

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

Title of Regulation: 9 VAC 10-20-10 et seq. Chesapeake Bay Preservation Area Designation and Management Regulations

Statutory Authority: §§ 10.1-2103 and 10.1-2107 of the Code of Virginia.

CHAPTER 20.
PART I.
INTRODUCTION.

9 VAC 10-20-10. Application.

The board is charged with the development of regulations which establish criteria that will provide for the protection of water quality, and that also will accommodate economic development. All counties, cities, and towns in Tidewater Virginia shall comply with this chapter. Other local governments not in Tidewater Virginia may use the criteria and conform their ordinances as provided in this chapter to protect the quality of state waters in accordance with § 10.1-2110 of the Code of Virginia.

9 VAC 10-20-20. Authority for chapter.

This chapter is issued under the authority of §§ 10.1-2103 and 10.1-2107 of Chapter 21 of Title 10.1 of the Code of Virginia (the Chesapeake Bay Preservation Act, hereinafter "the Act").

9 VAC 10-20-30. Purpose of chapter.

A. The purpose of this chapter is to protect and improve the water quality of the Chesapeake Bay, its tributaries, and other state waters by minimizing the effects of human activity upon these waters and implementing the Act, which provides for the definition and protection of certain lands called Chesapeake Bay Preservation Areas, which if improperly used or developed may result in substantial damage to the water quality of the Chesapeake Bay and its tributaries.

B. This chapter establishes the criteria that counties, cities and towns (hereinafter "local governments") shall use to determine the extent of the Chesapeake Bay Preservation Areas within their jurisdictions. This chapter establishes criteria for use by local governments in granting, denying or modifying requests to rezone, subdivide, or to use and develop land in Chesapeake Bay Preservation Areas. This chapter identifies the requirements for changes which local governments shall incorporate into their comprehensive plans, zoning ordinances and subdivision ordinances and employ to ensure that the use and development of land in Chesapeake Bay Preservation Areas shall be accomplished in a manner that protects the quality of state waters pursuant to §§ 10.1-2109 and 10.1-2111 of the Act.

9 VAC 10-20-40. Definitions.

The following words and terms used in this chapter have the following meanings, unless the context clearly indicates otherwise. In addition, some terms not defined herein are defined in § 10.1-2101 of the Act.

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

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

"Board" means the Chesapeake Bay Local Assistance Board.

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

"Chesapeake Bay Preservation Area" means any land designated by a local government pursuant to Part III (9 VAC 10-20-70 et seq.) of this chapter and § 10.1-2107 of the Act. A Chesapeake Bay Preservation Area shall consist of a Resource Protection Area and a Resource Management Area.

"Department" means the Chesapeake Bay Local Assistance Department.

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

3 "*Director*" means the executive director of the Chesapeake Bay Local Assistance Department.

4 "*Floodplain*" means all lands that would be inundated by flood water as a result of a storm event of a
5 100-year return interval.

6 "*Highly erodible soils*" means soils (excluding vegetation) with an erodibility index (EI) from sheet and rill
7 erosion equal to or greater than eight. The erodibility index for any soil is defined as the product of the
8 formula $RKLS/T$, where K is the soil susceptibility to water erosion in the surface layer; R is the rainfall and
9 runoff; LS is the combined effects of slope length and steepness; and T is the soil loss tolerance.

10 "*Highly permeable soils*" means soils with a given potential to transmit water through the soil profile.
11 Highly permeable soils are identified as any soil having a permeability equal to or greater than six inches of
12 water movement per hour in any part of the soil profile to a depth of 72 inches (permeability groups "rapid"
13 and "very rapid") as found in the "National Soil Survey Handbook" of November 1996 in the "Field Office
14 Technical Guide" of the U.S. Department of Agriculture Natural Resources Conservation Service.

15 "*Impervious cover*" means a surface composed of any material that significantly impedes or prevents
16 natural infiltration of water into the soil. Impervious surfaces include, but are not limited to, roofs, buildings,
17 streets, parking areas, and any concrete, asphalt or compacted gravel surface.

18 "*Infill*" means utilization of vacant land in previously developed areas.

19 "*Intensely Developed Areas*" means those areas designated by the local government pursuant to 9 VAC
20 10-20-100.

21 "*Local governments*" means counties, cities and towns. This chapter applies to local governments in
22 Tidewater Virginia, as defined in § 10.1-2101 of the Act, but the provisions of this chapter may be used by
23 other local governments.

24 "*Local program*" means the measures by which a local government complies with the Act and this chapter.

25 "*Local program adoption date*" means the date a local government meets the requirements of subdivisions
26 1 and 2 of 9 VAC 10-20-60 of Part II.

27 "*Nontidal wetlands*" means those wetlands other than tidal wetlands that are inundated or saturated by
28 surface or ground water at a frequency and duration sufficient to support, and that under normal
29 circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions,
30 as defined by the U.S. Environmental Protection Agency pursuant to § 404 of the federal Clean Water Act, in
31 33 CFR 328.3b.

32 "*Plan of development*" means any process for site plan review in local zoning and land development
33 regulations designed to ensure compliance with § 10.1-2109 of the Act and this chapter, prior to issuance of
34 a building permit.

35 "*Public road*" means a publicly owned road designed and constructed in accordance with water quality
36 protection criteria at least as stringent as requirements applicable to the Virginia Department of
37 Transportation, including regulations promulgated pursuant to (i) the Erosion and Sediment Control Law (§
38 10.1-560 et seq. of the Code of Virginia) and (ii) the Virginia Stormwater Management Act (§ 10.1-603.1 et
39 seq. of the Code of Virginia). This definition includes those roads where the Virginia Department of
40 Transportation exercises direct supervision over the design or construction activities, or both, and cases
41 where secondary roads are constructed or maintained, or both, by a local government in accordance with
42 the standards of that local government.

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

44 "*Resource Management Area*" means that component of the Chesapeake Bay Preservation Area that is
45 not classified as the Resource Protection Area.

46 "*Resource Protection Area*" means that component of the Chesapeake Bay Preservation Area comprised
47 of lands adjacent to water bodies with perennial flow that have an intrinsic water quality value due to the

1 ecological and biological processes they perform or are sensitive to impacts which may result in significant
2 degradation to the quality of state waters.

