

**ORDINANCE TO AMEND, REENACT, AND REENACT CHAPTER 61 (CHESAPEAKE BAY PRESERVATION ORDINANCE) OF THE ARLINGTON COUNTY CODE BY REPLACING THE EXISTING ORDINANCE LANGUAGE IN ITS ENTIRETY AND AMENDING, REENACTING, AND RECODIFYING THE PROPOSED AMENDMENTS TO CHAPTER 61 RELATING TO THE CHESAPEAKE BAY PRESERVATION ACT REQUIREMENTS FOR ARLINGTON COUNTY.**

After a duly advertised public hearing at which the public spoke, on motion by Ms. Favola, seconded by Mr. Zimmerman and carried by a vote of 4 to 0, the voting recorded as follows: Mr. Ferguson - Aye, Ms. Favola – Aye, Mr. Fisetto – Aye, and Mr. Zimmerman – Aye, the Board adopted the following ordinance:

BE IT ORDAINED by the County Board of Arlington, Virginia, that Chapter 61 (Chesapeake Bay Preservation Ordinance) of the Arlington County Code is amended, reenacted and recodified as follows, and that the amendments are effective this day of February 8, 2003:

**CHESAPEAKE BAY PRESERVATION ORDINANCE**

**Section 61-1. Title**

This ordinance shall be known and referenced as the "Chesapeake Bay Preservation Ordinance" of Arlington County.

**Section 61-2. Purpose and Intent**

- A. This ordinance is enacted to implement the requirements of Section 10.1-2100 *et seq.*, of the Code of Virginia, the Chesapeake Bay Preservation Act. The intent of the County Board and the purpose of the Chesapeake Bay Preservation Area Overlay District created herein 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, which might reasonably be expected to inhabit them; (3) safeguard the waters of the Commonwealth from pollution; (4) prevent any increase in pollution; (5) maintain and improve riparian habitat; and, (6) promote water resource conservation in order to provide for the health, safety, and welfare of the citizens of Arlington County.
- B. This Overlay District shall be in addition to and shall overlay all 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 zoning districts provided for by the Zoning Ordinance. Unless otherwise stated in these regulations, the review and approval procedures provided for in Section 61-13 (Plan of Development) shall be followed in reviewing and approving development and uses governed by this Chapter.

**Section 61-3. Definitions**

The following words and terms used in these regulations have the following meanings, unless the context clearly indicates otherwise:

"*Act*" means the Chesapeake Bay Preservation Act found in Chapter 21 (Section 10.1-2100 *et seq.*) of Title 10.1 of the Code of Virginia, as may be amended from time to time.

"*Average Land Cover*" means the average amount of impervious surfaces within a watershed, assumed to be 16 percent for the Chesapeake Bay watershed.

"*Best Management Practices*" (BMP's) means a practice, or combination of practices, that are determined by a state or designated area-wide planning agency, and approved by the County Manager, 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.

"*Buffer*" means an area managed to protect the components of a Resource Protection Area and state waters from significant degradation due to land disturbances.

"*Clean Water Act*" means the 1972 amendments to the Federal Water Pollution Control Act and the Federal Water Quality Act of 1987 and any subsequent amendments to those Acts.

"*Code*" or "*Arlington County Code*" means the Code of the County of Arlington County, Virginia, including the Appendix and the Zoning Ordinance.

"*Chesapeake Bay Preservation Area (CBPA)*" means any land designated by the County Board pursuant to Section 61-5 of this Chapter, Part III of the Chesapeake Bay Preservation Area Designation and Management Regulations, 9 VAC 10-20-*et seq.*, and Section 10.1-2107 of the Code of Virginia. Chesapeake Bay Preservation Areas shall consist of Resource Protection Areas and Resource Management Areas.

"*Construction footprint*" means the area of all impervious surfaces, including but not limited to buildings, roads and drives, parking areas, sidewalks, and the area necessary for construction of such improvements.

"*County*" means Arlington County, Virginia.

"*County Board*" means the County Board of Arlington County, Virginia.

"*County Manager*" means the County Manager for the County of Arlington or his designees.

"*Department*" means the Chesapeake Bay Local Assistance Department or its successor agency.

"*Development*" means the construction, or substantial alteration of residential, commercial, industrial, institutional, recreation, transportation, or utility facilities or structures. Unless otherwise specified, the term "development" shall be taken to include both new development and redevelopment, as defined herein.

"*Diameter at breast height*" or "*DBH*" means the diameter of a tree measured outside the bark at a point 4.5 feet above the ground.

"*Dripline*" means a vertical projection to the ground surface from the furthest lateral extent of a tree or shrub's canopy.

"*Floodplain*" means all lands that would be included in "Zone A" as defined in Section 48-2.23 of the Arlington County Code and shown on the adopted floodplain map.

"*Highly erodible soils*" means soils (excluding vegetation) with an erodibility index (EI) from sheet and rill erosion equal to or greater than eight, as defined by the U.S. Department of Agriculture - Natural Resource Conservation Service. The erodibility index for any soil is defined by the Universal Soil Loss Equation 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*" are defined 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 (i.e., 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 - Natural Resources Soil Conservation Service.

"*Impervious cover*" or "*impervious surface*" means a surface composed of any material that significantly impedes or prevents natural infiltration of water into the soil. Depending on the design, impervious surfaces may include, but are not limited to: non-vegetated roofs, buildings, streets, parking areas, and any concrete, asphalt, or compacted gravel or dirt surface without measurable permeability. For the purposes of this Chapter, any impervious cover removed from a site within the preceding two years may be counted as impervious cover for the pre-development condition, if a valid demolition permit was obtained for the project or other documentation of the removal acceptable to the County Manager is provided.

"*Intensely Developed Areas*" means a portion of a Resource Protection Area or Resource Management Area designated by the County Board and shown on the official map where little of the natural environment remains and where development is currently concentrated.

"*Land disturbance*" or "*land disturbing activity*" means those activities which disturb land by grading of soil, removing soil, filling over soil, altering structures such that soil is disturbed, dredging, paving or removing pavement over soils, clearing, grubbing, or any other activity specifically included in this ordinance as having the potential for impacts to water quality, except that minor land-disturbing activities such as home gardens and individual home landscaping, repairs and maintenance work shall not be considered land disturbance under this ordinance unless it involves the creation of impervious cover in the Resource Protection Area, the disturbance of more than 2,500 square feet of land, or the removal of trees with a diameter of at least three (3) inches in the RPA.

"*Landward*" means any portion of the RPA buffer located more than 50 feet from a waterbody or other component of the RPA, as specified in Section 61-5.B.

"*Map*" means the map adopted by the County Board that delineates the areas presumed to be Chesapeake Bay Preservation Areas.

"*New development*" means the process of developing land that has not been previously developed by the construction, or substantial alteration of residential, commercial, industrial, institutional, recreation, transportation, or utility facilities or structures.

"*Nonpoint source pollution*" means pollution consisting of contaminants including, but not limited to, sediment, nitrogen, phosphorus, hydrocarbons, heavy metals and other organic or toxic substances that are washed from the land surface from diffuse sources by stormwater runoff from agricultural and urban land development and use.

"*Nontidal wetlands*" mean 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, and in 33 C.F.R. Part 328.3b, as each may be amended from time to time.

