water-dependent is located outside of Resource Protection Areas; and
 - d. access to the water-dependent facility will be provided with the minimum disturbance necessary, and where practicable, a single point of access will be provided.

- (4) Redevelopment on isolated redevelopment sites shall be permitted in the Resource Protection Area only if there is no increase in the amount of impervious cover and no further encroachment within the Resource Protection Area, and it shall conform to all applicable erosion and sediment control and stormwater management requirements set forth in the New Kent County Code, and with all applicable stormwater management requirements of other state and federal agencies. Redevelopment efforts should include the establishment of buffers and other water quality measures to improve water quality whenever possible.
- (5) Roads and driveways not exempt under Subsection 94-44 of this Article may be constructed in or across Resource Protection Areas if each of the following conditions is met:
 - a. The Director of Planning makes a finding that there are no reasonable alternatives to aligning the road or driveway in or across the Resource Protection Area;
 - b. The alignment and design of the road or driveway are optimized, consistent with other applicable requirements, to minimize (i) encroachment in the Resource Protection Area and (ii) adverse effects on water quality;
 - c. The design and construction of the road or driveway satisfy all applicable criteria of this Article and the Regulations, including submission of a water quality impact assessment; and
 - d. The Director of Planning reviews the plan for the road or driveway proposed in or across the Resource Protection Area in coordination with site plan, subdivision and plan of development approvals.
- (6) Flood control and stormwater management facilities that drain or treat water from multiple development projects or from a significant portion of a watershed may be allowed in Resource Protection Areas, provided that all of the following are met:
 - a. The Board has conclusively established that location of the facility within the Resource Protection Area is the optimum location;
 - b. The size of the facility is the minimum necessary to provide necessary flood control, stormwater treatment, or both;

- c. 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;
- d. All applicable permits for construction in state or federal waters must be obtained from the appropriate state and federal agencies, such as the U.S. Army Corps of Engineers, the Virginia Department of Environmental Quality, and the Virginia Marine Resources Commission;
- e. Approval must be received from the County prior to construction; and routine maintenance is allowed to be performed on such facilities to assure that they continue to function as designed.
- f. It is not the intent of this subsection to allow a best management practice that collects and treats runoff from only an individual lot or some portion of the lot to be located within a Resource Protection Area.

(b) Exemptions in Resource Protection Areas. The following land disturbances in Resource Protection Areas may be exempt from the criteria of this part provided that they comply with subsections (1) through (5) below of this subsection: water wells; passive recreation facilities such as boardwalks, trails and pathways; and historic preservation and archaeological activities.

- (1) Any required permits, except those to which this exemption applies, shall have been issued.
- (2) An RPA Modification Form or a CBPA Exemption Application has been approved by the County in accordance with Section 94-45 of this Article.
- (3) Any land disturbance exceeding an area of 2,500 square feet shall comply with the erosion and sediment control criteria in Section 94-39(f).
- (4) Sufficient and reasonable proof is submitted that the intended use will not deteriorate water quality.
- (5) The intended use does not conflict with nearby planned or approved uses.

(c) Buffer area requirements.

- (1) To minimize the adverse effects of human activities on the other components of the Resource Protection Area, state waters, and aquatic life, a 100-foot wide 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 where it does not exist. The buffer area shall be located adjacent to and landward of other RPA components and along both sides of any water body with perennial flow. The 100-foot full buffer area shall be designated as the landward component of the Resource Protection Area as set forth in subsection (a)(4) of Section 94-35. Notwithstanding permitted uses, encroachments, and vegetation clearing, as set forth in this section, the 100-foot wide buffer area is not to be reduced in width.
- (2) The 100-foot wide buffer area shall be deemed to achieve a 75% reduction of sediments and a 40% reduction of nutrients.
- (3) 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 Article.
- (4) Permitted encroachments into the buffer area. When the 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, encroachments into the buffer area may be allowed through an administrative process as set forth in Section 94-44(a) of this Article, in accordance with the 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.
 - 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 or parcel.
 - c. The encroachment may not extend into the seaward 50 feet of the buffer area unless the Chesapeake Bay Preservation Board has granted an exception to this requirement after the notice requirements set forth in Section 94-45(b)(2) have

been met and so long as the Chesapeake Bay Preservation Board finds that an exception is warranted under the criteria set forth in Section 94-45(b)(3).