3 "*Silvicultural activities*" means forest management activities, including but not limited to the harvesting of
4 timber, the construction of roads and trails for forest management purposes, and the preparation of property
5 for reforestation that are conducted in accordance with the silvicultural best management practices
6 developed and enforced by the State Forester pursuant to § 10.1-1105 of the Code of Virginia and are
7 located on property defined as real estate devoted to forest use under § 58.1-3230 of the Code of Virginia.

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

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

12 "*Tidal wetlands*" means vegetated and nonvegetated wetlands as defined in § 28.2-1300 of the Code of
13 Virginia.

14 "*Tidewater Virginia*" means those jurisdictions named in § 10.1-2101 of the Act.

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

17 "*Water-dependent facility*" means a development of land that cannot exist outside of the Resource
18 Protection Area and must be located on the shoreline by reason of the intrinsic nature of its operation. These
19 facilities include, but are not limited to (i) ports; (ii) the intake and outfall structures of power plants, water
20 treatment plants, sewage treatment plants and storm sewers; (iii) marinas and other boat docking structures;
21 (iv) beaches and other public water-oriented recreation areas; and (v) fisheries or other marine resources
22 facilities.

23 **PART II.**

24 **LOCAL GOVERNMENT PROGRAMS.**

25 **9 VAC 10-20-50. Local program development.**

26 Local governments shall develop measures (hereinafter called "local programs") necessary to comply with
27 the Act and this chapter. Counties and towns are encouraged to cooperate in the development of their local
28 programs. In conjunction with other state water quality programs, local programs shall encourage and
29 promote: (i) protection of existing high quality state waters and restoration of all other state waters to a
30 condition or quality that will permit all reasonable public uses and will support the propagation and growth of
31 all aquatic life, including game fish, which might reasonably be expected to inhabit them; (ii) safeguarding
32 the clean waters of the Commonwealth from pollution; (iii) prevention of any increase in pollution; (iv)
33 reduction of existing pollution; and] (v) promotion of water resource conservation in order to provide for the
34 health, safety and welfare of the present and future citizens of the Commonwealth.

35 **9 VAC 10-20-60. Elements of program.**

36 Local programs shall contain the elements listed below.

- 37 1. A map delineating Chesapeake Bay Preservation Areas.
- 38 2. Performance criteria applying in Chesapeake Bay Preservation Areas that employ the requirements in
39 Part IV (9 VAC 10-20-110 et seq.) of this chapter.
- 40 3. A comprehensive plan or revision that incorporates the protection of Chesapeake Bay Preservation
41 Areas and of the quality of state waters, in accordance with criteria set forth in Part V (9 VAC 10-20-170 et
42 seq.) of this chapter.
- 43 4. A zoning ordinance or revision that (i) incorporates measures to protect the quality of state waters in
44 Chesapeake Bay Preservation Areas, as set forth in Part VI (9 VAC 10-20-181 et seq.) of this chapter,
45 and (ii) requires compliance with all criteria set forth in Part IV (9 VAC 10-20-110 et seq.) of this chapter.
- 46 5. A subdivision ordinance or revision that (i) incorporates measures to protect the quality of state waters
47 in Chesapeake Bay Preservation Areas, as set forth in Part VI (9 VAC 10-20-181 et seq.) of this chapter,

1 and (ii) assures that all subdivisions in Chesapeake Bay Preservation Areas comply with the criteria set
2 forth in Part IV (9 VAC 10-20-110 et seq.) of this chapter.

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4 6. An erosion and sediment control ordinance or revision that requires compliance with the criteria in Part
5 IV (9 VAC 10-20-110 et seq.) of this chapter.

6 7. A plan of development process prior to the issuance of a building permit to assure that use and
7 development of land in Chesapeake Bay Preservation Areas is accomplished in a manner that protects
8 the quality of state waters.

8 PART III.

9 CHESAPEAKE BAY PRESERVATION AREA DESIGNATION CRITERIA.

10 **9 VAC 10-20-70. Purpose.**

11 The criteria in this part provide direction for local government designation of the ecological and geographic
12 extent of Chesapeake Bay Preservation Areas. Chesapeake Bay Preservation Areas are divided into
13 Resource Protection Areas and Resource Management Areas that are subject to the criteria in Part IV (9
14 VAC 10-20-110 et seq.) and the requirements in Part V (9 VAC 10-20-170 et seq.) of this chapter. In
15 addition, the criteria in this part provide guidance for local government identification of areas suitable for
16 redevelopment that are subject to the redevelopment criteria in Part IV (9 VAC 10-20-110 et seq.) of this
17 chapter.

18 **9 VAC 10-20-80. Resource Protection Areas.**

19 A. At a minimum, Resource Protection Areas shall consist of lands adjacent to water bodies with perennial
20 flow that have an intrinsic water quality value due to the ecological and biological processes they perform or
21 are sensitive to impacts which may cause significant degradation to the quality of state waters. In their
22 natural condition, these lands provide for the removal, reduction or assimilation of sediments, nutrients and
23 potentially harmful or toxic substances in runoff entering the bay and its tributaries, and minimize the
24 adverse effects of human activities on state waters and aquatic resources.

25 B. The Resource Protection Area shall include:

26 1. Tidal wetlands;

27 2. Nontidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with
28 perennial flow;

29 3. Tidal shores;

30 4. Such other lands considered by the local government to meet the provisions of subsection A of this
31 section and to be necessary to protect the quality of state waters; and

32 5. A buffer area not less than 100 feet in width located adjacent to and landward of the components listed
33 in subdivisions 1 through 4 above, and along both sides of any water body with perennial flow. The full
34 buffer area shall be designated as the landward component of the Resource Protection Area
35 notwithstanding the presence of permitted uses, encroachments, and permitted vegetation clearing in
36 compliance with Part IV (9 VAC 10-20-110 et seq.) of this chapter.

37 C. Designation of the components listed in subdivisions 1-4 of subsection B of this section shall not be
38 subject to modification unless based on reliable, site-specific information as provided for in 9 VAC 10-20-105
39 and subdivision 6 of 9 VAC 10-20-130.

40 D. For the purpose of generally determining whether water bodies have perennial flow, local governments
41 may use one of the following methods, as long as the methodology is adopted into the local program and
42 applied consistently: (i) designation of water bodies depicted as perennial on the most recent U.S.
43 Geological Survey 7½ minute topographic quadrangle map (scale 1:24,000); or (ii) use of a scientifically
44 valid system of in-field indicators of perennial flow. However, site-specific determinations shall be made or
45 confirmed by the local government pursuant to 9 VAC 10-20-105.

