

CHAPTER 11

**CHESAPEAKE BAY PRESERVATION ORDINANCE**

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### **Sec. 11-1 . TITLE**

This Ordinance (hereinafter "the Ordinance") shall be known and may be cited as the Town of Clifton Chesapeake Bay Preservation Ordinance.

### **Sec. 11-2. FINDINGS OF FACT**

The Chesapeake Bay is one of the most important and productive estuaries in the world, providing substantial economic and social benefits to the people of the Town of Clifton and the Commonwealth of Virginia. Healthy state and local economies are integrally related to and dependent upon the health of the Chesapeake Bay; therefore the general welfare of the people of the Commonwealth depends upon the health of the Bay.

Waters of the Chesapeake Bay and its tributaries have been degraded significantly by nonpoint source pollution. By contributing to nonpoint source pollution, damage to and improper development of lands hereby designated by the Town Council as Chesapeake Bay Preservation Areas (hereinafter CBPA's) threatens public safety and the general welfare. These lands need to be protected from destruction and damage in order to protect the quality of water in the Bay and consequently the quality of life in the Town of Clifton and the Commonwealth of Virginia.

### **Sec. 11-3. PURPOSE**

- a. The Chesapeake Bay Preservation Ordinance for the Town of Clifton is enacted to implement the requirements of the Chesapeake Bay Preservation Act (Sec.10.1-2100 et seq of the Code of Virginia) and its subsequent regulations (Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC10-20-10 et seq.)). It is the policy of the Town of Clifton to protect the quality of water in the Chesapeake Bay and its tributaries and, to that end, to require all land uses in CBPA's and development in CBPA's to avoid or minimize damage to CBPA's in an effort to achieve the following:
  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 nonpoint source pollution;
  3. prevention of any increase in nonpoint source pollution;
  4. reduction of existing nonpoint source pollution;
  5. promotion of water resource conservation in order to provide for the health, safety and welfare of the present and future citizens of the Town of Clifton and the Commonwealth of Virginia.
- b. **GOAL AND INTENT.** The goal and intent of the ordinance is to minimize potential nonpoint source pollution from stormwater runoff, minimize potential erosion and sedimentation, reduce the introduction of nutrients and toxins into state waters affecting the Chesapeake Bay, maximize rainwater infiltration while protecting groundwater, and ensure the long-term performance of the measures hereby employed.

### **Sec. 11-4. AUTHORITY AND ADMINISTRATION**

- a. **Authority.** This ordinance is enacted under the authority of section 10.1-2100 *et seq.* of the Code of Virginia (the Chesapeake Bay Preservation Act) and section 15.2-2283 of the Code of Virginia. Authority to protect water quality is also provided by Title 15.2-2283 of the Code of Virginia
- b. **Administration.** The Planning Commission is hereby delegated the authority and power by the Town of Clifton to administer this Ordinance. The Commission shall perform these duties by assuring that all requirements set forth in this Chapter 11,

"Chesapeake Bay Preservation Act Ordinance," are evaluated and duly considered by the Commission in making their recommendations to the Town Council for the approval (or disapproval) of any plans of development including Use Permits, Subdivision development and construction plats and plans or other such similar requests/ applications. Commission recommendations will be pursuant not only to this Chapter, but shall also be governed by the underlying Chapters of the Town of Clifton Ordinances including: the "Zoning Ordinance" and the "Subdivision Ordinance," respectively.

- c. Administration Technical Assistance. The Planning Commission may require external (i.e., consultant, engineer, and/or inspection or review agent) technical assistance in the analysis and review of Use Permit Applications and/or Subdivision plats and plans to determine compliance with the requirements of this ordinance. In such instances the Commission is granted authority by the Town Council to obtain that assistance from: (1) consultant(s), (2) licensed engineer(s), (3) review agency (ies) (i.e., Chesapeake Bay Local Assistance Department, or other), and/or (4) inspection agency (ies) and to require that the applicant be responsible for those costs incurred by the Commission. The "Subdivision Ordinance" further delineates those fees as may be required of the applicant.

#### **Sec. 11-5. DEFINITIONS**

The following words and terms used in the Ordinance have the following meanings, unless the context clearly indicates otherwise.