"*Noxious Vegetation*" means invasive or otherwise harmful plants as may be determined by the County Manager including, but not limited to, poison ivy, poison oak, poison sumac, Johnson grass, kudzu, bamboo, English ivy, porcelain berry, and multiflora rose.

"*Passive recreation*" means recreational activities that are commonly unorganized and noncompetitive, including, but not limited to, picnicking, bird watching, kite flying, bicycling, and walking. Site amenities for such activities include, but are not limited to, picnic tables, photo stands, open play areas where substantial clearing is not required, rest rooms, tot lots, boardwalks, paved paths, pathways, benches, and pedestrian bridges and appurtenant structures.

"*Plan of Development*" means the process for plan review and all required information submitted to the County to ensure compliance with Section 10.1-2109 of the Code of Virginia and Section 61-13 this Chapter, prior to any clearing and grading of a site and the issuance of a building permit.

"*Pollutant*" means any substance that causes or contributes to, or may cause or contribute to, environmental degradation when discharged into the environment.

"*Pollutant load*" means the amount of a particular pollutant delivered to a waterbody measured in units of mass per unit time (e.g., pounds per year).

"*Public road*" means a publicly owned road, or a road designated for public use, that is 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 (Section 10.1-560 *et seq.* of the Code of Virginia) and (ii) the Virginia Stormwater Management Act (Section 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 roads are constructed or maintained, or both, by Arlington County in accordance with the County's standards for road design and construction activities.

"*Redevelopment*" means the process of developing land that is or has been previously developed by the construction, or substantial alteration of residential, commercial, industrial, institutional, recreation, transportation, or utility facilities or structures.

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

"*Resource Protection Area (RPA)*" means that component of the Chesapeake Bay Preservation Area as defined in Section 61-5.B of this Chapter.

"*Seaward*" means that portion of the RPA buffer located within 50 feet of a waterbody or other component of the RPA, as specified in Section 61-5.B.

"*Substantial alteration*" means expansion or modification of a building or development that would result in a disturbance of any land within a Resource Protection Area, or disturbance of any land exceeding an area of 2,500 square feet within a Resource Management Area.

"*Tree canopy*" means the branches, leaves, or other foliage from woody vegetation exceeding five feet in height. The area of tree canopy may be measured by determining the area surrounding a tree located within the dripline.

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

"*Tidal wetlands*" means vegetated and nonvegetated wetlands as defined in Section 28.2-1300 of the Code of Virginia, as may be amended from time to time.

"*Use*" means the purpose for which land or a building is arranged, designed or intended, or for which either land or a building is or may be occupied or maintained.

"*Water-dependent facility*" or "*water-dependent development*" means the development of land or a facility that cannot exist outside of a Resource Protection Area and must be located within a Resource Protection Area, either in whole or in part, 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; (v) fisheries or other marine resources facilities; and (vi) water-oriented education facilities.

"*Watershed Management Fund*" means a fund administered by the County for the purpose of reducing nonpoint source pollution runoff through regional nonpoint source pollution control and stream restoration programs, demonstration programs, and public education and outreach.

"*Wetlands*" means tidal and nontidal wetlands.

"*Zoning Ordinance*" means that part of the Arlington County Code called the "Zoning Ordinance."

#### **Section 61-4. Administration**

The County Manager shall be responsible for the administration of this Chapter and is authorized to develop regulations to implement this Chapter, as necessary. The County Board may establish a schedule of fees to implement this Chapter.

#### **Section 61-5. Areas of Applicability**

- A. Resource Protection Areas shall consist of sensitive 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 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, and minimize the adverse effects of human activities on State waters and aquatic resources.
- B. The Chesapeake Bay Preservation Area (CBPA) Overlay District shall apply to all lands identified as the CBPA by the County Board and as shown on the adopted CBPA map. The adopted CBPA map, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this Chapter.
  1. The Resource Protection Area (RPA) includes:
    - a. Tidal wetlands;
    - b. Nontidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow;
    - c. Tidal shores;
    - d. A buffer area not less than 100 feet in width located adjacent to and landward of the components listed in subsections 61-5.B.1.a through c, and along both sides of any water body with perennial flow.
    - e. Such other lands considered by the County Board to meet some or all of the criteria described in Section 61.5.A of this Chapter and to be necessary to protect the quality of State waters.
      - i. Other lands to be included within the RPA may include, but are not limited to, natural stream channels and man-made open channels as depicted on the most recent Storm Sewer Map layer of the County's Geographic Information System and including a buffer area not less than 100 feet in width located adjacent to and landward of these lands.
      - ii. The buffer area described in Section 61-5.B.1.d and 61-5.B.1.e.i, shall be expanded to include any contiguous steep slopes greater than or equal to 25 percent located adjacent to the landward boundary of the RPA buffer.

- iii. When necessary to protect the integrity of the RPA buffer, contiguous slopes greater than or equal to 15 percent located adjacent to the landward boundary of the RPA buffer may also be designated by the County Board.
  - 2. The Resource Management Area (RMA) includes all areas within the County not designated as an RPA. 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 RPA.
- C. The adopted CBPA map shows only the general location of the RPA and should be consulted by persons contemplating activities within the County prior to engaging in development activities or modifications to the RPA. Where RPA boundaries on the adopted CBPA map differ from boundaries as determined from the text of this Chapter, the text shall govern. The specific location of an RPA on a lot or parcel shall be delineated on each site or parcel or subdivision plat as required under Section 61-9 of this Chapter through the review and approval of the plan of development in accordance with Section 61-13, or as required under Section 61-12, through the review and approval of a water quality impact assessment.
- D. Portions of RPAs and RMAs may be designated by the County Board as Intensely Developed Areas. Areas so designated shall comply with all erosion and sediment control requirements and the performance standards in Section 61-10 (Performance Standards). Intensely Developed Areas may include those areas of existing development where little of the natural environment remains, provided at least one of the following conditions existed on May 16, 1992:
  - 1. Development had severely altered the natural state of the area such that it had more than fifty (50) percent impervious surface;
  - 2. Public sewer and water systems, or a constructed stormwater drainage system, or both, had actually been constructed and served the area;
  - 3. Housing density was equal to or greater than four dwelling units per acre.

**Section 61-6. Use Regulations**

Permitted uses, special exceptions, site plan requirements, proffered uses, accessory uses and special requirements shall be as established by the Zoning Ordinance, unless specifically modified by the requirements set forth herein.

**Section 61-7. Allowable Development, Modifications, and Encroachments in RPAs**

The following uses are allowed within the RPA, subject to the conditions set forth below. All other uses, as may be permitted in this Chapter, are subject to additional requirements contained in Section 61-14 (Nonconforming Uses and Structures), Section 61-15 (Exemptions), and Section 61-16 (Exceptions).

**A. Allowable Development in RPAs**

Land development in RPAs may be allowed only when permitted by the County Manager and if it: (i) is water-dependent; or (ii) constitutes redevelopment; or (iii) constitutes new development or redevelopment within a designated Intensely Developed Area; or (iv) is a road or driveway crossing satisfying the conditions set forth in Section 61-7.A.3 below; or (v) is a flood control or stormwater management facility that satisfies the criteria in Section 61-7.A.4.