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1 **9 VAC 10-20-90. Resource Management Areas.**

2 A. Resource Management Areas shall include land types that, if improperly used or developed, have a
3 potential for causing significant water quality degradation or for diminishing the functional value of the
4 Resource Protection Area.

5 B. A Resource Management Area shall be provided contiguous to the entire inland boundary of the
6 Resource Protection Area. The following land categories shall be considered for inclusion in the Resource
7 Management Area and, where mapping resources indicate the presence of these land types contiguous to
8 the Resource Protection Area, should be included in designations of Resource Management Areas:

- 9 1. Floodplains;
- 10 2. Highly erodible soils, including steep slopes;
- 11 3. Highly permeable soils;
- 12 4. Nontidal wetlands not included in the Resource Protection Area;
- 13 5. Such other lands considered by the local government to meet the provisions of subsection A of this
14 section and to be necessary to protect the quality of state waters.

15 C. Resource Management Areas shall encompass a land area large enough to provide significant water
16 quality protection through the employment of the criteria in Part IV (9 VAC 10-20-110 et seq.) and the
17 requirements in Parts II (9 VAC 10-20-50 et seq.) and V (9 VAC 10-20-170 et seq.) of this chapter.

18 1. Local governments with few or no Resource Management Area land types evident from available
19 mapping resources should evaluate the relationships of the following land categories to water quality
20 protection in making their Resource Management Area designations. The board will consider the degree
21 to which these land categories are included when evaluating the consistency of a locality's Resource
22 Management Area designation for achievement of significant water quality protection:

- 23 a. Known Resource Management Area land types;
- 24 b. Developable land within the jurisdiction;
- 25 c. Areas targeted for redevelopment; and
- 26 d. Areas served by piped or channelized stormwater drainage systems which provide no treatment of
27 stormwater discharges.

28 2. Localities with no mapping resources or with mapping resources for only portions of their jurisdiction
29 should evaluate the relationships of the following land categories to water quality protection in making
30 their Resource Management Area designations. The board will consider the degree to which these land
31 categories are included when evaluating the consistency of a local government's Resource Management
32 Area designation for achievement of significant water quality protection. Furthermore, such designations
33 may be considered an interim designation until such time as appropriate mapping resources become
34 available if such resources are considered by the board to be useful in determining the Resource
35 Management Area boundaries, in which case the board will reevaluate the interim Resource Management
36 Area designations at a later date:

- 37 a. Known Resource Management Area land types;
- 38 b. Developable land within the jurisdiction;
- 39 c. Areas targeted for redevelopment; and
- 40 d. Areas served by piped or channelized stormwater drainage systems which provide no treatment of
41 stormwater discharges.

42 3. Local governments should consider extending the Resource Management Area boundary to the
43 remainder of the lot, parcel, or development project upon which Resource Management Area-type
44 features are present.

1 4. Local governments shall demonstrate how significant water quality protection will be achieved within
2 designated Resource Management Areas, as well as by each local program as a whole, and explain the
3 rationale for excluding eligible Resource Management Area components that are not designated.

4 5. It is not the intent of the board, nor is it the intent of the Act or this chapter, to require that local
5 governments designate all lands within their jurisdiction as Chesapeake Bay Preservation Areas. It is also
6 not the intent of the board to discourage or preclude jurisdiction-wide designations of Resource
7 Management Areas when the local government considers such designations appropriate, recognizing that
8 greater water quality protection will result from more expansive implementation of the performance
9 criteria. The extent of the Resource Management Area designation should always be based on the
10 prevalence and relation of Resource Management Area land types and other appropriate land areas to
11 water quality protection.

12 **9 VAC 10-20-100. Intensely Developed Areas.**

13 A. At their option, local governments may designate Intensely Developed Areas as an overlay of
14 Chesapeake Bay Preservation Areas within their jurisdictions. For the purposes of this chapter, Intensely
15 Developed Areas shall serve as redevelopment areas in which development is concentrated as of the local
16 program adoption date. Areas so designated shall comply with the performance criteria for redevelopment in
17 Part IV (9 VAC 10-20-110 et seq.) of this chapter.

18 B. Local governments exercising this option shall examine the pattern of residential, commercial, industrial
19 and institutional development within Chesapeake Bay Preservation Areas. Areas of existing development
20 and infill sites where little of the natural environment remains may be designated as Intensely Developed
21 Areas provided at least one of the following conditions existed at the time the local program was originally
22 adopted:

- 23 1. Development has severely altered the natural state of the area such that it has more than 50%
24 impervious surface;
25 2. Public sewer and water systems, or a constructed stormwater drainage system, or both, have been
26 constructed and served the area by the original local program adoption date. This condition does not
27 include areas planned for public sewer and water or constructed stormwater drainage systems;
28 3. Housing density is equal to or greater than four dwelling units per acre.

29 **9 VAC 10-20-105. Site-specific refinement of Chesapeake Bay Preservation Area boundaries.**

30 Local governments shall, as part of their plan-of-development review process pursuant to subdivision 1 e
31 of 9 VAC 10-20-231 or during their review of a water quality impact assessment pursuant to subdivision 6 of
32 9 VAC 10-20-130, ensure or confirm that (i) a reliable, site-specific evaluation is conducted to determine
33 whether water bodies on or adjacent to the development site have perennial flow, and (ii) Resource
34 Protection Area boundaries are adjusted, as necessary, on the site, based on this evaluation of the site.
35 Local governments may accomplish this by either conducting the site evaluations themselves or requiring
36 the person applying to use or develop the site to conduct the evaluation and submit the required information
37 for review.

38 **PART IV.**

39 **LAND USE AND DEVELOPMENT PERFORMANCE CRITERIA.**

40 **9 VAC 10-20-110. Purpose.**

41 A. The purpose of this part is to achieve the goals of the Act and 9 VAC 10-20-50 by establishing criteria
42 to implement the following objectives: prevent a net increase in nonpoint source pollution from new
43 development and development on previously developed land where the runoff was treated by a water quality
44 protection best management practice, achieve a 10% reduction in nonpoint source pollution from
45 development on previously developed land where the runoff was not treated by one or more water quality
46 best management practices, and achieve a 40% reduction in nonpoint source pollution from agricultural and
47 silvicultural uses.