(5) Permitted modifications of the buffer area.

In order to maintain the functional value of the buffer area, existing vegetation may be removed, subject to approval by the Director of Planning in accordance with Section 94-45(a), only to provide for reasonable sight lines, access paths, general woodlot management, and best management practices, including those that prevent upland erosion and concentrated flows of stormwater, 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 on a 2 to 1 basis, with other vegetation that is equally effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff. The plant list as found in the Chesapeake Bay Local Assistance manual shall be used as a guide to choosing replacement vegetation.
- b. Any path shall be constructed and surfaced so as to effectively control erosion.
- c. Dead, diseased, or dying trees or shrubbery and Noxious Weeds may be removed and thinning of trees may be allowed, pursuant to sound horticultural practices.
- 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.

(6) Agricultural Lands: On agricultural lands the agricultural buffer area shall be managed to prevent concentrated flows of surface water from breaching the buffer area and appropriate measures may be taken to prevent Noxious Weeds from invading the buffer area. Agricultural activities may encroach into the buffer area, so long as the activities are otherwise allowed by the New Kent County Code, and as only as follows:

- a. Bona fide agricultural activities may encroach into the landward 50 feet of the 100-foot wide buffer area when at

least one agricultural best management practice, which, in the opinion of the Colonial Soil and Water Conservation District, addresses the more predominant water quality issued on the adjacent land – erosion control or nutrient management – is being implemented on the adjacent land, provided that the combination of the undisturbed buffer area and the best management practice achieves water quality protection, pollutant removal, and water resource conservation at least the equivalent of the 100-foot wide buffer area. If nutrient management is identified as the predominant water quality issue, a nutrient management plan, including soil test, must be developed consistent with the "Virginia Nutrient Management Training and Certification Regulations (4 VAC 5-15-*et seq.*)" administered by the Virginia Department of Conservation and Recreation.

- b. Bona fide agricultural activities may encroach within the landward 75 feet of the 100-foot wide buffer area when agricultural best management practices which address erosion control, nutrient management, and pest chemical control, are being implemented on the adjacent land. The erosion control practices must prevent erosion from exceeding the soil loss tolerance level, referred to as "T," as defined in the "National Soil Survey Handbook" of November 1996 in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resource Conservation Service. A nutrient management plan, including soil test must be developed consistent with the "Virginia Nutrient Management Training and Certification Regulations" (4 VAC 5-15-10) administered by the Virginia Department of Conservation and Recreation. In conjunction with the remaining buffer area, this collection of best management practices shall be presumed to achieve water quality protection at least the equivalent of that provided by the 100-foot buffer area.
- c. The buffer area is not required to be designated adjacent to agricultural drainage ditches if the adjacent agricultural land has in place at least one best management practices, either erosion control or nutrient management, as considered by the Colonial Soil and Water Conservation District to address the more predominant water quality issue on the adjacent land.

- d. The agricultural buffer encroachments described above shall not be approved unless the landowner shall demonstrate that a significant hardship will accrue in the absence and that the encroachment sought is the least necessary to afford reasonable relief.

Sec. 94-41. Water Quality Impact Assessment. A water quality impact assessment shall be required for any proposed land disturbance, development or redevelopment activity within a Resource Protection Area as permitted consistent with Section 94-40 of this Article including any buffer modification or encroachment. A water quality impact assessment shall also be required for any other encroachment or development in any Chesapeake Bay Preservation Area that may warrant such assessment because of the unique characteristics of the site or intensity of the proposed use or development.

(a) The purpose of the water quality impact assessment is to identify the impacts of proposed development on water quality and lands in the Resource Protection Areas and other environmentally sensitive lands; ensure that, where land disturbance, development or redevelopment does take place within RPAs and other sensitive lands, it will occur on those portions of a site and in a manner that will be least disruptive to the natural functions of RPAs and other sensitive land; to protect individuals from investing funds for improvements proposed for location on lands unsuited for such development because of high ground water, erosion, or vulnerability to flood and storm damage; provide for administrative relief from terms of this Article when warranted and in accordance with the requirements contained herein and specify mitigation which will address water quality protection.