- 1. A new or expanded water-dependent facility may be allowed provided that the following criteria are met:
  - a. It does not conflict with the County’s comprehensive plan;
  - b. It complies with the performance standards set forth in Section 61-10 of this Chapter;
  - c. Any nonwater-dependent component is located outside of the RPA; and,
  - d. Access to the water-dependent facility will be provided with the minimum disturbance necessary. Where practicable, a single point of access will be provided.
- 2. Redevelopment outside of locally designated Intensely Developed Areas designated by the County shall be permitted only if there is no increase in the amount of impervious cover within the RPA and there is no further encroachment within the RPA and it shall conform to the erosion and sediment control requirements outlined under Section 61-10.E of this chapter and the stormwater management requirements outlined under Section 61-10.F of this Chapter. Within an Intensely Developed Area, an increase in impervious area

in the RPA may be allowed only if there is no adverse impact on water quality and suitable best management practices are incorporated in the approved plan of development so as to comply with applicable provisions of Section 61-10.F of this Chapter, and any additional conditions required by the County Manager.

3. Roads and driveways not exempt under Section 61-15 may be constructed in or across RPAs if each of the following conditions is met:
  - a. The County Manager makes a finding that there are no reasonable alternatives to aligning the road or driveway in or across the RPA;
  - b. The alignment and design of the road or driveway are optimized, consistent with other applicable requirements, to minimize encroachment in the RPA and minimize adverse effects on water quality;
  - c. The design and construction of the road or driveway satisfy all applicable criteria of this Chapter;
  - d. The County Manager reviews the plan for the road or driveway proposed in or across the RPA in coordination with the plan of development requirements as required under Section 61-13, or the proposed subdivision plan or plat.
4. 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 RPAs, provided that:
  - a. The County Manager has conclusively established that location of the facility within the RPA 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 shall be consistent with a stormwater management program that has been approved by the Chesapeake Bay Local Assistance Board;
  - d. All applicable permits for construction in state or federal waters shall be obtained from the appropriate state and federal agencies;
  - e. Approval shall be received from the County Manager prior to construction; and,
  - f. Routine maintenance is allowed to be performed on such facilities to assure that they continue to function as designed.

B. Allowable Modifications to RPA Buffers

To minimize the adverse effects of human activities on the other components of the RPA, state waters, and aquatic life, a buffer area at least 100 feet wide 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. Notwithstanding permitted uses, encroachments, and vegetation clearing allowed in this Chapter, the minimum 100-foot buffer area is not reduced in width.

In order to maintain the functional value of the RPA buffer, existing trees and vegetation may be removed, only as permitted by the County Manager, 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:

1. Trees may be pruned or removed from the RPA buffer 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.
2. Trees may be pruned or removed from the RPA buffer in an area no greater than 5,000 square feet or 25 percent of the RPA buffer, whichever is less, for all sight lines and vistas combined. The bounds of this area shall be determined in a manner acceptable to the County Manager and are to be based on identified vantage points and the portion of the landscape to be viewed.
3. Trees may not be removed where reasonable sight lines or vistas can be created by pruning trees alone. No more than 25 percent of the trees six (6) inches or greater in diameter at breast height (4.5 feet) may be removed from the areas designated for sight lines and vistas.

4. A written request for a determination by the County Manager that the proposed removal of vegetation from the RPA buffer is in accordance with the requirements of this Chapter is required. Such request shall include a plan showing the following:
  - a. The vantage points for the sight lines and vistas;
  - b. The portion of the landscape to be viewed;
  - c. The area in which trees are to be pruned or removed;
  - d. The location of all trees six (6) inches or greater in diameter at breast height (4.5 feet) or as required by the County Manager;
  - e. The location of the trees to be removed or pruned;
  - f. The type of replacement vegetation proposed.
5. Trees may not be pruned or removed from the RPA buffer until a written determination is obtained from the County Manager that the proposed activity is in accordance with the requirements of this Chapter.
6. Any path shall be constructed and surfaced so as to control erosion effectively. Paths serving individual residential lots shall be no more than four (4) feet in width.
7. Noxious weeds and dead, diseased, or dying trees or shrubbery may be removed from the RPA buffer at the discretion of the landowner 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.
8. 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 applicable permit conditions or requirements. For shoreline erosion control projects which propose the use of sea walls, rip-rap, groins or other structural means of stabilization, it shall be demonstrated to the satisfaction of the County Manager that vegetative techniques cannot be effectively utilized.

C. Allowable Encroachments into RPA Buffer

1. When the application of the RPA buffer would result in the loss of a reasonable buildable area on a lot or parcel recorded prior to October 1, 1989, the County Manager may, through an administrative process, permit encroachments into the RPA buffer in accordance with Section 61-13 (Plan of Development) and the following criteria:
  - a. Encroachments into the RPA buffer shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities. For the purpose of this section, reasonable buildable area shall mean that area reasonably necessary for a principal structure and necessary utilities with compatible bulk and scale to those in the surrounding neighborhood or area;
  - b. Where practicable, a vegetated area that will maximize water quality protection, mitigate the effects of the RPA buffer encroachment, and is equal to the area of encroachment into the RPA buffer shall be established elsewhere on the lot or parcel; and,
  - c. The encroachment shall not extend into the seaward 50 feet of the RPA buffer unless an exception has been approved as provided in Section 61-16.
2. When the application of the RPA buffer would result in the loss of a buildable area on a lot or parcel recorded between October 1, 1989 and March 1, 2002, the County Manager may permit encroachments into the RPA buffer in accordance with Section 61-13 (Plan of Development) and the following criteria:
  - a. The lot or parcel was created as a result of a legal process conducted in conformity with the subdivision regulations under Chapter 23 of the Arlington County Code;
  - b. Conditions or mitigation measures imposed through a previously approved exception shall be met;

- c. If the use of a best management practice (BMP) was previously required, the BMP shall be evaluated to determine if it continues to function effectively and, if necessary, the BMP shall be reestablished or repaired and maintained as required; and,
  - d. The criteria in Section 61-7.C.1 shall be met.
- D. A water quality impact assessment as outlined in Section 61-12 of this Chapter shall be required for any proposed land disturbance, development, or modification within RPAs.

**Section 61-8. Minimum Lot Size**

Lot size shall be subject to the requirements of the underlying zoning district(s), provided that any lot subdivided after October 1, 1989, shall have sufficient area outside the RPA to accommodate an intended development, in accordance with the performance standards in Section 61-10, unless the development is otherwise allowed in the RPA, in accordance with Section 61-7.

**Section 61-9. Interpretation of RPA Boundaries**

- A. Delineation of RPA Boundaries on a Plan of Development or Subdivision Plat
- The site-specific boundaries and location of the RPA shall be determined by the applicant, surveyor, or engineer following guidelines and procedures to be provided by the County, and shall be made part of the submittal, for review and approval by the County, of a plan of development or subdivision plat showing the RPA delineation. The RPA delineation shown on a plan of development or subdivision plat shall be subject to approval by the County Manager and in accordance with Section 61-8 (Minimum Lot Size), Section 61-13 (Plan of Development) and Section 61-12 (Water Quality Impact Assessment) of this Chapter, if applicable. The adopted CBPA map may be used as a guide to the general location of RPAs.
- B. Where Conflict Arises Over Delineation
- Where the applicant has provided a determination of the RPA, the County Manager shall verify the accuracy of the boundary delineation. In determining the site-specific RPA boundary, the County Manager may render adjustments to the applicant's boundary delineation, in accordance with Section 61-13 (Plan of Development) of this Chapter. In the event the adjusted boundary delineation is contested by the applicant, the applicant may seek relief, in accordance with the provisions of Section 61-13.H (Denial/Appeal of Plan).