- a. "Best Management Practice (BMP)" means a practice, or combination of practices, that is determined by a state or designated area-wide planning agency to be the most effective, practicable means for preventing or reducing the amount of pollution generated by nonpoint sources to a level compatible with water quality goals of this Ordinance.
- b. "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.
- c. "Chesapeake Bay Preservation Area (CBPA)" means any land designated by Town of Clifton pursuant to section 11-8 of this Ordinance and Section 2107 of Title 10.1 of the Code of Virginia. The Chesapeake Bay Preservation Area consists of a Resource Protection Area (RPA) and a Resource Management Area (RMA).
- d. "Development" means the construction or substantial alteration of residential, commercial, industrial, institutional, recreational, transportation, or utility facilities or structures.
- e. "Floodplain" means all lands that would be inundated by flood water as a result of a storm event of a 100-year return interval.
- f. "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.
- g. "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 Survey Handbook" of November 1996 in the "Field Office Technical Guide: of the U.S. Department of Agriculture Natural Resources Conservation Service.
- h. "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.
- i. "Land Disturbing Activity" means any practice by which the existing contour/surface area of the soil totalling 2500 square feet or greater is modified, provided, however, that this does not apply to activities in the Resource Protection Area.
- j. "Nonpoint Source Pollution" means contamination from diffuse sources that is not regulated as point source pollution under section 402 of the Clean Water Act.

- k. "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 404 of the Federal Clean Water Act, in 33 CFR 328.3b.
- l. "Plan of Development" means any process for plan review under the provisions of this Ordinance and the Subdivision Ordinance and the Zoning Ordinance designed to ensure compliance with §10.1-2109 of the Act and this Ordinance, prior to the issuance of a building permit.
- m. "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 (§10.1-560 *et seq.* of the Code of Virginia) and ii. the Virginia Stormwater Management Act (§10.1-603 *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 a local government in accordance with the standards of that local government.
- n. "Redevelopment" means the process of developing land that is or has been previously developed, to the extent that there is no net increase in the building footprint.
- o. "State waters" means all waters on the surface or in the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction.
- p. "Substantial alteration" means any expansion or modification of a building, or development which would result in a disturbance of land exceeding an area of 2500 square feet in the Resource Management Area only.
- q. "Resource Management Area" means that component of the Chesapeake Bay Preservation Area that is not classified as the Resource Protection Area. RMAs include land types that, if improperly used or developed, have the potential for causing significant water quality degradation or for diminishing the functional value of the Resource Protection Area. "Resource Protection Area" means that component of the Chesapeake Bay Preservation Area comprised of lands adjacent to water bodies with perennial flow 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.
- r. "Use" means an activity on the land other than development, including, but not limited to agriculture, horticulture, and silviculture.
- s. "Water Dependent Facility" means a facility development of land that cannot exist outside of the Resources Protection Area. These facilities are limited to the outfall structure of storm sewers.

#### **Sec. 11-6. SEVERABILITY**

If any provision herein is declared unlawful, it shall be struck from the text leaving the remaining provisions in effect.

#### **Sec. 11-7. VALIDITY**

If any of the Articles, Sections, Paragraphs, sentences, clauses or phrases of this Ordinance shall be declared unconstitutional or invalid by a valid judgment or decree of a court or competent jurisdictions, such unconstitutionality or invalidity shall not affect the validity of the Ordinance in its entirety or any of the remaining Articles, Sections, Paragraphs, sentences, clauses, and phrases.

#### **Sec. 11-8. AREAS OF APPLICABILITY**

This ordinance shall apply to all lands in Chesapeake Bay Preservation Areas (CBPA's), which shall include lands that meet the designation criteria in this section. CBPA's are divided into Resource Protection Areas (hereinafter "RPA") and Resource Management Areas (hereinafter "RMA") that are subject to the use restrictions and regulations in this ordinance. RPA's are protected from most development because, left intact, they function to improve and protect water quality. RMA's, which include all areas in the Town of Clifton outside of RPA's, are regulated to protect both the associated RPA and water resources from degradation resulting from development and land disturbing activity.

