

**PART 504**

**CHESAPEAKE BAY PRESERVATION AREA OVERLAY DISTRICT**

**32-504.01. Title.**

This ordinance shall be known and referenced as the "Chesapeake Bay Preservation Area Overlay District" of Prince William County.

**32-504.02. Findings of Fact.**

(1) The Chesapeake Bay is an important and productive estuary, providing economic and social benefits to the citizens of the Commonwealth of Virginia. The health of the bay is vital to maintaining the state's economy and the welfare of its citizens. Economic development and water quality protection not only may coexist, they must.

(2) The Chesapeake Bay waters have been degraded significantly by point source and nonpoint source pollution from land uses and development along the shores of the Bay, its tributaries and other state waters. Existing high quality waters are worthy of protection from degradation to guard against further pollution. Certain lands that are proximate to shorelines have intrinsic water quality value due to the ecological and biological processes they perform. Other lands have severe development constraints from flooding, susceptibility to erosion, and soil limitations. With proper management, such lands offer significant ecological benefits by providing water quality maintenance and pollution control, as well as flood and shoreline erosion control. These lands together, designated by the Board of County Supervisors of Prince William County as Resource Protection Areas and Resource Management Areas comprise Chesapeake Bay Preservation Areas, in accordance with the requirements of the Chesapeake Bay Preservation Act, Sections 10.1-2100, *et seq.*, of the Code of Virginia ("the Act"), and 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 Commonwealth of Virginia.

(3) The mandates of the Act constitute a material change in circumstances substantially affecting the public health, safety and welfare and necessitating an appropriate legislative response by the Board of County Supervisors.

**32-504.03. Purpose and Intent.**

(1) This ordinance is enacted to implement the requirements of the Act. The intent of the Board of County Supervisors and the purpose of the Chesapeake Bay Preservation Area Overlay District is to: (a) protect existing high quality state waters; (b) restore all other state waters to a condition or quality that will permit all reasonable public uses and will support the propagation and growth of all aquatic life, including game fish, which might reasonably be expected to inhabit them; (c) safeguard the clean waters of the Commonwealth from

pollution; (d) prevent any increase in pollution; (e) reduce existing pollution, and (f) promote water resource conservation in order to provide for the health, safety, and welfare of the present and future citizens of Prince William County.

(2) This district shall be in addition to and shall overlay all other zoning districts where they are applied so that any parcel of land lying in the Chesapeake Bay Preservation Area Overlay District shall also lie in one or more of the other zoning districts provided for by this chapter. Unless otherwise stated in these regulations, the review and approval procedures otherwise provided for in this chapter and in Chapter 25 of the Prince William County Code, and the Design and Construction Standards Manual shall be followed in reviewing and approving development and uses governed by these regulations.

(3) This ordinance is enacted under the authority of the Act and Section 15.2-2283 of the Code of Virginia. Section 15.2-2283 states that zoning ordinances may "also include reasonable provisions, not inconsistent with applicable state water quality standards, to protect surface water and groundwater as defined in Section 62.1-255."

(4) With regard to designation of Resource Management Areas in the county as required by the regulations, it is the finding of the Board of County Supervisors that it is authorized by Sections 10.1-2109 of the Code of Virginia, in addition to the authority cited above, to enact the measures attending development in Resource Management Areas without regard to the mandates of the Act, that the restrictions thereon attending constitute good development practice; that adoption of Resource Management Area restrictions for less than all the county is unworkable and that, indeed, virtually all of the development practices mandated by the Act have heretofore been required in all or part of the county.

**32-504.04. Definitions.**

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

"Agricultural land uses" mean activities such as the tilling of the soil, planting and harvesting of crops or plant growth of any kind in the open; pasture; horticulture; dairying; floriculture; or raising of poultry or livestock. This does not include ancillary noncommercial agricultural activities on lands within existing platted residential subdivisions.

"Applicant" means a person seeking any determination under this part or permit required by this ordinance.