**Section 61-10. General Performance Standards for Development in Chesapeake Bay Preservation Areas**

The following general performance standards shall apply to development in Chesapeake Bay Preservation Areas, including development in both RPAs and RMAs.

- A. Land disturbance shall be limited to the area reasonably necessary to provide for the proposed use or development.
- 1. In accordance with an approved plan of development, the limits of clearing and grading shall be strictly defined by the construction footprint. The County Manager shall review and approve the construction footprint through the plan of development process. These limits shall be clearly shown on submitted plans and physically marked on the development site.
  - 2. Ingress and egress during construction shall be limited to one access point, unless otherwise approved by the County Manager.
- B. Existing vegetation and trees shall be preserved to the maximum extent practicable consistent with the proposed use and development permitted and in accordance with the Virginia Erosion and Sediment Control Handbook.
- 1. Existing trees over three (3) inches in diameter at breast height (DBH) shall be preserved outside the approved construction footprint consistent with the preceding paragraph. Diseased trees or trees weakened by age, storm, fire, or other injury may be removed, when approved by the County Manager.
  - 2. Site clearing for construction activities shall be allowed as approved by the County Manager through the Plan of Development review process outlined under Section 61-13 of this Chapter.
  - 3. Prior to clearing and grading, suitable protective barriers consistent with the County's construction standards and specifications, and including safety fencing, signs, or such other material as may be required by the County Manager, shall be erected to protect the critical root zone for any tree or stand of trees to be

preserved on the site, as well as to protect the critical root zone of trees on adjacent properties that extend onto the site.

4. Exceptions may be granted to allow reasonable access to the site and work area, with specific conditions to be established by the County Manager. Protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
- C. All new development or redevelopment shall provide for the planting or retention of trees on the site to the extent that, at a maturity of twenty years, the minimum lot coverage of the tree canopy shall be as specified below:
1. Minimum tree canopy requirements
    - a. Ten (10) percent tree canopy for a site zoned business, commercial, or industrial;
    - b. Ten (10) percent tree canopy for a residential site zoned twenty or more units per acre;
    - c. Fifteen (15) percent tree canopy for a residential site zoned more than ten but less than twenty units per acre; and,
    - d. Twenty (20) percent tree canopy for a residential site zoned ten units or less per acre.
  2. The County Manager may modify the tree canopy coverage requirements in this Chapter where necessary to preserve wetlands or where the strict application of the requirements would be unnecessary, or an unreasonable hardship to the developer.
  3. Dedicated school sites, playing fields, or other nonwooded public recreation areas, and other facilities and uses of a similar nature are exempt from these tree canopy coverage requirements.
  4. The County Manager may impose conditions on any request for a modification or exception to the tree canopy coverage requirements that will assure that the results of the modification or exception will be in accordance with the purpose and intent of this Chapter.
  5. The tree canopy coverage requirements in this Section shall be subject to the enforcement provisions of the Zoning Ordinance.
- D. Land development shall minimize impervious cover consistent with the proposed use or development.
- E. Notwithstanding any other provisions of this Chapter or exceptions or exemptions thereto, any land disturbing activity exceeding 2,500 square feet, including construction of all single-family houses, shall comply with the requirements of Chapter 57 - Erosion and Sediment Control Ordinance.
- F. All development shall meet the following stormwater quality requirements:
1. Pollutant removal requirements

The pollutant removal requirements for all development shall be determined according to Sections 61-10.F.1.a through 61-10.F.1.d.

    - a. If pre-development impervious cover is less than or equal to the average land cover condition, defined for purposes of this Chapter as the Chesapeake Bay watershed average of 16 percent, and post-development impervious cover is less than or equal to the average land cover condition, there are no pollutant removal requirements for the site.
    - b. If pre-development impervious cover is less than or equal to the average land cover condition, and post-development impervious cover is greater than the average land cover condition, the post-development pollutant load shall be reduced to the pollutant load generated by the average land cover condition.
    - c. If pre-development impervious cover is greater than the average land cover condition, the post-development pollutant load shall be reduced to 90 percent of the pre-development pollutant load or to the pollutant load generated by the average land cover condition, whichever pollutant load reduction is smaller.

- d. If pre-development impervious cover is served by an existing stormwater quality BMP, the post-development pollutant load shall be reduced to the pre-development pollutant load after treatment by the existing BMP. The existing BMP shall be shown to have been designed and constructed in accordance with proper design standards and specifications, and to be in proper functioning condition.
2. Compliance with pollutant removal requirements
- a. Onsite stormwater treatment shall be provided for impervious surfaces on the development site with which vehicles come into contact, including but not limited to parking areas; streets and roadways except for public roads exempt under Section 61-15; loading docks; equipment, material, and waste storage areas; and vehicle fueling, washing, storage, maintenance, and repair areas.  
  
Onsite treatment of vehicle-related impervious cover is not required to exceed the total pollutant removal requirements under Section 61-10.F.1.
  - b. If onsite stormwater treatment required under Section 61-10.F.2.a does not meet the total pollutant removal requirements under Section 61-10.F.1, full compliance with Section 61-10.F.1 shall be achieved by a combination of the following options, subject to approval by the County Manager:
    - i. Additional onsite stormwater treatment for roofs, plazas, and other areas of the development site;
    - ii. Onsite stormwater treatment for offsite areas; or
    - iii. A contribution to the County's Watershed Management Fund, as described in Section 61-11.
3. Site design standards
- All development shall incorporate site design standards recognized by the County Manager as a means of minimizing impervious cover, stormwater runoff, and nonpoint source pollution and protecting or improving indigenous vegetation and habitat.
4. Compliance with the pollutant removal, Watershed Management Fund, and site design standards requirements shall be determined using the administrative guidance and calculation procedures provided by the County Manager.
- G. Prior to initiating grading or other on-site activities on any portion of a lot or parcel, all wetlands permits required by federal, state, and local laws and regulations shall be obtained and evidence of such submitted to the County Manager, in accordance with Section 61-13 (Plan of Development) of this Chapter.
- H. On-site sewage disposal system requirements
- 1. All on-site sewage disposal systems not requiring a state or federal permit shall be pumped out at least once every five years. Pumping of systems and disposal of waste shall be in accordance with the provisions of the Arlington County Health Code. Owners of on-site sewage treatment systems shall submit to the County, every five years, documentation certified by a sewage handler permitted by the Virginia Department of Health that the septic system has either been pumped out, or that the on-site sewage disposal system has been inspected and is functioning properly and does not need to be pumped out.
  - 2. For new development or redevelopment, each on-site sewage disposal system shall be provided with a reserve sewage disposal site with a capacity at least equal to that of the primary sewage disposal site for lots recorded after October 1, 1989. Buildings or the construction of any impervious surface shall be prohibited on the area of all sewage disposal sites or on an on-site sewage treatment system that operates under a permit issued by the State Water Control Board, until the structure is served by public sewer.