(b) A water quality impact assessment must demonstrate that the undisturbed buffer area, enhanced vegetative plantings and any required best management practices will result in the removal of no less than 75 percent of sediments and 40 percent of nutrients from post-development runoff the equivalent of the full undisturbed 100-foot buffer area. The information required in this subsection shall be considered a minimum, unless the Director of Planning determines that some of the elements are unnecessary due to the scope and nature of the proposed use and the development of the land.

(c) The water quality impact assessment shall include a site drawing to scale prepared by a professional acting within the scope of his or her capacity which shows the following:

- (1) Location of the components of the RPA, including the 100 foot buffer area;

- (2) Location and nature of the proposed encroachment into the buffer area, including: type of paving material; areas of clearing 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 to mitigate the proposed encroachment;
- (4) Location of existing vegetation onsite, including the number and type of trees and other vegetation to be removed in the buffer to accommodate the encroachment or modification;
- (5) Re-vegetation plan that supplements the existing buffer vegetation in a manner that provides for pollutant removal, erosion and runoff control; and
- (6) Any additional requirements as determined by the Director of Planning.

(d) Additional requirements: In addition to the site drawing required in subsection (c) of this section, the water quality impact assessment shall also include the following elements in the preparation and submission of a water quality impact assessment:

- (1) A hydrogeological element prepared by a professional acting within the scope of his or her capacity that:
 - a. Shows existing and proposed topography, soils, and hydrology of the site and adjacent lands on a two (2) foot contoured site plan.
 - b. Indicates the following:
 1. Disturbance or removal of wetlands and justification for such action;
 2. Source location of and description of proposed fill material;
 3. Location of dredging and location of dumping area for such dredged material;
 4. Estimation of pre- and post development pollutant loads in runoff;

5. Estimation of percent increase in impervious surface on site, type(s) of surfacing material used;
 6. Percent of site to be cleared for project;
 7. Anticipated duration and phasing schedule of construction project; and
 8. Listing of all requisite permits from all applicable agencies necessary to develop project.
- c. Describes the proposed mitigation measures for the potential hydrogeological impacts. Potential mitigation measures include:
1. Additional proposed erosion and sediment control concepts beyond those normally required under Section 94-39(f) of this Article; these additional concepts may include, but are not limited to, the following: minimizing the extent of cleared area; perimeter controls; reduction of runoff velocities; measures to stabilize disturbed areas; schedule and personnel for site inspections.
 2. Proposed best management practice(s) for nonpoint source water quality and water quantity control.
- (2) A vegetative element prepared by a professional acting within the scope of his or her capacity that:
- a. Identifies and delineates the location of all woody plant material on site, including all trees on site six inches or greater diameter at breast height or, where there are groups of trees, said stands may be outlined.
 - b. Describes the impacts the development or use will have on the existing vegetation. Information must include:
 1. General limits of clearing based on all anticipated improvements, including buildings, drives, and utilities;
 2. Clear delineation of all trees and other woody vegetation which will be removed; and

3. Description of all plant species to be disturbed or removed.
- c. Describes the proposed measures for mitigation. Possible mitigation measures include, but are not limited to:
1. Proposed design plan and replanting schedule for trees and other woody vegetation removed for construction, including a list of proposed plants and trees to be used;
 2. Demonstration that the re-vegetation plan supplements the existing buffer vegetation in a manner that provides for pollutant removal, erosion and runoff control;
 3. Demonstration that the design of the plan will preserve to the greatest extent possible any significant trees and vegetation on the site and will provide maximum erosion control and overload flow benefits from such vegetation; and
 4. Demonstration that indigenous plants are to be used to the greatest extent possible and that, if feasible, all grasses planted in the buffer area will be of native species.

(e) Submission and Review Requirements

- (1) Five (5) copies of all cited drawings and other applicable information as required above shall be submitted to the Director of Planning for review.
- (2) All information required in this section shall be prepared and certified as complete and accurate by a professional acting within his or her scope of competence.
- (3) As part of any water quality impact assessment submitted, the Director of Planning may request review by the Chesapeake Bay Local Assistance Department (CBLAD). Upon receipt of a water quality impact assessment, the Director of Planning will determine if review is warranted and may request CBLAD to review the assessment and respond with written comments. Any comments by CBLAD will be incorporated into the final review by the Director of Planning, provided that such comments are provided by CBLAD.