48 B. In order to achieve these goals and objectives, the criteria in this part establish performance standards
49 to minimize erosion and sedimentation potential, reduce land application of nutrients and toxics, maximize
50 rainwater infiltration, and ensure the long-term performance of the measures employed.

1 C. The criteria in this part become mandatory upon the local program adoption date. They are
2 supplemental to the various planning and zoning concepts employed by local governments in granting,
3 denying, or modifying requests to rezone, subdivide, or to use and develop land in Chesapeake Bay
4 Preservation Areas.

5 D. Local governments shall incorporate the criteria in this part into their comprehensive plans, zoning
6 ordinances and subdivision ordinances, and may incorporate the criteria in this part into such other
7 ordinances and regulations as may be appropriate, in accordance with §§ 10.1-2108 and 10.1-2111 of the
8 Act and Parts V (9 VAC 10-20-170 et seq.), VI (9 VAC 10-20-181 et seq.), and VII (9 VAC 10-20-211 et
9 seq.) of this chapter. The criteria may be employed in conjunction with other planning and zoning concepts
10 to protect the quality of state waters.

11 **9 VAC 10-20-120. General performance criteria.**

12 Through their applicable land use ordinances, regulations and enforcement mechanisms, local
13 governments shall require that any use, development or redevelopment of land in Chesapeake Bay
14 Preservation Areas meets the following performance criteria:

- 15 1. No more land shall be disturbed than is necessary to provide for the proposed use or development.
- 16 2. Indigenous vegetation shall be preserved to the maximum extent practicable, consistent with the use or
17 development proposed.
- 18 3. Where the best management practices utilized require regular or periodic maintenance in order to
19 continue their functions, such maintenance shall be ensured by the local government through a
20 maintenance agreement with the owner or developer or some other mechanism that achieves an
21 equivalent objective.
- 22 4. All development exceeding 2,500 square feet of land disturbance shall be accomplished through a plan
23 of development review process consistent with § 15.2-2286 A 8 of the Code of Virginia and subdivision 1
24 e of 9 VAC 10-20-231.
- 25 5. Land development shall minimize impervious cover consistent with the proposed use or development.
- 26 6. Any land disturbing activity that exceeds an area of 2,500 square feet (including construction of all
27 single family houses, septic tanks and drainfields, but otherwise as defined in § 10.1-560 of the Code of
28 Virginia) shall comply with the requirements of the local erosion and sediment control ordinance.
- 29 7. On-site sewage treatment systems not requiring a Virginia Pollutant Discharge Elimination System
30 (VPDES) permit shall:
 - 31 a. Have pump-out accomplished for all such systems at least once every five years;
 - 32 (1) If deemed appropriate by the local health department and subject to conditions the local health
33 department may set, local governments may offer to the owners of such systems, as an alternative to
34 the mandatory pump-out, the option of having a plastic filter installed and maintained in the outflow
35 pipe from the septic tank to filter solid material from the effluent while sustaining adequate flow to the
36 drainfield to permit normal use of the septic system. Such a filter should satisfy standards
37 established in the Sewage Handling and Disposal Regulations (12 VAC 5-610) administered by the
38 Virginia Department of Health.
 - 39 (2) Furthermore, in lieu of requiring proof of septic tank pump-out every five years, local governments
40 may allow owners of on-site sewage treatment systems to submit documentation every five years,
41 certified by a sewage handler permitted by the Virginia Department of Health, that the septic system
42 has been inspected, is functioning properly, and the tank does not need to have the effluent pumped
43 out of it.
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 - 46 b. For new construction, provide a reserve sewage disposal site with a capacity at least equal to that of
47 the primary sewage disposal site. This reserve sewage disposal site requirement shall not apply to any
48 lot or parcel recorded prior to October 1, 1989, if the lot or parcel is not sufficient in capacity to
49 accommodate a reserve sewage disposal site, as determined by the local health department. Building
50 shall be prohibited on the area of all sewage disposal sites until the structure is served by public sewer
or an on-site sewage treatment system which operates under a permit issued by the State Water

1 Control Board. All sewage disposal site records shall be administered to provide adequate notice and
2 enforcement. As an alternative to the 100% reserve sewage disposal site, local governments may offer
3 the owners of such systems the option of installing an alternating drainfield system meeting the
4 following conditions:

5 (1) Each of the two alternating drainfields in the system shall have, at a minimum, an area not less
6 than 50% of the area that would otherwise be required if a single primary drainfield were constructed.

7 (2) An area equaling 50% of the area that would otherwise be required for the primary drainfield site
8 must be reserved for subsurface absorption systems that utilize a flow diversion device, in order to
9 provide for future replacement or repair to meet the requirements for a sewage disposal system.
10 Expansion of the primary system will require an expansion of this reserve area.

11 (3) The two alternating drainfields shall be connected by a diversion valve, approved by the local
12 health department, located in the pipe between the septic (aerobic) tank and the distribution boxes.
13 The diversion valve shall be used to alternate the direction of effluent flow to one drainfield or the
14 other at a time. However, diversion valves shall not be used for the following types of treatment
15 systems:

16 (a) Sand mounds;

17 (b) Low-pressure distribution systems;

18 (c) Repair situations when installation of a valve is not feasible; and

19 (d) Any other approved system for which the use of a valve would adversely affect the design of the
20 system, as determined by the local health department.

21 (4) The diversion valve shall be a three-port, two-way valve of approved materials (i.e., resistant to
22 sewage and leakproof and designed so that the effluent from the tank can be directed to flow into
23 either one of the two distribution boxes).

24 (5) There shall be a conduit from the top of the valve to the ground surface with an appropriate cover
25 to be level with or above the ground surface.

26 (6) The valve shall not be located in driveways, recreational courts, parking lots, or beneath sheds or
27 other structures.

28 (7) In lieu of the aforementioned diversion valve, any device that can be designed and constructed to
29 conveniently direct the flow of effluent from the tank into either one of the two distribution boxes may
30 be approved if plans are submitted to the local health department and found to be satisfactory.

31 (8) The local government shall require that the owner(s) alternate the drainfields every 12 months to
32 permit the yearly resting of half of the absorption system.

33 (9) The local government shall ensure that the owner(s) are notified annually of the requirement to
34 switch the valve to the opposite drainfield.