"Chesapeake Bay Preservation Area" - Any land so designated by the Board of County Supervisors pursuant to Part III of the Chesapeake Bay Preservation Area Designation and Management Regulations, 9 VAC 10-20-070, et seq., and Section 10.1-2109 of the Code of Virginia. Chesapeake Bay Preservation Areas shall consist of

Resource Protection Areas (RPAs) and Resource Management Areas (RMAs).

"Chesapeake Bay Preservation Area Review Board" - Chesapeake Bay Preservation Area Review Board - Board of County Supervisors appointed body which reviews exception requests for encroachment into RPA, and takes action following a public hearing.

"Floodplain" means all lands that would be inundated by flood water as a result of a storm event of a 100 year return interval. The limits of the floodplain shall be established in accordance with ~~of~~ the Design and Construction Standards Manual.

"Highly Erodible Soils" - Soils (excluding vegetation) with an erodibility index (EI) from sheet and rill erosion equal to or greater than eight (8). 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.

"Highly Permeable Soils" - 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 (6) inches of water movement per hour in any part of the soil profile to a depth of seventy-two (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.

"Infill IDA" means utilization of vacant land in previously intensely developed areas.

"Intensely Developed Area (IDA)" means those areas designated by the Board of County Supervisors to meet the criteria for designation as an Intensely Developed Area pursuant to the Code of Virginia, Section 9 VAC 10-20-60 of the Chesapeake Bay Preservation Area Designation and Management regulations.

"Nontidal Wetlands" - Those wetlands other than tidal wetlands that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support and that, under normal circumstances, do support a prevalence of vegetation typically adapted for life in saturated soil conditions, as defined by the U.S. Environmental Protection Agency, pursuant to Section 404 of the Federal Clean Water Act, in 33 C.F.R. 328.3b.

"Private road" means a privately owned and maintained road designed and constructed in accordance with the Design and Construction Standards Manual.

"Public road" means a publicly owned road designed and constructed in accordance with the Design and Construction Standards Manual or the Virginia Department of Transportation standards.

"Redevelopment" means the process of developing land that is or has been previously developed lawfully under then-existing regulations.

"Resource Management Area (RMA)" means that component of the Chesapeake Bay Preservation Area that is not classified as the Resource Protection Area and includes 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 Areas.

"Resource Protection Area (RPA)" 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.

"RPA 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.

"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 Section 10.1-1105 of the Code of Virginia and are located on property defined as real estate devoted to forest use under Section 58.1-3230 of the Code of Virginia.

"Substantial alteration" means expansion or modification of a building or development which would result in a disturbance of a land exceeding an area of 2,500 square feet in a Resource Management 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" - Vegetated and nonvegetated wetlands as defined in Section 28.2-1300 of the Code of Virginia.

"Water-dependent facility" means a development of land that cannot exist outside of a Resource Protection Area and must be located on the shoreline by reason of the intrinsic nature of its operation. For the purposes of this ordinance, these facilities include, but are not limited to, (i) ports; (ii) the intake and outfall

structures of power plants, of water treatment plants, of sewage treatment plants, and of 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 nontidal wetlands.

**32-504.05. Areas of Applicability.**

(1) The Chesapeake Bay Preservation Area Overlay District shall apply to all lands identified as a Resource Protection Area and Resource Management Area as designated herein and as determined by section 740 of the Design and Construction Standards Manual. The Chesapeake Bay Preservation Area Overlay District Map, as amended by the Board of County Supervisors, is hereby adopted by reference and declared to be a part of this ordinance, and is given the effect set out in Section 32-504.10.

(2) There is hereby established the Resource Protection Area which shall consist of lands adjacent to water bodies with perennial flow that would include:

(a) Tidal wetlands;

(b) Nontidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow tributary streams;

(c) Tidal shores;

(d) Perennial water bodies;

(e) A 100-foot area located adjacent to and landward of the components listed in subsections a. through d. above, and along both sides of a water body with perennial flow, to be known as the "RPA buffer area."

(f) Other lands with sensitive environmental features that have the potential of significantly affecting water quality as determined by the Director of Public Works.