(f) Evaluation Procedure.

- (1) Upon completing the review of a water quality impact assessment, the Director of Planning will determine if any proposed modification or encroachment in the buffer area is consistent with the provisions of this Article and make a finding based upon the following criteria:
 - a. The necessity of the proposed encroachment and the ability to place improvements elsewhere on the site to avoid disturbance of the buffer area;
 - b. Impervious surface is minimized;
 - c. Proposed mitigation measures, including the revegetation plan and site design will result in minimal disturbance to all components of the RPA, including the 100-foot buffer area;
 - d. Proposed mitigation measures are sufficient to retain all buffer area functions pollutant removal, erosion and runoff control;
 - e. Proposed best management practices, where required, achieve the requisite reductions in pollutant loadings;
 - f. The development, as proposed, is consistent with the spirit and intent of this Article;
 - g. The cumulative impact of the proposed development, when considered in relation to other development in the vicinity, both existing and proposed, will not result in a significant degradation of water quality;
 - h. Within any RPA, the proposed development is water-dependent or constitutes redevelopment;
 - i. The development will not result in significant disruption of the hydrology of the site;
 - j. The development will not result in the degradation to aquatic vegetation or life;
 - k. The development will not result in unnecessary destruction of plant materials on site;

- l. Proposed erosion and sediment control concepts are adequate to achieve the reductions in runoff and prevent off-site sedimentation;
 - m. Proposed stormwater management concepts are adequate to control the stormwater runoff to achieve the required performance standard for pollutant control;
 - n. Proposed revegetation of disturbed areas will provide optimum erosion and sediment control benefits, as well as runoff control and pollutant removal equivalent of the full 100-foot undisturbed buffer area;
 - o. The design and location of any proposed drainfield will be in accordance with the applicable zoning requirements of the New Kent County Code; and
 - p. The percentage of existing wetlands disturbed by the development and/or the number of square feet or acres proposed to be disturbed is the least amount possible to meet the proposed use.
- (2) The Director of Planning shall require additional mitigation where potential impacts have not been adequately addressed. Evaluation of mitigation measures will be made by the Director of Planning based on the criteria listed in subsection (1).
- (3) The Director of Planning shall find the proposal to be inconsistent with the purpose and intent of this Article when the impacts created by the proposal cannot be mitigated. Evaluation of the impacts will be made by the Director of Planning based on the criteria listed in subsection (1) of this subsection.

Sec. 94-42. Plan of development process.

(a) Generally. In addition to the information required for a plan of development or site plan under the zoning regulations of the New Kent County Code, and the site-specific RPA information required in Section 94-35, the owner or developer of a project which constitutes development or redevelopment subject to the provisions of this Article shall include the following information and studies in this section with the site plan. All of the information required in subsection (1) through (8) must be prepared by a professional acting within the scope of his or her professional capacity.

- (1) Landscaping.

- a. The landscaping plan shall be drawn to scale and clearly delineate the location, size, and description of existing and proposed plant material. All existing trees in the open on the site six (6) inches or greater diameter at breast height (DBH) shall be shown on the landscaping plan, or where there are groups of trees, said stands may be outlined instead except that individual trees twenty-four inches (24") or greater in diameter at breast height (DBH) shall be individually identified. The specific number of trees six (6) inches or greater DBH to be preserved outside of the building envelope shall be indicated on the plan. Trees and other woody vegetation proposed to be removed to create the desired construction footprint shall be clearly delineated on the landscaping plan.
- b. Any required RPA buffer areas shall be clearly delineated and any plant material to be added to establish or supplement the buffer area, as required by this Article, shall be shown on the landscaping plan.
- c. Within the buffer area, trees and other woody vegetation to be removed for sight lines, vistas, access paths, and best management practices, as provided for in this Article shall be shown on the plan. Vegetation required by this part to replace any existing trees proposed to be removed within the buffer area shall also be shown.
- d. Trees and other woody vegetation to be removed for shoreline stabilization projects and any replacement vegetation required by this Article shall be shown.
- e. The plan shall depict grade changes or other work adjacent to trees which would affect them adversely. Specifications shall be provided as to how grade, drainage, and aeration would be maintained around trees to be preserved.
- f. The landscaping plan will include specifications for the protection of existing trees and other vegetation during clearing, grading and all phases of construction.
- g. If the proposed development is a change in use from agricultural or silvicultural to some other use, the plan must demonstrate the re-establishment of vegetation in the buffer area.