35 8. Stormwater management criteria consistent with the water quality protection provisions (4 VAC 3-20-71
36 et seq.) of the Virginia Stormwater Management Regulations (4 VAC 3-20) shall be satisfied.

37 a. The following stormwater management options shall be considered to comply with this subsection of
38 this chapter:

39 (1) Incorporation on the site of best management practices that meet the water quality protection
40 requirements set forth in this subsection. For the purposes of this subsection, the "site" may include
41 multiple projects or properties that are adjacent to one another or lie within the same drainage area
42 where a single best management practice will be utilized by those projects to satisfy water quality
43 protection requirements;

44 (2) Compliance with a locally adopted regional stormwater management program, which may include
45 a Virginia Pollution Discharge Elimination System (VPDES) permit issued by the Department of
46 Environmental Quality to a local government for its municipally owned separate storm sewer system

- 1 discharges, that is reviewed and found by the board to achieve water quality protection equivalent to
2 that required by this subsection; and
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- 4 (3) Compliance with a site-specific VPDES permit issued by the Department of Environmental
5 Quality, provided that the local government specifically determines that the permit requires measures
6 that collectively achieve water quality protection equivalent to that required by this subsection.
- 7 b. Any maintenance, alteration, use or improvement to an existing structure that does not degrade the
8 quality of surface water discharge, as determined by the local government, may be exempted from the
9 requirements of this subsection.
- 10 c. Stormwater management criteria for redevelopment shall apply to any redevelopment, whether or not
11 it is located within an Intensely Developed Area designated by a local government.
- 12 9. Land upon which agricultural activities are being conducted, including but not limited to crop production,
13 pasture, and dairy and feedlot operations, or lands otherwise defined as agricultural land by the local
14 government, shall have a soil and water quality conservation assessment conducted that evaluates the
15 effectiveness of existing practices pertaining to soil erosion and sediment control, nutrient management,
16 and management of pesticides and, where necessary, results in a plan that outlines additional practices
17 needed to ensure that water quality protection is being accomplished consistent with the Act and this
18 chapter.
- 19 a. Recommendations for additional conservation practices need address only those conservation issues
20 applicable to the tract or field being assessed. Any soil and water quality conservation practices that
21 are recommended as a result of such an assessment and are subsequently implemented with financial
22 assistance from federal or state cost-share programs must be designed, consistent with cost-share
23 practice standards effective in January 1999 in the "Field Office Technical Guide" of the U.S.
24 Department of Agriculture Natural Resource Conservation Service or the January 2001 edition of the
25 "Virginia Agricultural BMP Manual" of the Virginia Department of Conservation and Recreation,
26 respectively. Unless otherwise specified in this section, general standards pertaining to the various
27 agricultural conservation practices being assessed shall be as follows:
- 28 (1) For erosion and sediment control recommendations, the goal shall be, where feasible, to prevent
29 erosion from exceeding the soil loss tolerance level, referred to as "T," as defined in the "National Soil
30 Survey Handbook" of November 1996 in the "Field Office Technical Guide" of the U.S. Department of
31 Agriculture Natural Resource Conservation Service. However, in no case shall erosion exceed the
32 soil loss consistent with an Alternative Conservation System, referred to as an "ACS", as defined in
33 the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resource
34 Conservation Service.
- 35 (2) For nutrient management, whenever nutrient management plans are developed, the operator or
36 landowner must provide soil test information, consistent with the Virginia Nutrient Management
37 Training and Certification Regulations (4 VAC 5-15-10 et seq.).
- 38 (3) For pest chemical control, referrals shall be made to the local cooperative extension agent or an
39 Integrated Pest Management Specialist of the Virginia Cooperative Extension Service.
40 Recommendations shall include copies of applicable information from the "Virginia Pest Management
41 Guide" or other Extension materials related to pest control.
- 42 b. A higher priority shall be placed on conducting assessments of agricultural fields and tracts adjacent
43 to Resource Protection Areas. However, if the landowner or operator of such a tract also has Resource
44 Management Area fields or tracts in his operation, the assessment for that landowner or operator may
45 be conducted for all fields or tracts in the operation. When such an expanded assessment is
46 completed, priority must return to Resource Protection Area fields and tracts.
- 47 c. The findings and recommendations of such assessments and any resulting soil and water quality
48 conservation plans will be submitted to the local Soil and Water Conservation District Board, which will
49 be the plan-approving authority.
- 50 10. Silvicultural activities in Chesapeake Bay Preservation Areas are exempt from this chapter provided
51 that silvicultural operations adhere to water quality protection procedures prescribed by the Virginia
52 Department of Forestry in the January 1997 edition of "Forestry Best Management Practices for Water
Quality in Virginia Technical Guide." The Virginia Department of Forestry will oversee and document

1 installation of best management practices and will monitor in-stream impacts of forestry operations in
2 Chesapeake Bay Preservation Areas.

3 11. Local governments shall require evidence of all wetlands permits required by law prior to authorizing
4 grading or other on-site activities to begin.

5 **9 VAC 10-20-130. Development criteria for Resource Protection Areas.**

6 In addition to the general performance criteria set forth in 9 VAC 10-20-120, the criteria in this section are
7 applicable in Resource Protection Areas.

8
9 1. Land development may be allowed in the Resource Protection Area, subject to approval by the local
10 government, only if it (i) is water dependent; (ii) constitutes redevelopment; (iii) constitutes development or
11 redevelopment within a designated Intensely Developed Area; (iv) is a new use established pursuant to
12 subdivision 4 a of this section; (v) is a road or driveway crossing satisfying the conditions set forth in
13 subdivision 1 d of this section; or (vi) is a flood control or stormwater management facility satisfying the
14 conditions set forth in subdivision 1 e of this section.

15 a. A water quality impact assessment in accordance with subdivision 6 of this section shall be required
16 for any proposed land disturbance.

17 b. A new or expanded water-dependent facility may be allowed provided that the following criteria are
18 met:

19 (1) It does not conflict with the comprehensive plan;

20 (2) It complies with the performance criteria set forth in 9 VAC 10-20-120;

21 (3) Any nonwater-dependent component is located outside of Resource Protection Areas; and

22 (4) Access to the water-dependent facility will be provided with the minimum disturbance necessary.
23 Where practicable, a single point of access will be provided.