(3) Because of the prevalence of the following land categories: floodplains, highly erodible soils, including steep slopes, highly permeable soils and nontidal wetlands not included in the RPA; that portion of Prince William County not comprising a Resource Protection Area is hereby designated as a Resource Management Area. In accordance with the provisions of the Design and Construction Standards Manual, an applicant may establish those portions of his property which are exempt from the provisions of this ordinance.

**32-504.06. Permitted Uses.**

(1) Uses permitted in Resource Management Areas shall include all uses permitted in the underlying zoning district(s), provided that all standards established by this part and all requirements otherwise imposed by this chapter are met.

(2) Uses permitted in Resource Protection Areas shall be limited to: (a) new or expanded water-dependent facilities as defined in section 504.04 above, or (b) redevelopment in intensely developed areas and as permitted in Part 601 of this chapter provided, however, that (i) water wells, (ii) passive recreation facilities such as boardwalks, trails and pathways; (iii) historic preservation and archaeological activities and (iv) regional storm water management facilities may be permitted in the RPA so long as they comply with the Design and Construction Standards Manual.

(3) Except as expressly provided in this part, or as approved within the RPA area in accordance with the requirements of the Design and Construction Standards Manual, no accessory or ancillary structures or uses may be located in the Resource Protection Area on properties recorded after November 27 1990 unless approved by exception in accordance with section 740.06C of the Design and Construction Standards Manual

**32-504.07. Intensely Developed Areas.**

(1) Intensely Developed Areas shall consist of those areas so designated on the Chesapeake Bay Preservation Area Overlay District map adopted herewith and any lots designated pursuant to subparagraphs (2) or (3) below.

(2) Any lot in an area of concentrated development which existed as a separate lot of record prior to November 27, 1990, and which was lawfully developed and in use on that date, may be designated as an Intensely Developed Area by the Board of County Supervisors, provided that one or more of the following conditions existed as of November 27, 1990.

(a) Development had severely altered the natural state of the lot such that it had more than 50% impervious surface;

(b) The lot is in an area served by public sewer and water; or

(c) The density existing in the area of the lot equals or exceeds four dwelling units per acre; and provided, further, that the use existing or proposed on the lot is consistent with the comprehensive plan in effect at the time determination of IDA status is made.

(3) Vacant or undeveloped lots of record on November 27, 1990, may be designated as Infill IDA, by the Board of County Supervisors, if the development proposed is consistent with the comprehensive plan in effect at the time determination of Infill IDA status is made and such

lots are located in areas served by public water and sewer, provided that such lots are generally surrounded by Intensely Developed Areas.

(4) For purposes of subsections (2) and (3), a lot is located in an area served by public water and sewer if sewer and water lines have been constructed and served the area on or before November 1990 and if the area lies within 500 feet of water and sewer lines into which it may be connected.

(5) The boundaries of an Intensely Developed Area shall ordinarily be determined by reference to the adopted Chesapeake Bay Preservation Overlay District map. In the event the map erroneously depicts the boundaries of any lot shown thereon, as an Intensely Developed Area, the owner may apply to the zoning administrator for correction thereof. The owner shall supply a certified metes and bounds description and plat depicting the boundary of his lot as well as any verification required by the zoning administrator that the lot was intended to be embraced in the IDA map.

(6) Designation of a lot as an Intensely Developed Area or Infill IDA shall be in addition to, and not in lieu of, the designation of Chesapeake Bay Preservation Areas upon such lot. Except for any land exempted by the Design and Construction Standards Manual, development or redevelopment upon any lot designated as an Intensely Developed Area or Infill IDA shall conform to all requirements for redevelopment, as established by this ordinance and the Design and Construction Standards Manual.

#### **32-504.08. Lot Size.**

Lot size containing RPA shall be subject to the requirements of section 741.03 of the Design and Construction Standards Manual and the underlying zoning district(s), provided that any lot shall have sufficient area outside the Resource Protection Area to accommodate an intended use, when this use is not otherwise allowed in the Resource Protection Area.