(5) Plant Specifications

- a. All plant materials necessary to supplement the buffer area or vegetated areas outside the construction footprint shall be installed according to standard planting practices and procedures.
 1. The applicant shall be responsible for the maintenance and replacement of all vegetation as may be required under this Article.
 2. In buffer areas and outside the construction footprint, plant material shall be tended and maintained in a healthy growing condition and free from refuse and debris. Unhealthy, dying, or dead plant materials must be replaced during the next planting season.
- b. All supplementary or replacement plant materials shall be living and in a 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 landscaping plan, are encroached, replacement of existing trees and other vegetation will be achieved at a three (3) planted trees to one (1) removed ratio. Replacement trees shall be a minimum one and one-half (1½) inches DBH at the time of planting.
- d. Native or indigenous plant species shall be preferred over non-native or non-indigenous species.

(6) Stormwater Management Plan: A stormwater management plan shall be submitted as part of the plan of development process required by this Article and in conjunction with site plan or subdivision plan approval.

- a. Contents of the Plan: The Stormwater Management Plan shall contain information including, maps, charts, graphs, tables, photographs, narrative descriptions, explanations and citations to supporting references as appropriate to communicate the information required by this Article. At minimum, the stormwater management plan must contain the following:

1. Location and design of all planned stormwater control devices;
 2. Procedures for implementing non-structural stormwater control practices and techniques;
 3. Pre- and post development nonpoint source pollutant loadings with supporting documentation of all utilized coefficients and calculations;
 4. For facilities, verification of structural soundness, using the County checklist and including a Professional Engineer or Class IIIB Surveyor Certification.
- b. Site specific facilities shall be designed for the ultimate development of the contributing watershed based on zoning, comprehensive plans, local public facility master plans, or other similar planning documents.
 - c. All engineering calculations must be performed in accordance with the procedures outlined in the current edition of the Virginia Stormwater Management Handbook.
 - d. The plan shall establish a 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 the County, then a maintenance agreement shall be executed between the responsible party and the County.

(7) Erosion and Sediment Control Plan

An erosion and sediment control plan, shall be submitted that satisfied the requirements of this Article and in accordance with the erosion and sediment control regulations of the New Kent County Code, in conjunction with site plan or subdivision plan approval.

- (8) Final Plan: Final plans for property within CBPAs shall serve as final plats for land to be subdivided or site plans for land not to be subdivided as required by the subdivision and zoning regulations of the New Kent County Code. Final plans for all lands within CBPAs shall include the following additional information:

- a. The delineation of the RPA boundary, including the 100-foot buffer component;
- b. A plan note stating that no land disturbance is allowed in the buffer area without review and approval by the County;
- c. All wetlands permits required by law; and
- d. A maintenance agreement as deemed necessary and appropriate by the County to ensure proper maintenance of best management practices in order to continue their functions.

(b) Installation and bonding requirements.

- (1) Except as provided in subsection (2) of this section, where buffer areas or other specifications of an approved plan are required, no certificate of occupancy shall be issued until the installation of required plant materials or facilities is completed, in accordance with the approved site plan.
- (2) When the occupancy of a structure is desired prior to the completion of the specifications of an approved plan, a certificate of occupancy may be issued only if the applicant provides to the County a deferred improvement agreement secured with a form of surety satisfactory to the County Attorney in an amount equal to not less than 125% of the costs of the remaining plant materials, related materials, and installation of the required landscaping or facilities and/or maintenance costs for any required stormwater management facilities.
- (3) All required landscaping shall be installed and approved by the first planting season following issuance of a certificate of occupancy or the surety may be forfeited to the County. The County may collect from the property owner any amount by which the cost of required actions, including reasonable administrative fees, exceeds the surety amount.
- (4) All required stormwater management facilities or other specifications, shall be installed and approved within 18 months of project commencement. Should the applicant fail, after proper notice, to initiate, complete or maintain appropriate actions required by the approved plan, the surety may be forfeited to the County. The County may collect from the property owner the amount by which the cost of required actions including reasonable administrative fees, exceeds the amount of the surety held.