**Section 61-11. Watershed Management Fund**

- A. The County Manager shall administer a dedicated fund known as the "Watershed Management Fund" to be used in conjunction with the County's Watershed Management Plan to reduce nonpoint source pollution and improve stream quality and habitat through programs which provide BMP retrofits, stabilize or restore stream valleys and streams, educate the residents of the County on methods of reducing nonpoint source pollution runoff, promote public

awareness of the importance of stormwater quality, supplement County programs which provide water quality protection, provide demonstration projects, or provide water quality monitoring or analysis.

- B. The County Manager shall fund the Watershed Management Fund from participation contributions made by development projects, in accordance with Section 61-10.F, and any additional funds the County Board may authorize. The County Board shall establish a contribution rate that shall not exceed the typical cost of providing on-site stormwater quality treatment, and periodically adjust the rate to reflect inflation and changes in the cost of designing, building, and maintaining stormwater treatment facilities. Expenditures from the Watershed Management Fund shall be used to provide regional stormwater management, stream restoration programs, demonstration projects, and outreach and education programs that protect water quality.
- C. The initial contribution rate for the Watershed Management Fund is equal to \$2.50 per square foot of impervious area mitigation required, as specified under Section 61-10.F. of this Chapter. Such rate may be adjusted in the future by the County Board in accordance with Section 61-11.B. and shall be hereafter set forth in Chapter 22 of the Arlington County Code.

## **Section 61-12. Water Quality Impact Assessment**

### **A. Applicability**

A water quality impact assessment shall be required for any proposed land disturbance or development within an RPA, including development permitted under Section 61-7.A of this Chapter, as well as any RPA buffer modification or encroachment, including modifications or encroachments permitted under Section 61-7.B or C of this Chapter. A water quality impact assessment shall also be required for any proposed land disturbance or development on contiguous steep slopes greater than or equal to 15 percent located adjacent to the landward boundary of the RPA buffer. A water quality impact assessment may also be required for any proposed land disturbance or development in an RMA as regarded appropriate by the County Manager due to the presence of wetlands, potential for harmful discharge of contaminants from the property, or due to the unique site characteristics or intensity of the proposed use or development and its potential impact on water quality.

At a minimum, a water quality impact assessment shall demonstrate that enhanced RPA buffer vegetation and/or onsite stormwater BMPs will retard runoff, prevent erosion, and result in pollutant reduction. In general, the WQIA shall demonstrate that there is either a 40 percent reduction of pollutant loads from the post-development condition for sites with an RPA buffer that consists primarily of natural vegetation (trees, shrubs, and ground cover), or there is a net reduction in pollutant loads over the pre-development condition and a net improvement in RPA buffer vegetation and riparian habitat for sites with an RPA buffer that contains impervious cover and/or little natural vegetation. Actual site requirements will be determined during the review of the water quality impact assessment as well as by any other requirements applicable to the site (e.g., pollutant removal requirements under Section 61-10.F) under this Chapter.

There shall be two levels of water quality impact assessments: a minor assessment and a major assessment. Information shall be provided using the forms and guidance provided by the County Manager.

### **B. Minor Water Quality Impact Assessment**

A minor water quality impact assessment shall be performed for any land disturbance or development that proposes to disturb up to 5,000 square feet of land in the landward 50 feet of the RPA buffer or proposes to modify or encroach into the landward 50 feet of the RPA buffer. A minor water quality impact assessment shall also be required for any proposed land disturbance or development that proposes to disturb up to 5,000 square feet of land on contiguous steep slopes greater than or equal to 15 percent located adjacent to the landward boundary of the RPA buffer.

A minor assessment shall include a site drawing to scale, which shows the following:

1. Location of the components of the RPA as defined in Section 61-5.B.1 and required in Section 61-13.B, including the minimum 100 foot buffer area measured from the top of the streambank and adjacent 25 percent slopes; the location of slopes greater than or equal to 15 percent located adjacent to the landward boundary of the RPA buffer shall also be delineated;
2. Location and nature of the proposed encroachment into the RPA buffer, including the 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. Estimation of pre- and post-development impervious surfaces on the site and stormwater calculations required by the County Manager;
4. Type and location of proposed best management practices to mitigate the proposed encroachment and the location of existing and proposed runoff outfalls or drainage pathways from the property;
5. Location of existing vegetation onsite, including the number and type of trees and other vegetation to be removed in the RPA buffer to accommodate the encroachment or modification;
6. Re-vegetation or vegetation enhancement plan that supplements the existing RPA buffer vegetation in a manner that provides for pollutant removal, erosion and runoff control.

C. Major Water Quality Impact Assessment

A major water quality impact assessment shall be performed for any land disturbance or development that proposes to disturb more than 5,000 square feet of land in the landward 50 feet of the RPA buffer or proposes to disturb, modify, or encroach into any portion of the seaward 50 feet of the Resource Protection Area buffer, regardless of the size of the proposed disturbance. A major water quality impact assessment shall also be required for any proposed land disturbance or development that proposes to disturb more than 5,000 square feet of land on contiguous steep slopes greater than or equal to 15 percent located adjacent to the landward boundary of the RPA buffer. The information required in this section shall be considered a minimum, unless the County Manager determines that some of the elements are unnecessary due to the scope and nature of the proposed use and development.

The following elements shall be included in the preparation and submission of a major water quality impact assessment.

1. All of the information required in a minor water quality impact assessment, as specified in Section 61-12.B.
2. A hydrogeological element that:
  - a. Describes the existing topography, soils, hydrology and geology of the site and adjacent lands.
  - b. Describes the impacts of the proposed development on topography, soils, hydrology and geology on the site and adjacent lands.
  - c. Includes the following elements, if applicable:
    - i. Disturbance or removal of wetlands and justification for such action;
    - ii. Changes or reductions in the supply of water to wetlands, streams, lakes, rivers or other water bodies;
    - iii. Changes to the existing hydrology of the site and adjacent lands;
    - iv. Source, location, and description of proposed fill material;
    - v. Location of dredging and location of dumping area for such dredged material;
    - vi. Percent of site to be cleared for the proposed project;
    - vii. Anticipated duration and phasing schedule of the proposed construction project;
    - viii. Listing of all requisite permits from all applicable agencies necessary to develop the proposed project.
  - d. Describes the proposed mitigation measures for the potential hydrogeological impacts. Potential mitigation measures may include, but are not limited to:
    - i. Additional proposed erosion and sediment control concepts beyond those normally required under Section 61-10.E of this Chapter; these additional concepts may include the following: minimizing the extent of cleared area; perimeter controls; reduction of runoff velocities; measures to stabilize disturbed areas; schedule and personnel for site inspection;

- ii. Proposed stormwater management system for nonpoint source quality and quantity control.
- 3. A landscape conservation element that:
  - a. Identifies and delineates the location of all woody plant material on site, including shrubs having a canopy greater than 24 inches in diameter and all trees on site three (3) inches or greater in 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 shall include:
    - i. General limits of land disturbance, based on all anticipated improvements, including buildings, drives, and utilities;
    - ii. Clear delineation of all trees and other woody vegetation that will be removed.
  - c. Describes the proposed measures for mitigation, including a proposed design plan and planting schedule for trees and other woody vegetation removed for construction, including a list of proposed plants and trees to be used. Possible mitigation measures include:
    - i. The re-vegetation plan shall supplement the existing RPA buffer vegetation in a manner that provides for pollutant removal, erosion and runoff control;
    - ii. The design of the plan shall preserve to the greatest extent possible any significant trees and vegetation on the site and will provide maximum erosion control and overland flow benefits from such vegetation;
    - iii. Indigenous plants shall be used unless otherwise approved by the County Manager.