- a. RPA's. Resource Protection Areas consist of sensitive 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 that are sensitive to uses or activities such that the use results in significant degradation to the quality of State Waters. In their natural condition, these lands provide for the removal, reduction, or assimilation of nonpoint source pollution entering the Bay and its tributaries. RPA's shall include land characterized by one or more of the following features:
  1. A Nontidal Wetland connected by surface flow and contiguous to a tidal wetland or water body with perennial flow; and
  2. A buffer area consisting of any land within 100 feet of a feature listed in (1) above and along both sides of any water body with perennial flow.
- b. RMA's. Resource Management Areas means that component of the Chesapeake Bay Preservation Area (CBPA) comprise of lands 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 RMA is generally characterized by the following land categories: floodplains, highly erodible soils, including steep slopes; highly permeable soils; and nontidal wetlands not included in the RPA.

#### **Sec. 11-9. INCORPORATION OF CBPA BOUNDARIES INTO ZONING ORDINANCE**

- a. Incorporating RPA's and RMA's by Reference. The above designation criteria which define the boundaries of RPA's and RMA's are incorporated by reference with this section into the Town of Clifton Ordinance including the "Zoning Ordinance" and the "Subdivision Ordinance." The Clifton CBPA Map shows the general location of CBPA's and should be considered by persons contemplating activities within the Town of Clifton prior to engaging in a regulated activity. However, this Map should be considered a planning tool. Boundaries of RPA's shall be delineated by the applicant during the plan of development process as outlined in Section 11-15 of this Ordinance or through the review of a water quality impact assessment as required Section 11-15.c or as established by the Town Council and in accordance with provisions of this Ordinance.
- b. RPA Boundaries. The boundaries of RPAs and RMAs are drawn based on available mapping resources. The Town Council shall determine site specific boundaries based on more reliable field data developed and examined during the plan of development process or through the review of a water quality impact assessment.
  1. It is the burden of the applicant to show the appropriate RPA boundaries, applying the criteria in 11-8 above, in all subdivision plats and plans (including water quality impact assessments), development or construction plats and plans and/or Use Permit Applications submitted for review. Where RPA boundaries on the adopted map may differ from boundaries as determined from the text of this Ordinance, the text shall govern. Such boundary locations shown on plans of development can be approved, modified or disapproved by the Town Council.
    2. Any landowner or agent of the landowner may submit certification from a professional engineer, land surveyor or landscape architect certified or licensed to practice in the Commonwealth of Virginia for review and approval by the Town Council.
- c. Lands Meeting Definition of CBPA Component Presumed to Exist. Lands that meet the above definition of a component of a CBPA (section 11-8 of the Ordinance) but not identified on the Clifton CBPA map are presumed to exist in the Town of Clifton and are hereby designated to be within the CBPA and protected under all of the terms and provisions of this ordinance.

- d. When this Ordinance Shall Govern. Whenever any provision of this Ordinance imposes a greater requirement or a higher standard than is required in any State or Federal statute or other Town of Clifton or Fairfax County ordinance or regulation, the provision of this Ordinance shall govern. Whenever any provision of any State or Federal statute or other Town of Clifton or ordinance or regulation imposes a greater requirement or a higher standard than is required by this Ordinance, the provision of such State or Federal statute or other Town of Clifton ordinance or regulation shall govern.

#### **Sec. 11-10. ALLOWED DEVELOPMENT IN RPA'S**

Development shall be allowed in the RPA only when permitted by the Town Council and if it is water dependent as designated in this Ordinance, constitutes redevelopment as permitted in the underlying zoning district, and is in compliance with all requirements in this Ordinance. A water quality impact assessment shall be required for any proposed land distributing activity, redevelopment or development in accordance with Sec. 11-15.3 of this Ordinance.

#### **Sec. 11-11. ALLOWED DEVELOPMENT IN RMA'S**

Permitted uses, special permit uses, accessory uses, and special requirements shall be as established by the underlying zoning district, unless modified by the performance requirements set forth section 11-12.

#### **Sec.11-12. GENERAL PERFORMANCE REQUIREMENTS FOR DEVELOPMENT AND REDEVELOPMENT IN CBPA'S**

In order to attain the water quality objectives set forth in section 11-3 (the "purpose") of this ordinance, development and redevelopment in all components of CBPA's must meet and maintain the performance criteria set forth in sections 11-12 through 11-13.