- (5) After all required actions of the approved site plan have been completed, the applicant shall submit a written request for a final inspection. If the requirements of the approved plan have been completed to the satisfaction of the Director of Planning, such unexpended or unobligated portion of the surety held shall be refunded to the applicant or terminated within 60 days following the receipt of the applicant's request for final inspection. The Director of Planning may require a certificate of substantial completion from a professional engineer or class IIIB surveyor before making a final inspection.

(Code 1999, § 9-471)

Sec. 94-43. Noncomplying Structures.

(a) The lawful use of a building or structure which existed on or before the effective date of this Article, or which exists at the time of any amendment to this Article, and which is not in conformity with the provisions of the Article may be continued, provided there is a finding by the Director of Planning, that:

- (1) There will be no increase in nonpoint source pollution load; and
- (2) Any development or land disturbance exceeding an area of 2,500 square feet complies with all erosion and sediment control requirements of the New Kent County Code.

(b) An application for a nonconforming use and development waiver shall be made to and upon forms furnished by the Director of Planning and shall follow those procedures set forth in the subdivision regulations of the New Kent County Code. The application must also include the applicable review fee. For the purpose of the proper enforcement of this Article, the following information must be submitted.

- (1) Name address and applicant and property owner;
- (2) Legal description of the property and the 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 RPA;
- (4) Location and description of any existing private water supply or sewage system

(c) This Article shall not be construed to prevent the reconstruction of pre-existing structures within Chesapeake Bay Areas from occurring as a result of casualty loss.

(d) A nonconforming use and development waiver shall become null and void twelve months from the date issued if substantial work towards completion has not occurred.

(e) An application for the expansion of a existing legal principal nonconforming structure may be approved by the Director of Planning through the process set forth in Section 94-45(a) so long as the expansion is in conformity with any other applicable provisions of the Code, and so long as the Director of Planning makes the following findings:

- (1) The request for the waiver is the minimum necessary to afford relief;
- (2) Granting the waiver will not confer upon the applicant any specific privileges that are denied by this Article to other property owners in similar situations;
- (3) The waiver is in harmony with the purpose and intent of this Article and does not result in water quality degradation;
- (4) The waiver is not based on conditions or circumstances that are self-created or self-imposed;
- (5) Reasonable and appropriate conditions are imposed, as warranted, including appropriate bonding requirements, that will prevent the waiver from causing a degradation of water quality;
- (6) The proposed expansion is permitted by the provisions of the subdivision and zoning regulations and other applicable provisions of the New Kent County Code;
- (7) Other findings, as appropriate and required by the County are met; and
- (8) In no case shall this provision apply to accessory structures.

(Code 1999, § 9-472)

Sec. 94-44. Public Use Exemptions.

(a) Public utilities, railroads, public roads, and facilities exemptions. Construction, installation, operation and maintenance of electric, natural gas,

fiber-optic, and telephone transmission lines, railroads and public roads and their appurtenant structures in accordance with regulations promulgated pursuant to the Erosion and Sediment Control Law (§ 10.1-560 *et seq.* of the Code of Virginia) and the Stormwater Management Act (§ 10.1-603.1 *et seq.* of the Code of Virginia), an erosion and sediment control plan and a stormwater management plan approved by the Virginia Department of Conservation and Recreation, or water quality protection criteria adopted by the County that are as stringent as the above will be deemed to constitute compliance with this Article.

(b) The exemption of public roads is limited to those public roads constructed by the Virginia Department of Transportation (VDOT) and is further conditioned upon the optimization of the road alignment and design, consistent with other applicable requirements, to prevent or otherwise minimize encroachment in the RPA and adverse effects on water quality.

(c) Construction, installation and maintenance of water, sewer, natural gas and underground telecommunications and cable television lines, owned, permitted, or both, by the County or regional service authority shall be exempt from the criteria in this Article provided that:

- (1) To the degree possible, the location of such utilities and facilities shall be outside RPAs;
- (2) No more land shall be disturbed than is necessary to provide for the proposed utility installation;
- (3) All such construction, installation, and maintenance of such utilities and facilities shall be in compliance with all applicable state and federal permits and designed and conducted in a manner that protects water quality; and.
- (4) Any land disturbance exceeding an area of 2,500 square feet complies with all the County's erosion and sediment control requirements.