#### **32-504.09. Required Conditions.**

Except as otherwise exempted in this Part 504, all use and development shall be subject to a plan of development, including the approval of a site plan and required studies in accordance with section 742 of the Design and Construction Standards Manual and the provisions of Part 800 of this chapter, or a subdivision plan in accordance with Chapter 25 and with the provisions of the Design and Construction Standards Manual.

#### **32-504.10. Effect of Chesapeake Bay Preservation Area Overlay District Map.**

(1) Designation of land as RPA is made by text, as provided in section 740 of the Design and Construction Standards Manual and Section 32-504.05. The Chesapeake Bay Preservation Area Overlay District map adopted herewith shows the general location of Resource

Protection Areas and should be consulted prior to engaging in any regulated activity.

(2) The delineation of the RPA boundary shall be accomplished by the applicant in accordance with the requirements of the Design and Construction Standards Manual.

(3) Any person contemplating any land disturbing activity or grading for which no other county permit or approval is required that exceeds an area of 2,500 square feet on land designated as Resource Protection Area or a Resource Management Area on the adopted Chesapeake Bay Preservation Area Overlay District Map shall first submit for review and approval appropriate studies as required by the Design and Construction Standards Manual then secure a land disturbing permit.

**32-504.11. Performance Standards.**

In addition to any other applicable requirements, all development or redevelopment in the Chesapeake Bay Preservation Area Overlay District shall comply with the performance standards set out therefor in the Design and Construction Standards Manual.

**32-504.12. RPA Buffer Area Requirements.**

(1) That portion of the Resource Protection Area designated as RPA buffer area shall be used only in accordance with the requirements therefor established in the Design and Construction Standards Manual.

(2) In the event restrictions governing use of the RPA buffer area are modified in accordance with the provisions of the Design and Construction Standards Manual, the applicant shall cause a plat demarcating such modifications and a description of the alternative measures to be implemented to be recorded in the land records after approval by the director of planning.

**32-504.13 Nonconforming Use in RPA.**

(1) The lawful use of a building or structure which existed on November 27 1990 or existing at the time of any amendment to these regulations, and which is not in conformity with the provisions of the Chesapeake Bay Preservation Area Overlay District may be continued in accordance with Part 601 of this chapter—and the provisions of the Design and Construction Standards Manual. Expansion of a nonconforming use or structure must be in accordance with Part 601.33 and subject to an exception approval in accordance with section 740.06 of the Design and Construction Standards Manual.

(2) Lawful nonconforming uses shall be established in accordance with the requirements of Section 32-601.60.

**32-504.14. Exemptions for Utilities, Railroads, and Public Roads.**

(1) Construction, installation, operation, and maintenance of electric, natural gas, fiber optic, telephone transmission lines,



railroads, sanitary sewer trunk lines, and public roads and their appurtenant structures shall be exempt so long as they comply with Erosion and Sediment Control Law, the Storm Water Management (SWM) Act of the Code of Virginia and the Design and Construction Standards Manual. The exemption of public roads is further conditioned on the road alignment and design being such as to minimize encroachment into the RPA and adverse effects on water quality.

(2) Construction, installation, and maintenance of water and sanitary sewer lines, and storm sewer system outfalls shall be exempt from the Chesapeake Bay Preservation Area Overlay District provided that:

(a) To the degree possible, the location of such utilities and facilities should be outside Resource Protection Areas; that is to say, to the extent feasible, these utilities and facilities should cross streams at right angles, and avoid paralleling them;

(b) No more land shall be disturbed than is necessary to provide for the necessary utility installation;

(c) All such construction, installation, and maintenance of such utilities and facilities shall be in compliance with all applicable state and federal requirements and permits and designed and conducted in a manner that protects water quality;

(d) Any land disturbance exceeding an area of 2,500 square feet shall comply with all erosion and sediment control requirements of the Design and Construction Standards Manual.

#### **32-504.15. Exemptions for Silvicultural Activities.**

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

#### **32-504.16 Agriculture Uses in Chesapeake Bay Preservation Areas**

(1) Land upon which agricultural activities are being conducted, including but not limited to crop production, pasture, and dairy and feedlot operations, or lands otherwise defined as agricultural in accordance with section 504.04, shall have a soil and water quality conservation assessment conducted 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 and this chapter.