- a. When the Town Council Shall Approve a Development or Redevelopment. The Town Council shall approve a proposed development or redevelopment greater than 2500 square feet only if it is found that the regulated activity is determined to be in accordance with this Ordinance and that the applicant has demonstrated to the Town Council by a preponderance of the evidence that the proposed development, or redevelopment meets or exceeds the following performance criteria:
  - 1. Any land disturbing activity that exceeds an area of 2,500 square feet shall be subject to a plan of development process, including the approval of a site plan in accordance with the provisions of the Zoning Ordinance or a subdivision plat in accordance with the Subdivision Ordinance. The construction of single family dwellings, septic tanks and drainfields shall not be exempt from this requirement.
  - 2. No more land shall be disturbed that is necessary to provide for the proposed use or development.
  - 3. Indigenous vegetation shall be preserved to the maximum extent practicable consistent with the use or development proposed;
  - 4. Land development shall minimize impervious cover consistent with the proposed use or development or redevelopment.
  - 5. Stormwater Quality Management Requirements:
    - A. For any development or redevelopment, stormwater runoff shall be controlled by the use of best management practices (BMP's) consistent with the water quality protection provisions of the Virginia Stormwater Management Regulations (4VAC3-20-10 et.seq.).
      - i. For development, the post-development nonpoint source pollution load shall be reduced by no less than fifty (50) percent compared to the nonpoint source pollution load projected for the development without treatment.

- ii. For redevelopment sites, the nonpoint source pollution load shall be reduced by at least ten (10) percent. The Town Council may waive or modify this requirement for redevelopment sites that originally incorporated water quality BMPs, provided the following provisions are satisfied:
      - a. In no case may the post-development nonpoint source pollution runoff load exceed the pre-development load;
      - b. Runoff pollution loads must have been calculated and the BMPs selected for the expressed purpose of controlling nonpoint source pollution;
      - c. If BMPs are structural, evidence shall be provided that facilities are in good working order and performing at the design levels of service. The Town Council may require 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 Ordinance.
    - iii. For redevelopment, both pre- and post-development loadings shall be calculated by the same procedures. However, where the design data is available, the original post-development nonpoint source pollution loadings can be substituted for the existing development loadings.
- 6. Land upon which agricultural activities are being conducted shall undergo a soil and water quality conservation assessment. Such assessments shall evaluate 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 accomplished consistent with this Article.
- 7. Development and redevelopment exceeding 2500 square feet of land disturbance (including construction of all single family houses, septic tanks and drainfields) must comply with a local erosion and sedimentation control ordinance which by Town of Clifton Resolution pursuant to §21-89.5 is the Fairfax County Erosion & Sediment Control Ordinance. That ordinance is administered for the Town of Clifton by Fairfax County.
- 8. Onsite sewage treatment systems not requiring a Virginia Pollutant Discharge Elimination System (VPDES) permit shall:
  - a. have pump-out accomplished for all such systems at least once every five years
  - b. for new construction, provide a reserve sewage disposal site with a capacity at least equal to that of the primary sewage disposal site. Building shall be prohibited on the area of all sewage disposal sites until the structure is served by public sewer or an onsite sewage treatment system which operates under a permit issued by the State Water Control Board. All sewage disposal records shall be administered to provide adequate notice and enforcement;
  - c. compliance with Chapter 68 of the Fairfax County Code shall be deemed to constitute compliance with this requirement.

This requirement shall not apply to any parcel of land for which a site plan or preliminary subdivision plat was filed on or before May 21, 1973, and approved by November 20, 1976, if the Director of Health Services determines the parcel to have insufficient capacity to accommodate a reserve sewage disposal site except as may be required in the Commonwealth of Virginia Sewage Handling and Disposal Regulations.

- 9. The Town Council shall require certification on all plans of development and redevelopment that all wetlands permits required by law will be obtained prior to commencement of land disturbing activities. No land disturbing activity requiring wetlands permits shall commence until all such permits have been obtained by the applicant.



- b. The Town Council shall ensure that these standards are met through the Use Permit Application review process of the Zoning Ordinance and/or through development and construction plats and plans reviewed as required by the Subdivision Ordinance for Subdivisions. Also, any development or redevelopment exceeding 2500 square feet of disturbance must be reviewed as to compliance with this ordinance, as well as with the underlying ordinances including the Zoning Ordinance and the Subdivision Ordinance.