24 c. Redevelopment outside locally designated Intensely Developed Areas shall be permitted in the
25 Resource Protection Area only if there is no increase in the amount of impervious cover and no further
26 encroachment within the Resource Protection Area, and it shall conform to applicable erosion and
27 sediment control and stormwater management criteria set forth in subdivisions 6 and 8, respectively, of
28 9 VAC 10-20-120, as well as all applicable stormwater management requirements of other state and
29 federal agencies.

30 d. Roads and driveways not exempt under subdivision B 1 of 9 VAC 10-20-150 and which, therefore,
31 must comply with the provisions of this chapter, may be constructed in or across Resource Protection
32 Areas if each of the following conditions is met:

33 (1) The local government makes a finding that there are no reasonable alternatives to aligning the
34 road or driveway in or across the Resource Protection Area;

35 (2) The alignment and design of the road or driveway are optimized, consistent with other applicable
36 requirements, to minimize (i) encroachment in the Resource Protection Area and (ii) adverse effects
37 on water quality;

38 (3) The design and construction of the road or driveway satisfy all applicable criteria of this chapter,
39 including submission of a water quality impact assessment; and

40 (4) The local government reviews the plan for the road or driveway proposed in or across the
41 Resource Protection Area in coordination with local government site plan, subdivision and plan of
42 development approvals.

43 e. Flood control and stormwater management facilities that drain or treat water from multiple
44 development projects or from a significant portion of a watershed may be allowed in Resource
45 Protection Areas, provided that (i) the local government has conclusively established that location of the
46 facility within the Resource Protection Area is the optimum location; (ii) the size of the facility is the
47 minimum necessary to provide necessary flood control, stormwater treatment, or both; (iii) the facility
must be consistent with a stormwater management program that has been approved by the Board as a

- 1 Phase I modification to the local government's program; (iv) all applicable permits for construction in
2 state or federal waters must be obtained from the appropriate state and federal agencies, such as the
3 U.S. Army Corps of Engineers, the Virginia Department of Environmental Quality, and the Virginia
4 Marine Resources Commission; (v) approval must be received from the local government prior to
5 construction; and (vi) routine maintenance is allowed to be performed on such facilities to assure that
6 they continue to function as designed. It is not the intent of this subdivision to allow a best management
7 practice that collects and treats runoff from only an individual lot or some portion of the lot to be located
8 within a Resource Protection Area.
- 9
- 10 2. Exemptions in Resource Protection Areas. The following land disturbances in Resource Protection
11 Areas may be exempt from the criteria of this part provided that they comply with subdivisions a and b
12 below of this subdivision 2: (i) water wells; (ii) passive recreation facilities such as boardwalks, trails and
13 pathways; and (iii) historic preservation and archaeological activities.
- 14 a. Local governments shall establish administrative procedures to review such exemptions.
- 15 b. Any land disturbance exceeding an area of 2,500 square feet shall comply with the erosion and
16 sediment control criteria in subdivision 6 of 9 VAC 10-20-120.
- 17 3. Buffer area requirements. The 100-foot wide buffer area shall be the landward component of the
18 Resource Protection Area as set forth in subdivision B 5 of 9 VAC 10-20-80. Notwithstanding permitted
19 uses, encroachments, and vegetation clearing, as set forth in this section, the 100-foot wide buffer area is
20 not reduced in width. To minimize the adverse effects of human activities on the other components of the
21 Resource Protection Area, state waters, and aquatic life, a 100-foot wide buffer area of vegetation that is
22 effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff shall be
23 retained if present and established where it does not exist.
- 24 a. The 100-foot wide buffer area shall be deemed to achieve a 75% reduction of sediments and a 40%
25 reduction of nutrients.
- 26 b. Where land uses such as agriculture or silviculture within the area of the buffer cease and the lands
27 are proposed to be converted to other uses, the full 100-foot wide buffer shall be reestablished. In
28 reestablishing the buffer, management measures shall be undertaken to provide woody vegetation that
29 assures the buffer functions set forth in this chapter.
- 30 4. Permitted encroachments into the buffer area.
- 31 a. When the application of the buffer area would result in the loss of a buildable area on a lot or parcel
32 recorded prior to October 1, 1989, encroachments into the buffer area may be allowed through an
33 administrative process, in accordance with the following criteria:
- 34 (1) Encroachments into the buffer area shall be the minimum necessary to achieve a reasonable
35 buildable area for a principal structure and necessary utilities.
- 36 (2) Where practicable, a vegetated area that will maximize water quality protection, mitigate the
37 effects of the buffer encroachment, and is equal to the area of encroachment into the buffer area shall
38 be established elsewhere on the lot or parcel.
- 39 (3) The encroachment may not extend into the seaward 50 feet of the buffer area.
- 40 b. When the application of the buffer area would result in the loss of a buildable area on a lot or parcel
41 recorded between October 1, 1989 and March 1, 2002, encroachments into the buffer area may be
42 allowed through an administrative process in accordance with the following criteria:
- 43 (1) The lot or parcel was created as a result of a legal process conducted in conformity with the
44 local government's subdivision regulations;
- 45 (2) Conditions or mitigation measures imposed through a previously approved exception shall
46 be met;
- 47 (3) If the use of a best management practice (BMP) was previously required, the BMP shall be
48 evaluated to determine if it continues to function effectively and, if necessary, the BMP shall be
49 reestablished or repaired and maintained as required; and
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(4) The criteria in subdivision 4 a of this section shall be met.

5. Permitted modifications of the buffer area.

a. In order to maintain the functional value of the buffer area, existing vegetation may be removed, subject to approval by the local government, only to provide for reasonable sight lines, access paths, general woodlot management, and best management practices, including those that prevent upland erosion and concentrated flows of stormwater, as follows:

(1) Trees may be pruned or removed as necessary to provide for sight lines and vistas, provided that where removed, they shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff.

(2) Any path shall be constructed and surfaced so as to effectively control erosion.

(3) Dead, diseased, or dying trees or shrubbery and noxious weeds (such as Johnson grass, kudzu, and multiflora rose) may be removed and thinning of trees may be allowed, pursuant to sound horticultural practice incorporated into locally-adopted standards.

(4) For shoreline erosion control projects, trees and woody vegetation may be removed, necessary control techniques employed, and appropriate vegetation established to protect or stabilize the shoreline in accordance with the best available technical advice and applicable permit conditions or requirements.

b. 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:

(1) 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) administered by the Virginia Department of Conservation and Recreation.