Sec. 94-45. Exceptions.

(a) Administrative Exceptions.

- (1) A request for an exception to the requirements of any section of this Article, except as provided in subsection (b) of this section, shall be made in writing to the Director of Planning with the appropriate fee by filing a RPA Modification Application or a CBPA Exception Application with the appropriate fee.

- (2) The Director of Planning shall review the request for an exception and may grant the exception provided that the Director of Planning finds that:
 - a. Exceptions shall be the minimum necessary to afford relief; and
 - b. Reasonable and appropriate conditions upon any exception granted shall be imposed, as necessary, so that the purpose and intent of the Act is preserved;
 - c. For exceptions to Section 94-41, so long as the findings in Section 94-41 are met.
- (3) If the Director of Planning denies the request for an exception, the applicant may appeal to the Chesapeake Bay Preservation Board.

(b) RPA Criteria Exceptions.

- (1) A request for an exception to the requirements of Sections 94-39 and 94-40 of this Article shall be made in writing to Chesapeake Bay Preservation Board with the appropriate fee. It shall identify the impacts of the proposed exception on water quality and on land within the RPA through the performance of a water quality impact assessment which complies with the provisions of Section 94-41.
- (2) No exception granted by this section shall be authorized except after notice and a hearing, as required by § 15.2-2204 of the Code of Virginia, except that only one hearing shall be required. When giving the 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 may be given by first-class mail rather than by registered or certified mail.
- (3) The Chesapeake Bay Preservation Board shall review the request for an exception and the water quality impact assessment and may grant the exception with such conditions and safeguards as deemed necessary to further the purpose and intent of this Article if the Chesapeake Bay Preservation Board finds that:
 - a. The exception request is the minimum necessary to afford relief;
 - b. Granting the exception will not confer upon the applicant any special privileges that are denied by this Article to other

property owners who are subject to its provisions and who are similarly situated;

- c. The exception request will be in harmony with the purpose and intent of this Article and is not of substantial detriment to water quality;
- d. The exception request is not based upon conditions or circumstances that are self-created or self-imposed; and
- e. Reasonable and appropriate conditions are imposed, as warranted, that will prevent the allowed activity from causing a degradation of water quality. The conditions may include a requirement that a surety acceptable to the County Attorney be posted to guarantee performance.

- (4) If the Chesapeake Bay Preservation Board cannot make the required findings or refuses to grant the exception, the Chesapeake Bay Preservation Board shall return the request for an exception together with the water quality impact assessment and the written findings and rationale for the decision to the applicant.

Sec. 94-46. Penalties.

(a) Any person who: (i) violates any provision of this Article or (ii) violates or fails, neglects, or refuses to obey any final notice, order, rule, regulation, or variance or permit condition issued by the County and authorized under this Article 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 Chesapeake Bay Preservation Areas therein, in such a manner as the court may direct by order, except that if the violator is the County or its agent, the court shall direct the penalty to be paid into the state treasury.

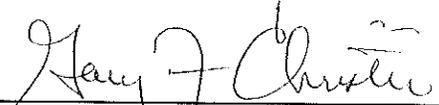
(b) Nothing in this section shall be deemed to limit the authority of the County to apply to the County Circuit Court for injunctive relief to enjoin a violation or threatened violation of this Article, or to seek damages in a civil action, including but not limited to the recovery of any cost(s) incurred for any conservation action undertaken by the County to preserve the Chesapeake Bay Preservation Area in accordance with this Article.

(c) With the consent of any person who: (i) violates any provision of this Article related to the protection of water quality in Chesapeake Bay Preservation Areas or (ii) violates or fails, neglects, or refuses to obey any notice, order, rule,

regulation, or variance or permit condition issued by the County and authorized under this Article, 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 in which the violation occurred for the purpose of abating environmental damage to or restoring Chesapeake Bay Preservation Areas therein, except that where the violator is found to be the County 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 subsection (1) above. Civil charges may be in addition to the cost of any restoration required or ordered by the County or the Director of Planning.

BE IT FURTHER ORDAINED that the provisions contained herein shall be immediately in effect upon adoption.

Attested:



Gary F. Christie
County Administrator



Julian T. Lipscomb, Sr.
Chairman