**Sec. 11-13. ADDITIONAL PERFORMANCE REQUIREMENTS FOR RPA'S**

- a. Roads and Driveways that are Not Exempt. Roads and driveways not exempt under this ordinance may be constructed in or across Resource Protection Areas if each of the following conditions is met:
  - 1. The Town makes a finding that there are no reasonable alternatives to aligning the road or driveway in or across a Resource Protection Area;
  - 2. The alignment and design of the roadway are optimized, consistent with other applicable requirements, to minimize 1. encroachment in the Resource Protection Area and 2. adverse effects on water quality;
  - 3. The design and construction of the road or driveway satisfy all applicable criteria of this ordinance, including submission of a water quality impact assessment;
  - 4. The plan for the road or driveway proposed in or across the RPA is reviewed by the Town as part of a use permit, subdivision and/or plan of development approval process.
- b. When the Town Council may Permit a Water Dependent Facility. The Town Council may permit redevelopment or development of a new or expanded water-dependent facility in a RPA provided that the applicant has demonstrated by a preponderance of the evidence that the regulated activity meets or exceeds the following standards:
  - 1. all performance requirements set forth in this ordinance;
  - 2. the non-water dependent component of a proposed development is located outside of the RPA;
  - 3. access is provided with the minimum disturbance necessary; where possible, a single point of access will be provided;
  - 4. the activity is consistent with the requirements of the comprehensive plan;
  - 5. redevelopment in a RPA shall be permitted only if there is no increase in the amount of impervious cover, no further encroachment within the RPA and it conforms to stormwater management requirements and erosion and sediment control requirements of this ordinance.
- c. Buffer requirements.
  - 1. To minimize the adverse effects of human activities on the other components of the RPA, state waters, and aquatic life, a 100-foot wide buffer area of vegetation 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.
    - A. The 100-foot buffer area adjacent to any component of the RPA and along both sides of a water body with perennial flow shall be deemed to achieve a 75% reduction of sediments and a 40% reduction of nutrients.
    - B. 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 Ordinance.

- C. In order to maintain the functional value of the buffer area, indigenous vegetation may be removed only, as permitted by the designated authority, to provide for reasonable sight lines, access paths, general woodlot management, subject to the following:
  - i. 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.
  - ii. Any path shall be constructed and surfaced so as to effectively control erosion.
  - iii. Dead, diseased, or dying trees or shrubbery and noxious weeds (such as Johnson grass, kudzu, and multiflora rose) may be removed and thinning of trees may be allowed pursuant to sound horticultural practice as recommended by the Town or by a professional forester, arborist, or County extension agent, upon review and approved by the Town.
  - iv. Artificial maintenance of buffers with chemical fertilizers, herbicides and pesticides shall be avoided except after other efforts to preserve or establish vegetation in a buffer have failed.
  
- D. Modifications to buffer requirements.
  - i. 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 in accordance with the following criteria:
    - a. encroachments into the buffer area shall be minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities;
    - b. if 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; and
    - c. the encroachment may not extend into the seaward 50 feet of the buffer area.

**Sec. 11-14. ADMINISTRATIVE WAIVERS AND EXEMPTIONS FROM THE CHESAPEAKE BAY PRESERVATION ORDINANCE**

- a. Nonconforming Use and Development Waivers. The Town Council may permit the continued use, but not necessarily the expansion of any structure in existence on the date of the adoption of this Ordinance. No change or expansion of use shall be allowed with the exception that:
  - 1. The Planning Commission may grant a nonconforming use and development waiver for structures on legal nonconforming lots or parcels to provide for remodeling and alterations to such nonconforming structures provided that:
    - A. There will be no net increase in nonpoint source pollution load;
    - B. Any development or land disturbance exceeding an area of 2,500 square feet complies with all erosion and sediment control requirements of this Article.
  - 2. An application for a nonconforming use and development waiver shall be made to and upon forms furnished by the Planning Commission and shall include for the purpose of proper enforcement of this Ordinance, the following information:

- 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, and boundary of the Resource Protection Area;
  - D. Location and description of any existing private water supply or sewage system.
3. A nonconforming use and development waiver shall become null and void twelve months from the date issued if no substantial work has commenced.
  4. An application for the expansion of a nonconforming principal structure may be approved by the designated authority through an administrative review process provided that the following findings are made:
    - A. The request for the waiver is the minimum necessary to afford relief;
    - B. Granting the waiver will not confer upon the applicant any specific privileges that are denied by this Ordinance to other property owners in similar situations;
    - C. The waiver is in harmony with the purpose and intent of this Article and does not result in water quality degradation;
    - D. The waiver is not based on conditions or circumstances that are self-created or self-imposed;
    - E. Reasonable and appropriate conditions are imposed, as warranted, that will prevent the waiver from causing a degradation of water quality;
    - F. Other findings, as appropriate and required by Town of Clifton are met; and
    - G. In no case shall this provision apply to accessory structures.
- b. Public Utilities, Railroads, and Facilities Exemptions.
1. 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 (i) 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), (ii) an erosion and sediment control plan and a stormwater management plan approved by the Virginia Department of Conservation and Recreation, or (iii) local water quality protection criteria at least as stringent as the above state requirements will be deemed to constitute compliance with this Ordinance. The exemption of public roads is further conditioned by Section 11-13.1 of this Ordinance since section 11-13.1 outlines the conditions for construction of public roads.
  2. Construction, installation, and maintenance of water, sewer, natural gas, underground telecommunications and cable television lines owned, permitted or both by the Town of Clifton shall be exempt from the criteria in this part provided that:
    - A. to the degree possible, the location of such utilities and facilities should be outside Resource Protection Areas;
    - B. No more land shall be disturbed than is necessary to provide for the proposed utility installation;

- C. 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;
- D. Any land disturbance exceeding an area of 2,500 square feet complies with all erosion and sediment control requirements of this part.

c. 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 subdivisions 1 through 4 below: 1. water wells; 2. Passive recreation facilities such as boardwalks, trails, and pathways; and 3. historic preservation and archaeological activities.

- 1. Any required permits except those to which this exemption specifically applies, shall have been issued;
- 2. Sufficient and reasonable proof is submitted that the intended use will not deteriorate water quality;
- 3. The intended use does not conflict with nearby planned or approved uses; and
- 4. Any land disturbance exceeding an area of 2500 square feet shall comply with the erosion and sediment control requirements of the Town of Clifton.

d. Exceptions. Exceptions of the requirements of sections 11-10 and 11-13 of this Ordinance may be granted, provided that:

- 1. A request for an exception to the requirements of sections 11-10 and 11-13 of this Ordinance shall be made in writing to the Planning Commission. It shall identify the impacts of the proposed exception on water quality and on lands within the RPA through the performance of a water quality impact assessment which complies with the provisions of Section 11-15.3 of this Ordinance.
- 2. The Planning Commission shall review the request for an exception and the water quality assessment and may grant the exception with such conditions and safeguards as deemed necessary to further the purpose and intent of this Ordinance if the Planning Commission finds:
  - A. Granting the exception will not confer upon the applicant any special privileges that are denied by this Ordinance to other property owners within the Town;
  - B. The exception request is not based upon conditions or circumstances that are self-created or self-imposed, nor does the request arise from conditions or circumstances either permitted or non-conforming that are related to adjacent parcels;
  - C. The exception request is the minimum necessary to afford relief;
  - D. The exception request will be in harmony with the purpose and intent of the Ordinance, and not injurious to the neighborhood or otherwise detrimental to the public welfare and is not of substantial detriment to water quality; and
  - E. Reasonable and appropriate conditions are imposed which will prevent the exception request from causing a degradation of water quality.
- 3. If the Planning Commission cannot make the required findings or refuses to grant the exception, the Planning Commission 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, with a copy to the Town Council. The applicant may then apply to the Town Council for an exception.
- 4. The Town Council shall consider the water quality impact assessment and the findings and rationale of the Planning Commission in determining harmony with the intended spirit and purpose of this Ordinance.

5. The Town of Clifton shall notify the affected public of any such exception requests and shall consider these requests in a public hearing in accordance with §15.2-2204 of the Code of Virginia, except that only one hearing shall be required.
6. A request for an exception to the requirements of provisions of this Ordinance other than Sections 11-10 and 11-13 Additional Performance Requirements for RPAs, shall be made in writing to the Planning Commission. The Planning Commission may grant these exceptions provided that:
  - A. Exceptions to the requirements are the minimum necessary to afford relief; and
  - B. Reasonable and appropriate conditions are placed upon any exception that is granted, as necessary, so that the purposed and intent of this Ordinance is preserved.