(2) 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) 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.

(3) The buffer area is not required to be designated adjacent to 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.

(4) 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 local government, in cooperation with 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

1 account the seasons and other temporal considerations so that the probability for successfully
2 implementing the corrective measures is greatest.

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4 (5) In cases where the landowner or his agent or operator has refused assistance from the local soil
5 and water conservation district in complying with or documenting compliance with the agricultural
6 requirements of this chapter, the district shall report the noncompliance to the local government. The
7 local government shall require the landowner to correct the problems within a specified period of time
8 not to exceed 18 months from their initial notification of the deficiencies to the landowner. The local
9 government, in cooperation with the district, shall recommend a compliance schedule to the
10 landowner. This schedule shall expedite environmental protection while taking into account the
11 seasons and other temporal considerations so that the probability for successfully implementing the
12 corrective measures is greatest.

13 6. Water quality impact assessment. A water quality impact assessment shall be required for any
14 proposed development within the Resource Protection Area consistent with this Part and for any other
15 development in Chesapeake Bay Preservation Areas that may warrant such assessment because of the
16 unique characteristics of the site or intensity of the proposed use or development.

17 a. The purpose of the water quality impact assessment is to identify the impacts of proposed
18 development on water quality and lands in the Resource Protection Areas consistent with the goals and
19 objectives of the Act, this chapter, and local programs, and to determine specific measures for
20 mitigation of those impacts. The specific content and procedures for the water quality impact
21 assessment shall be established by each local government. Local governments should notify the board
22 of all development requiring such an assessment. Upon request, the board will provide review and
23 comment regarding any water quality impact assessment, in accordance with the advisory state review
24 requirements of § 10.1-2112 of the Act.

25 b. The water quality impact assessment shall be of sufficient specificity to demonstrate compliance with
26 the criteria of the local program.

27 7. Buffer area requirements for Intensely Developed Areas. In Intensely Developed Areas the local
28 government may exercise discretion regarding whether to require establishment of vegetation in the 100-
29 foot wide buffer area. However, while the immediate establishment of vegetation in the buffer area may
30 be impractical, local governments shall give consideration to implementing measures that would establish
31 vegetation in the buffer in these areas over time in order to maximize water quality protection, pollutant
32 removal, and water resource conservation.

33 **9 VAC 10-20-140. (Repealed.)**

34 **9 VAC 10-20-150. Nonconformities, exemptions, and exceptions.**

35 A. Nonconforming uses and noncomplying structures.

36 1. Local governments may permit the continued use, but not necessarily the expansion, of any structure in
37 existence on the date of local program adoption. Local governments may establish an administrative
38 review procedure to waive or modify the criteria of this part for structures on legal nonconforming lots or
39 parcels provided that:

40 a. There will be no net increase in nonpoint source pollutant load; and

41 b. Any development or land disturbance exceeding an area of 2,500 square feet complies with all
42 erosion and sediment control requirements of this part.

43 2. This chapter shall not be construed to prevent the reconstruction of pre-existing structures within
44 Chesapeake Bay Preservation Areas from occurring as a result of casualty loss unless otherwise
45 restricted by local government ordinances.

46 B. Public utilities, railroads, public roads, and facilities exemptions.

47 1. Construction, installation, operation, and maintenance of electric, natural gas, fiber-optic, and telephone
48 transmission lines, railroads, and public roads and their appurtenant structures in accordance with (i)
49 regulations promulgated pursuant to the Erosion and Sediment Control Law (§ 10.1-560 et seq. of the
50 Code of Virginia) and the Stormwater Management Act (§ 10.1-603.1 et seq. of the Code of Virginia), (ii)
an erosion and sediment control plan and a stormwater management plan approved by the Virginia

- 1 Department of Conservation and Recreation, or (iii) local water quality protection criteria at least as
2 stringent as the above state requirements will be deemed to constitute compliance with this chapter. The
3 exemption of public roads is further conditioned on the following:
- 4 a. Optimization of the road alignment and design, consistent with other applicable requirements, to
5 prevent or otherwise minimize (i) encroachment in the Resource Protection Area and (ii) adverse effects
6 on water quality; and
7
8 b. Local governments may choose to exempt (i) all public roads as defined in 9 VAC 10-20-40, or (ii)
9 only those public roads constructed by the Virginia Department of Transportation.
- 10 2. Construction, installation and maintenance of water, sewer, natural gas, and underground
11 telecommunications and cable television lines owned, permitted, or both, by a local government or
12 regional service authority shall be exempt from the criteria in this part provided that:
- 13 a. To the degree possible, the location of such utilities and facilities should be outside Resource
14 Protection Areas;
15
16 b. No more land shall be disturbed than is necessary to provide for the proposed utility installation;
17
18 c. All such construction, installation and maintenance of such utilities and facilities shall be in
19 compliance with all applicable state and federal permits and designed and conducted in a manner that
20 protects water quality; and
21
22 d. Any land disturbance exceeding an area of 2,500 square feet complies with all erosion and sediment
23 control requirements of this part.
- 24 C. Exceptions.
- 25 1. Exceptions to the requirements of 9 VAC 10-20-120 and 9 VAC 10-20-130 may be granted, provided
26 that a finding is made that:
- 27 a. The requested exception to the criteria is the minimum necessary to afford relief;
28
29 b. Granting the exception will not confer upon the applicant any special privileges that are denied by
30 this Part IV to other property owners who are subject to its provisions and who are similarly situated;
31
32 c. The exception is in harmony with the purpose and intent of this Part IV and is not of substantial
33 detriment to water quality;
34
35 d. The exception request is not based upon conditions or circumstances that are self-created or self-
36 imposed;
37
38 e. Reasonable and appropriate conditions are imposed, as warranted, that will prevent the allowed
39 activity from causing a degradation of water quality; and
40
41 f. Other findings, as appropriate and required by the local government, are met.
- 42 2. Each local government shall design and implement an appropriate process or processes for the
43 administration of exceptions. The process to be used for exceptions to 9 VAC 10-20-130 shall include,
44 but not be limited to, the following provisions:
- 45 a. An exception may be considered and acted upon only by the local legislative body; the local planning
46 commission; or a special committee, board or commission established or designated by the local
47 government to implement the provisions of the Act and this chapter.
48
49 b. Local governments implementing this chapter through the local zoning code may provide for specific
50 provisions that allow for consideration of exceptions that comply with subdivision 2 of this subsection.
c. The provision of subdivision 2 b of this subsection notwithstanding, no exception shall be authorized
except after notice and a hearing, as required by § 15.2-2204 of the Code of Virginia, except that only
one hearing shall be required. However, when giving any required notice to the owners, their agents or
the occupants of abutting property and property immediately across the street or road from the property
affected, the notice may be given by first-class mail rather than by registered or certified mail.