**D. Water Quality Impact Assessment Submission and Review Requirements**

- 1. Copies of all site drawings and other applicable information as required by Subsections B and C above shall be submitted to the County Manager for review.
- 2. A major or minor water quality impact assessment shall be prepared, as applicable, and submitted to and reviewed by the County Manager in conjunction with Section 61-13 (Plan of Development) of this Chapter.
- 3. All information required in this section shall be certified as complete and accurate by a professional engineer or certified land surveyor, except that the landscape conservation element of the assessment shall be certified as complete and accurate by a licensed arborist or landscape architect.

**E. Evaluation Procedure**

Upon the completed review of a water quality impact assessment, the County Manager or the Chesapeake Bay Ordinance Review Committee (CBORC), in accordance with Section 61-16, will determine whether the proposed modification or encroachment into the RPA buffer, if any, is consistent with the provisions of this Chapter and applicable regulations.

**Section 61-13. Plan of Development Process in Chesapeake Bay Preservation Areas**

Any new development or redevelopment exceeding 2,500 square feet of land disturbance in aggregate shall be accomplished through a plan of development process prior to any development preparation activities onsite, including, but not limited to, clearing and grading of the site and the issuance of any building or other applicable permit, to assure compliance with all applicable requirements of this Chapter.

**A. Required Information**

The plan of development process shall consist of the plans and studies identified below. These required plans and studies may be coordinated or combined, as deemed appropriate by the County Manager. The County Manager may determine that some of the following information is unnecessary due to the scope and nature of the proposed development.

The applicant shall submit the following plans or studies to the County Manager:

1. Copies of plans submitted to the Zoning Administrator to ensure compliance with the provisions of the Zoning Ordinance;
2. A plan showing the RPA delineation, as defined in Section 61-13.B;
3. A landscape conservation plan, as defined in Section 61-13.C;
4. A stormwater management plan, as defined in Section 61-13.D;
5. An erosion and sediment control plan in accordance with the provisions of Chapter 57 of the Arlington County Code.
6. A Water Quality Impact Assessment, if applicable, in accordance with Section 61-12.
7. Other studies requested by the County Manager reasonably required to ensure compliance with this Chapter.

B. Plan Showing RPA Delineation

The applicant shall submit a plan showing the RPA delineation, if any portion of the property is located within an RPA, in conjunction with any proposed land disturbance exceeding 2,500 square feet.

1. The plan showing the RPA delineation shall be drawn to scale and clearly delineate all environmental features, as defined in Section 61-5.B.1, including any sensitive environmental features as may be determined by the County Manager;
2. Wetlands delineation shall be performed consistent with the procedures specified in the most current version of the *Corps of Engineers Wetlands Delineation Manual, 1987*, as may be revised from time to time;
3. The plan showing the RPA delineation shall be drawn at the same scale as the preliminary site plan unless otherwise requested by the County Manager, and shall be certified as complete and accurate by a professional engineer or a certified land surveyor. The County Manager may waive this requirement when the proposed use or development would result in less than 5,000 square feet of disturbed area.

C. Landscape Conservation Plan

A Landscape Conservation plan shall be submitted in conjunction with plan review and approval. No clearing or grading of any lot or parcel will be permitted without an approved landscape conservation plan for any land disturbance exceeding 2,500 square feet. Landscape conservation plans shall be prepared and/or certified by a landscape architect or arborist practicing within their areas of competence as prescribed by the Code of Virginia.

1. Contents of the Plan
  - a. The landscape conservation plan shall be drawn to scale and clearly delineate the location, size, and description of existing and proposed plant material. All existing trees on the site three (3) inches or greater diameter at breast height (DBH) shall be shown on the plan, or where there are groups of trees, said stands may be outlined instead. The specific number of trees three (3) 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 plan.
  - b. The location of the critical root zone, as defined by the County's construction standards and specifications, for any trees shown on the plan or located on adjacent properties where the critical root zone extends onto the site, shall be delineated on the plan.
  - c. Any required RPA shall be clearly delineated and any plant material to be added to establish or supplement the RPA buffer, as required under the authority of this Chapter, shall be shown on the plan.
  - d. Within the RPA buffer, trees and other woody vegetation to be removed for sight lines, vistas, access paths, and best management practices, as provided for in this Chapter, shall be shown on the plan. Vegetation required by this ordinance to replace any existing trees within the RPA buffer shall be also be depicted on the plan.
  - e. Trees and other woody vegetation to be removed for shoreline stabilization projects and any

replacement vegetation required by this Chapter shall be shown on the plan.

- f. The plan shall depict grade changes or other work adjacent to trees that would affect them adversely. Specifications shall be provided showing how grade, drainage, and aeration will be maintained around trees to be preserved to ensure the protection of existing trees and other vegetation during clearing, grading, and all phases of construction.

## 2. Plant Specifications

- a. All plant materials necessary to supplement the RPA buffer or vegetated areas outside the construction footprint shall be installed according to the County's standard planting practices and procedures.
- 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 landscape conservation plan, are encroached, the County Manager may require reasonable replacement of any trees damaged or destroyed in accordance with the County's current tree replacement policy, as adopted by the County Manager.
- d. Native or indigenous species shall be used for all supplementary or replacement plant materials, unless otherwise approved by the County Manager.

## D. Stormwater Management Plan

A stormwater management plan shall be submitted as part of the plan of development process required by this Chapter.

### 1. Contents of the Plan

The stormwater management plan shall contain maps, charts, graphs, tables, photographs, narrative descriptions, explanations, and citations to supporting references as appropriate to communicate the information required by this Chapter. At a minimum, the stormwater management plan shall contain the following:

- a. Pre- and post-development impervious cover and stormwater calculations required by the County Manager;
  - b. Location and design of all planned stormwater BMPs, including total area of impervious surface treated by each BMP and BMP treatment efficiencies;
  - c. Description and design of any non-structural stormwater control practices and techniques;
  - d. For stormwater management facilities, verification of performance and structural soundness, including a Professional Engineer Certification;
  - e. Any worksheets or other documentation required by the County Manager.
2. Site specific facilities shall be designed, where required by the County Manager, to accommodate the future development of the contributing watershed based on zoning, comprehensive plans, local public facility master plans, or other similar planning documents.
  3. All engineering calculations shall be performed in accordance with the procedures outlined in the current edition of the *Virginia Stormwater Management Handbook* or engineering manuals developed by designated area-wide planning agencies.
  4. 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.

E. Erosion and Sediment Control Plan

An erosion and sediment control plan shall be submitted that satisfies the requirements of this Chapter and in accordance with Chapter 57 (Erosion and Sediment Control Ordinance) of the Arlington County Code.