#### **Sec. 11-15. PLAN OF DEVELOPMENT CRITERIA, REQUIREMENTS AND EVALUATION PROCEDURES**

- a. Application Fees, Submission of Drawings and other Information.
  1. Application for a Plan of Development approval shall be made to the Town Clerk and the fee for such application shall be \$25.00. The original of the application and the fee for the application shall be delivered to the Town Clerk. Twelve (12) copies of the Plan of Development application and twelve (12) copies of all site drawings and other applicable information incorporating the requirements of this Ordinance shall be submitted to the Planning Commission for review at least two weeks prior to the Commission hearing date. This Plan of Development application may be filed separately or in conjunction with a use permit or subdivision application.
  2. All information required in this section shall be certified as complete and accurate by a professional engineer.
  3. As part of its review of an application, the Planning Commission may require a review by its chosen consultants or by the Chesapeake Bay Local Assistance Department (CBLAD) to determine compliance with this ordinance. CBLAD comments are advisory only. Any costs incurred in the application review process will be the responsibility of the applicant/Land owner and must be paid for prior to approval of the application.
  4. When submitting a plan for review, an applicant shall include the following information as applicable. The Planning Commission may request additional information as necessary due to the scope and nature of the proposed project.
    - A. General Information:
      - i. Date and name of project.
      - ii. A Boundary survey of the site or site drawing showing north arrow, scale, property line measurements, and existing and proposed zoning.
      - iii. A description of the proposed project including a description of the proposed use or uses, location, dimensions of proposed or existing structures including marine and temporary structures, and adjacent land uses.
      - iv. Location of all building restriction lines, setbacks, easements, covenant restrictions, and rights-of-way on and adjacent to the site including off-site roads.
      - v. Location and dimensions of all driveways, parking areas and other impervious surfaces with indication of the type of surface material.

- vi. Computations of total site area in acres, the amount and percent of the site to be cleared for the project, and the amount and percent to be covered by impervious surface after development.
- vii. Copies of all permits from applicable agencies necessary to develop the project, especially wetlands permits.
- viii. Existing and proposed topography and general soils information.
- ix. The location of all RPA features, including the 100 foot buffer and any water body with perennial flow.
- x. Specifications for the preservation of existing vegetation, re-establishment of denuded areas, and supplemental planting.
- xi. Location and description of all existing and proposed on-site sewage disposal systems including reserve sites, and of all existing and proposed wells.
- xii. Location and description of all erosion and sediment control devices.

b. Stormwater Management. NOTE: This information shall be submitted in addition to the General Information if stormwater management is required for water quality protection.

- 1. Stormwater management calculations (Virginia Stormwater Management Handbook).
- 2. A brief explanation of the selected Best Management Practices (including nonstructural practices and techniques) and how they were determined.
- 3. Location and design of planned stormwater control devices. In addition,
  - A. For structures involving embankments:
    - i. A typical cross-section through the embankment showing any necessary core, and all design elevations including any freeboard allowances;
    - ii. The composition of core material.
    - iii. Latitudinal and longitudinal cross-sections of any outlet structure.
  - B. For infiltration facilities:
    - i. Typical cross-sections;
    - ii. Composition of trench materials.
    - iii. Soil data supporting trench viability.
- 4. For detention and retention facilities, hydrologic calculations including:
  - A. Rainfall intensities or characteristics;
  - B. Existing and proposed drainage areas mapped (in acres);
  - C. Runoff coefficients or runoff curve numbers;

- D. Times of concentration. Any overland flow over 200 feet used in computations must be documented on a map;
  - E. Storm routings with full hydrographs for all design storm events (normally the 2- and 10-year storms).
5. Hydraulic calculations including:
- A. For any pipe or culvert structure:
    - i. Inlet and outlet elevations;
    - ii. Length and diameter or height;
    - iii. Manning's roughness coefficient;
    - iv. Verification of inlet/outlet control conditions.
  - B. For any stream or channel analysis:
    - i. Channel bottom profile and 100' cross-sections;
    - ii. Manning's roughness coefficient determination for each different channel reach.
6. All engineering calculations must be performed in accordance with the procedures outlined in the current edition of the Virginia Stormwater Management Handbook.
7. The plan shall establish a long-term schedule for inspection and maintenance for the planned Best Management Practices, including all maintenance requirements, persons responsible for performing maintenance, and any agreement necessary to ensure the maintenance is carried out.
- c. Water Quality Assessment Information.