(a) Recommendations for additional conservation practices need address only those conservation issues applicable to the tract or field being assessed. Any soil and water quality conservation practices that are recommended as a result of such an assessment and

are subsequently implemented with financial assistance from federal or state cost-share programs must be designed consistent with cost-share practice standards effective in January 1999 in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resource Conservation Service or the January 2001 edition of the "Virginia Agricultural BMP Manual" of the Virginia Department of Conservation and Recreation, respectively. Unless otherwise specified in this section, general standards pertaining to the various agricultural conservation practices being assessed shall be as follows:

(i) For erosion and sediment control recommendations, the goal shall be, where feasible, to 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. However, in no case shall erosion exceed the soil loss consistent with an Alternative Conservation System, referred to as an "ACS", as defined in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resource Conservation Service.

(ii) For nutrient management, whenever nutrient management plans are developed, the operator or landowner must provide soil test information, consistent with the Virginia Nutrient Management Training and Certification Regulations (4 VAC 5-15-10 et seq.).

(iii) For pest chemical control, referrals shall be made to the local cooperative extension agent or an Integrated Pest Management Specialist of the Virginia Cooperative Extension Service. Recommendations shall include copies of applicable information from the "Virginia Pest Management Guide" or other Extension materials related to pest control.

(b) A higher priority shall be placed on conducting assessments of agricultural fields and tracts adjacent to Resource Protection Areas. However, if the landowner or operator of such a tract also has Resource Management Area fields or tracts in his operation, the assessment for that landowner or operator may be conducted for all fields or tracts in the operation. When such an expanded assessment is completed, priority must return to Resource Protection Area fields and tracts.

(c) The findings and recommendations of such assessments and any resulting soil and water quality conservation plans will be submitted to the local Soil and Water Conservation District Board, which will be the plan-approving authority.

(2) Permitted modifications to the agricultural buffer area. Buffer area consists of 100-foot wide area of natural or established vegetation adjacent to stream or core RPA components.

(a) 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 (such as Johnson grass, kudzu, and multiflora rose) from invading the buffer area. Agricultural activities may encroach into the buffer area as follows:

(i) 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 local soil and water conservation district board, addresses the more predominant water quality issue 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 tests, must be developed consistent with the Virginia Nutrient Training and Certification Regulations (4 VAC 5-15-10 et seq.) administered by the Virginia Department of Conservation and Recreation.

(ii) 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 tests, must be developed, consistent with the Virginia Nutrient Management Training and Certification Regulations (4 VAC 5-15-10 et seq.) 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 wide buffer area.

(iii) The buffer area is not required to be designated adjacent to the agricultural drainage ditches if at least one best management practice which, in the opinion of the local soil and water conservation district board, addresses the more predominant water quality issue on the adjacent land - either erosion control or nutrient management - is being implemented on the adjacent land.

(3) If specific problems are identified pertaining to agricultural activities which are causing pollution of the nearby water body with perennial flow or violate performance standards pertaining to the vegetated buffer area, the county, in cooperation with the soil and water conservation district, shall recommend a compliance schedule to the landowner and require the problems to be corrected consistent with that schedule. This schedule shall expedite environmental protection while taking into account the seasons and other temporal

considerations so that the probability for successfully implementing the corrective measures is greatest.

**32-504.17. Exceptions.**

Exceptions to the requirements of the Chesapeake Bay Preservation Area Overlay District may be granted only as permitted by section 740.06 of the Design and Construction Standards Manual. Exceptions for encroachment into the RPA will be processed either as administrative exceptions in accordance with section 740.06A of the Design and Construction Standards Manual or as public hearing exceptions in accordance with section 740.06C of the Design and Construction Standards Manual.

**32-504.18 Chesapeake Bay Preservation Area Review Board.**

The Chesapeake Bay Preservation Area Review Board shall conduct a public hearing to review a request for an exception for encroachment into the RPA, and the associated water quality impact assessment study and may grant the exception with such conditions and safeguards as stated in section 740.06 of the Design and Construction Standards Manual.