F. Other Submittal Requirements

1. Final plans for all lands within CBPAs shall include the following additional information:
  - a. All wetlands permits required by law;
  - b. A maintenance agreement as deemed necessary and appropriate by the County Manager to ensure proper maintenance of best management practices in order to continue their function.
  - c. Plat or plan note stating that no land disturbance is allowed in the RPA buffer without review or approval by the County Manager.
2. Installation and Bonding Requirements
  - a. Where RPAs, landscaping, stormwater management facilities or other specifications of an approved plan are required, no certificate of occupancy shall be issued until the installation of required plant material or facilities is completed in accordance with the approved plan.
  - b. When the occupancy of a structure is desired prior to the completion of the required landscaping, stormwater management facilities, or other specifications of an approved plan, a certificate of occupancy may be issued only if the applicant provides to the County Manager a form of surety satisfactory to the County Manager in an amount equal to the cost of any remaining plant materials, related materials, or installation costs of the required landscaping or facilities and/or maintenance costs for any required stormwater management facilities, under terms to be established by the County Manager. A certificate of occupancy may be issued if the County Manager determines that the cost of any uncompleted work is less than \$1,500.
  - c. 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.
  - d. All required stormwater management facilities or other specifications shall be installed and approved within six (6) months of project initiation, as evidenced by issuance of the initial County building permit, this period being subject to extension for cause by the County Manager. Should the applicant fail, after proper written notice, to initiate, complete or maintain appropriate actions required by the approved plan, the surety may be forfeited to County. The County may collect from the applicant the amount by which the reasonable cost of required actions exceeds the amount of the surety held.
  - e. The applicant shall submit a written request for final inspection after all required actions of the approved plan have been completed. If the requirements of the approved plan have been completed to the satisfaction of the County Manager, such unexpended or unobligated portion of the surety held shall be refunded to the applicant or terminated within 60 days following receipt of the applicant's request for final inspection. The County Manager may require a certificate of substantial completion from a Professional Engineer or Class III B Surveyor, as applicable, before making a final inspection.

G. Administrative Responsibility

The County Manager shall approve, approve subject to conditions, or disapprove the plans or subdivision plats in accordance with this Chapter. The County Manager shall review and return the plan or plat review results to the applicant, including required conditions or modifications if the applicant wishes to proceed. If the applicant decides to proceed, the plan or plat shall be modified by the applicant to reflect any required conditions or modifications and submitted for approval.

H. Denial of Plan or Subdivision Plat, Appeal of Conditions or Modifications

The applicant, when aggrieved by a decision of the County Manager in the enforcement of this Chapter, may request a meeting with the County Manager to review the decision. Requests for the meeting shall be made no more than 30 calendar days after the applicant has been notified of the County Manager's decision. The County Manager shall

then preside at a meeting of the involved parties and then reconsider the decision. The meeting participants shall be notified by the County Manager within 30 calendar days after the meeting of the result of the reconsideration.

**Section 61-14. Nonconforming Uses and Structures**

- A. Any structure or nonagricultural use that was legally established in accordance with the provisions of the Arlington County Code and was in existence on the effective date of this Chapter, May 16, 1992, and made non-conforming by operation of this Chapter, may continue and be maintained, but shall not be enlarged or expanded, unless such enlargement or expansion is approved pursuant to Section 61-16 (Exceptions) of this Chapter and otherwise complies with applicable provisions of the Arlington County Code, or is otherwise allowed under Section 61-14.C.
- B. Nothing in this Chapter shall prevent the reconstruction of such nonconforming structures destroyed or damaged by any casualty unless the reconstruction is otherwise restricted by the Zoning Ordinance or other portions of the Arlington County Code. Such reconstruction shall occur within two (2) years after the destruction or damage and there shall be no increase in the amount of impervious area and no further encroachment into the RPA, to the extent possible by sound engineering practices.
- C. No change or expansion of nonconforming uses or structures in the RPA buffer shall be allowed except that:
  - 1. The County Manager may approve exception requests to modify principal nonconforming structures on legal nonconforming lots or parcels, including the addition of decks, garages, and other customary and incidental structures attached to the principal structure, provided that:
    - a. The principal structure remains intact and the modification is compatible in bulk and scale to those in the surrounding neighborhood or area, as determined by the County Manager. If these criteria are not met, the modification shall be subject to the exception request requirements for redevelopment under 61-16.A.
    - b. There will be no net increase in nonpoint source pollution load;
    - c. Any development or land disturbance exceeding an area of 2,500 square feet complies with all erosion and sediment control requirement of this Chapter.
    - d. The County Manager finds that the exception request complies with the provisions of Section 61-16.C
  - 2. The County Manager may establish criteria to determine when the request shall become null and void, if granted and no substantial work has commenced.
  - 3. Requests to expand nonconforming uses or to construct or modify nonconforming, non-attached accessory structures in the RPA buffer shall only be approved by the Chesapeake Bay Ordinance Review Committee (CBORC) through the exceptions process in Section 61-16.A of this Chapter.

**Section 61-15. Exemptions**

- A. Exemptions for Public Utilities, Railroads, Public Roads, and Facilities

Construction, installation, operation, and maintenance of electric, natural gas, fiber-optic, and telephone transmission lines, railroads, and public roads (built separately from development projects regulated under Section 61-13) and their appurtenant structures in accordance with (i) regulations promulgated pursuant to the Erosion and Sediment Control Law (Section 10.1-560 *et seq.* of the Code of Virginia) and the Stormwater Management Act (Section 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 are deemed to comply with this Chapter. Any road alignment and design shall be optimized, consistent with all applicable requirements, to prevent or otherwise minimize the encroachment in the RPA buffer and to minimize adverse effects on water quality.

- B. Exemptions for Local Utilities and Other Service Lines

Construction, installation, and maintenance of water, sewer, natural gas, underground telecommunications and cable television lines owned or permitted by Arlington County or a service authority shall be exempt from the requirements of this Chapter 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 requirements and 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 Arlington County erosion and sediment control requirements.

C. Exemptions in RPAs

The following land disturbances in RPAs may be exempt from the requirements of this Chapter provided that they comply with the requirements listed in subdivisions 1 through 3 below: (i) water wells; (ii) passive recreation facilities and associated amenities such as boardwalks, trails, and pathways, including nature trails operated by government agencies, and trails and bikepaths that provide a link to a planned County trail system or have been recognized by the County Manager as an integral portion of a public trail network; (iii) conservation or preservation of soil, water, vegetation, fish, and other wildlife; and (iv) historic preservation and archaeological activities. The applicant shall demonstrate to the satisfaction of the County Manager that:

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; and,
3. Any land disturbance exceeding an area of 2,500 square feet shall comply with all Arlington County erosion and sediment control requirements.

**Section 61-16. Exceptions**

A. Exception Requests Submitted to the Chesapeake Bay Ordinance Review Committee

1. A request for an exception to the requirements of Section 61-7.A and Section 61-7.B (Allowable Development, Modifications and Encroachments in RPAs) of this Chapter, or an exception request to modify nonconforming, non-attached accessory structures and uses in the RPA buffer under Section 61-14.C.3, shall be made in writing to the Chesapeake Bay Ordinance Review Committee (CBORC), which is to be appointed by the County Manager. CBORC shall hold a public hearing on any such requests prior to approving or denying the exception.
2. CBORC shall consist of an odd number of members, including at least five (5), but not more than nine (9), individuals. Members shall be appointed to serve staggered terms of service, not to exceed four (4) years. Members may be appointed from County staff, residents of Arlington County, or persons doing business in Arlington, provided that all members shall be knowledgeable in County development policies and/or Chesapeake Bay Preservation Ordinance policies, and provided further that no more than three (3) staff members shall serve on the committee at any time.