NOTE: This information shall be submitted in addition to the General Information and Stormwater Management for any proposed land development or redevelopment in the Resource Protection Area or for any other development as deemed necessary by the Planning Commission, because of the unique characteristics of the site or intensity of the proposed use or development. The water quality impact assessment shall include but not be limited to the following:

- 1. Location and nature of the proposed encroachment into the buffer area, including justification for such encroachment.
- 2. Hydrogeology (for major impacts only):
  - A. Disturbance or encroachment into RPA features and justification for action;
  - B. Disruptions or reductions in the supply of water to wetlands, streams, lakes, rivers, or other water bodies;
  - C. Disruptions to existing hydrology including wetlands and stream circulation patterns;
  - D. Location of dredge material and location of dumping area for such material;
  - E. Location of and impacts on shellfish beds, SAV, and fish spawning areas;
  - F. Description of proposed mitigation measures for identified hydrogeological impacts.

3. Landscaping:
    - A. Location and description of all existing plant material;
    - B. Clear delineation of all existing plant material;
    - C. Proposed mitigation measures for land disturbance.
  4. Wastewater:
    - A. Description of wastewater disposal techniques, including calculations and locations of on-site sewage disposal systems, and techniques and standards for wastewater system and sewer line construction;
    - B. Discussion of potential wastewater disposal impacts on water quality and proposed mitigation measures for such impacts.
  5. Identification of existing characteristics and conditions of RPA and RMA features.
  6. Additional information shall be required as deemed necessary by the Planning Commission to demonstrate compliance with the criteria of this Ordinance.
- d. Evaluation Procedures for Water Quality Impact Assessments.
1. Upon the completed review of an application, the Planning Commission will determine if any proposed encroachment into the buffer area is consistent with the provisions of this Ordinance 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 best management practices, where required, achieve the requisite reductions in pollutant loadings;
    - D. The development, as proposed, meets the purpose and intent of this Ordinance;
    - E. 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.
  2. Upon the completed review of an Application, the Planning Commission will determine if the proposed development is consistent with the purpose and intent of this Ordinance and makes a finding based upon the following criteria:
    - A. Within any RPA, the development, if proposed is water-dependent; the development or redevelopment, if proposed does not increase impervious surfaces and/or is in accordance with the provisions of this Ordinance.
    - B. The disturbance of any wetlands will be minimized;
    - C. The development will not result in unnecessary disruption of the hydrology of the site;
    - D. The development will not result in unnecessary degradation to aquatic vegetation or life;



- E. The development will not result in unnecessary destruction of plant materials on site;
  - F. Proposed erosion and sediment control measures are adequate to achieve the reductions in erosion and minimize off-site sedimentation;
  - G. Proposed stormwater management concepts are adequate to control the stormwater runoff to achieve the required performance standard for pollution control;
  - H. The development, as proposed, is consistent with the purpose and intent of any other Town Ordinances.
    - i. 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.
3. The Planning Commission shall require additional mitigation where potential impacts have not been adequately addressed. Evaluation of mitigation measures will be made by the Planning Commission based on the criteria listed above.
  4. The Planning Commission shall find the proposal to be inconsistent with the purpose and intent of this Ordinance when impacts created by the proposal cannot be mitigated. Evaluation of the impact will be made by the Planning Commission based on the criteria listed above.
  5. In the event that the plan or stormwater management plan is not approved or required modifications are unacceptable to the applicant, the applicant may appeal such administrative decision to the Town Council. In granting the appeal, the Town Council must find the plan in accordance with all applicable ordinances and include necessary elements to mitigate any detrimental impact on water quality and upon adjacent property and the surrounding area, or such plan meets the purpose and intent of this Ordinance. If the Town Council finds that the applicant's plan does not meet the above state criteria, it shall deny approval of the plan.

#### **Sec. 11.16. ENFORCEMENT AND PENALTIES FOR VIOLATION**

The enforcement and penalties for violation shall be those set forth under sections 9-24 and 9-25 of Article 4 of the Zoning Ordinance.