B. Exception Requests Submitted to the County Manager

A request for an exception to the requirements of this Chapter shall be made in writing to the County Manager in the following cases:

1. Exception requests for provisions other than Section 61-7.A and Section 61-7.B (Allowable Development, Modifications and Encroachments in RPAs);
2. Exception requests to modify principal nonconforming structures on legal nonconforming lots or parcels in the RPA buffer, as may be approved by the County Manager under Section 61-14.C.1.

C. CBORC or the County Manager, as appropriate, shall review the exception request, including the water quality impact assessment, if applicable, and may grant the exception with such conditions and safeguards as are deemed necessary to further the purpose and intent of this Chapter, if CBORC or the County Manager find:

1. The requested exception to the criteria is the minimum necessary to afford relief;
2. Granting the exception will not confer upon the applicant any special privileges that are denied by this

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

3. The exception is in harmony with the purpose and intent of this Chapter and is not of substantial detriment to water quality;
4. The exception request is not based upon conditions or circumstances that are self-created or self-imposed;
5. Reasonable and appropriate conditions are imposed, as warranted, that will prevent the allowed activity from causing a degradation of water quality; and,
6. Other findings, as appropriate and required by CBORC or the County Manager.

D. Public Notification

For exception requests submitted to CBORC under Section 61-16.A, the applicant shall notify the affected public as set forth below:

1. Applicants submitting exception requests, waiver requests or water quality impact assessment review requests under this Chapter shall be required to provide notice to all persons owning property abutting or immediately across the street from the parcel, who are identified as the owners of record in the County tax records. The local civic association president and the Neighborhood Conservation Advisory Committee representatives that are on file with the County Board Office shall also be notified by the applicant. If a County designated historic district or landmark is situated on, abuts or is immediately across the street from the parcel affected by the request, the applicant shall also give notice to the Historic Affairs and Landmark Review Board chairman.
2. The notices shall be sent by mail certified, return receipt requested by the applicant and at their expense. The notices shall use the form prescribed by the County. The return receipts or copies shall be given to the County Manager and become part of the documentation for the exception request. CBORC shall not hold a public hearing on any request for at least 10 working days from the last date as shown in the signed and dated return receipts provided to the applicant by the U.S. Postal Service, except where the County Manager determines an emergency situation requires an immediate response. The applicant shall ensure that a copy of the request is readily available for public review during the 10 working day period and shall note the location of the copy in the request filed with the County Manager.

E. If CBORC or the County Manager cannot make the required findings or refuse to grant the exception, CBORC or the County Manager 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.

F. Any person aggrieved by a decision of CBORC or the County Manager in the enforcement of this Chapter may request a meeting with the County Manager and a representative of CBORC, if the exception request was submitted to CBORC, to review the decision. Requests for the meeting shall be made no more than 30 days after the decision has been made. The County Manager and a representative of CBORC, if the exception request was submitted to CBORC, shall then preside at a meeting of the involved parties and then reconsider the decision. The County Manager shall notify the meeting participants within 30 days of the result of the reconsideration.

**Section 61-17. Enforcement**

The County Manager, on behalf of the County Board, may seek injunctive relief to enjoin a violation or a threatened violation of any provision of this Chapter.

**Section 61-18. Penalties**

A. General Provisions

1. Any building erected or improvements constructed contrary to any of the provisions of this Chapter and any land disturbing activity regardless of area contrary to any of the provisions of this Chapter and any removal of vegetation in Chesapeake Bay Preservation Areas contrary to any of the provisions of this Chapter shall be and the same is hereby declared to be unlawful.
2. Any person, whether owner, lessee, principal, agent, employee or otherwise, who violates any of the provisions of this Chapter, or permits any such violation, or fails to comply with any of the requirements hereof, or who erects any building or uses any building or land in violation of the provisions of this Chapter shall be subject to the enforcement provisions of this Chapter.

3. Upon becoming aware of any violation of any provisions of this Chapter, the County Manager may serve a notice of violation on the property owner, the person committing or permitting the same either in person or by registered or certified mail to the property or the owner's address. Such notice shall specify the provisions of the Chapter which have been violated, the measures needed to remedy the violation, and a reasonable time in which to remedy the violations. Failure to take steps to comply with such notice within the time provided for shall constitute a separate violation of this Chapter.
4. Restoration of Chesapeake Bay Preservation Areas shall be performed as necessary to meet the intent of this Chapter. In addition to the plantings required by Section 61-10.C, the County Manager may require that trees illegally removed from Chesapeake Bay Preservation Areas be replaced by other trees of the same or comparable species of equal value. The value of the replacement trees shall not exceed the value of those illegally removed as determined by the formula in the latest revision of the *Guide for Plant Appraisal* prepared by the Council of Tree and Landscape Appraisers and published by the International Society of Arboriculture.
5. The County Manager may require the submission of a Water Quality Impact Assessment (WQIA) in accordance with the provisions of Section 61-12 as a condition for remedying a violation. In addition to the components of the WQIA listed in Section 61-12.C, the WQIA shall include a restoration plan acceptable to the County Manager for any removal of vegetation from Chesapeake Bay Preservation Areas which does not comply with the provisions of this Chapter.

**B. Criminal violations and penalties**

1. Violation of this ordinance shall constitute a Class One misdemeanor punishable by a fine of up to \$2,500 for each offense. Each separate act on the part of the person violating the Chapter shall be deemed a separate offense, and each day a violation is permitted to continue unabated shall be deemed to constitute a separate offense.
2. In addition to any criminal penalties provided under this Chapter, any person who violates any provision of this Chapter may be liable to the County in a civil action for damages, or for injunctive relief.

**C. Civil Penalties**

1. With the consent of any person who: (i) violates any provision of any local ordinance related to the protection of water quality in Chesapeake Bay Preservation Areas or (ii) violates or fails, neglects, or refuses to obey any Arlington County notice, order, rule, regulation, or variance or permit condition authorized under such ordinance, Arlington 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 Watershed Management Fund established by Section 61-11 of this Chapter in the treasury of Arlington County for the purpose of abating environmental damage to or restoring Chesapeake Bay Preservation Areas, except that where the violator is the County itself or its agent, the civil charges shall be paid into the state treasury. Civil charges shall be in lieu of any appropriate civil penalty that could be imposed under Subsection C.2. of this Section. Civil charges may be in addition to the cost of any restoration required or ordered by the local governmental body or official.
2. Any person who (i) violates this Ordinance or (ii) violates or fails, neglects, or refuses to obey any Arlington County final notice, order, rule, regulation, or variance or permit condition authorized under this Ordinance 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 Watershed Management Fund established by Section 61-11 of this Chapter in the treasury of Arlington County for the purpose of abating environmental damage to or restoring Chesapeake Bay Preservation Areas, in such a manner as the court may direct by order except that where the violator is the County itself or its agent, the court shall direct the penalty to be paid into the state treasury.

**Section 61-19. Severability**

It is the intention of the County Board that the phrases, clauses, sections, paragraphs, and sentences of this Chapter are severable, and if any phrase, clause, section, paragraph or sentence of this ordinance shall be declared unconstitutional or invalid by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Chapter.