1 3. Exceptions to other provisions of this part may be granted, provided that:

2 a. Exceptions to the criteria shall be the minimum necessary to afford relief; and

3 b. Reasonable and appropriate conditions upon any exception granted shall be imposed, as necessary,
4 so that the purpose and intent of the Act is preserved.

5 4. Notwithstanding the provisions of subdivisions 2 a through 2 c of this subsection, additions and
6 modifications to existing legal principal structures may be processed through an administrative review
7 process, as allowed by subsection A of this section, subject to the findings required by subdivision 1 of
8 this subsection but without a requirement for a public hearing. This provision shall not apply to accessory
9 structures.

10 **9 VAC 10-20-160. (Repealed.)**

11 PART V.
12 COMPREHENSIVE PLAN CRITERIA.

13 **9 VAC 10-20-170. Purpose.**

14 The purpose of this part is to assist local governments in the development of a comprehensive plan or
15 plan component that is consistent with the Act, and to establish guidelines for determining the consistency of
16 the local comprehensive plan or plan component with the Act.

17 **9 VAC 10-20-171. Comprehensive plans.**

18 Local governments shall review and revise their comprehensive plans, as necessary, for compliance with
19 § 10.1-2109 of the Act and this chapter. As a minimum, the comprehensive plan or plan component shall
20 consist of the following basic elements: (i) a summary of data collection; (ii) analysis and policy
21 discussion(s); (iii) land use plan map(s); and (iv) implementing measures, including specific objectives and a
22 time frame for accomplishment.

23 1. Local governments shall establish and maintain, as appropriate, an information base from which policy
24 choices are made about future land use and development that will protect the quality of state waters. This
25 element of the plan should be based upon the following, as applicable to the locality:

26 a. The location and extent of Chesapeake Bay Preservation Areas;

27 b. Physical constraints to development, including soil limitations;

28 c. The character and location of commercial and recreational fisheries and other aquatic resources;

29 d. Shoreline and streambank erosion problems;

30 e. Existing and proposed land uses;

31 f. Catalog of existing and potential water pollution sources;

32 g. Public and private waterfront access areas, including the general locations of or information about
33 docks, piers, marinas, boat ramps, and similar water access facilities;

34 h. A map or map series accurately representing the above information.

35 2. As part of the comprehensive plan, local governments shall clearly indicate local policy on land use
36 issues relative to water quality protection based on an analysis of the data referred to in subdivision 1 of
37 this section. Local governments shall ensure consistency among the policies developed.

38 a. Local governments shall discuss each component of Chesapeake Bay Preservation Areas in relation
39 to the types of land uses considered appropriate and consistent with the goals and objectives of the Act,
40 this chapter, and their local programs.

41 b. As a minimum, local governments shall prepare policy statements for inclusion in the plan on the
42 following issues, as applicable to the locality:

- 1 (1) Physical constraints to development, including a discussion of the relationship between soil
2 limitations and existing and proposed land use, with an explicit discussion of soil suitability for septic
3 tank use;
- 4 (2) Protection of potable water supply, including groundwater resources and threats to the water
5 supply or groundwater resources from existing and potential pollution sources;
- 6 (3) Relationship of land use to commercial and recreational fisheries and other aquatic resources;
- 7 (4) Siting of docks and piers;
- 8 (5) Public and private access to waterfront areas and effect on water quality;
- 9 (6) Mitigation of the impacts of land use and its associated pollution upon water quality;
- 10 (7) Shoreline and streambank erosion problems; and
- 11 (8) Potential water quality improvement through reduction of existing pollution sources and the
12 redevelopment of Intensely Developed Areas and other areas targeted for redevelopment.

13 c. For each of the policy issues listed above, the plan shall contain a discussion of the scope and
14 importance of the issue, the policy adopted by the local government for that issue, and a description of
15 how the local policy will be implemented.

16 d. Within the policy discussion, local governments shall address the relationship between the plan,
17 existing and proposed land use, public services, and capital improvement plans and budgets to ensure
18 a consistent local policy.

19 PART VI.
20 LAND DEVELOPMENT ORDINANCES.

21
22 **9 VAC 10-20-180. (Repealed.)**

23 **9 VAC 10-20-181. Purpose.**

24 The purpose of this part is to assist local governments in the preparation of land use and development
25 ordinances and regulations adopted pursuant to § 10.1-2109 and Articles 1 (§ 2.2-2200 et seq.), 2 (§ 2.2-
26 2210 et seq.), 4 (§ 2.2-2233 et seq.), 5 (§ 2.2-2239), 6 (§ 2.2-2240 et seq.), and 7 (§ 2.2-2280 et seq.) of
27 Chapter 22 of Title 15.2 of the Code of Virginia that are consistent with the Act and this chapter, and to
28 establish guidelines for determining the consistency of such ordinances and regulations with the Act and this
29 chapter. Such ordinances and regulations include, but are not limited to, subdivision ordinances and zoning
30 ordinances.

31
32 **9 VAC 10-20-190. (Repealed.)**

33 **9 VAC 10-20-191. Land development ordinances, regulations and procedures.**

34 A. Local governments shall review and revise their land development regulations, as necessary, to comply
35 with § 10.1-2109 of the Act. To achieve this:

- 36 1. Local zoning ordinances shall ensure that the uses permitted by the local zoning regulations are
37 consistent with the Act and this chapter;
- 38 2. Local land development ordinances and regulations shall incorporate either explicitly or by direct
39 reference the performance criteria in Part IV (9 VAC 10-20-110 et seq.) of this chapter. Specific
40 development standards that implement the performance criteria from subdivisions 1, 2 and 5 of 9 VAC 10-
41 20-120 (minimizing land disturbance and impervious cover and preserving existing vegetation,
42 respectively) shall be included;
- 43 3. Local land development ordinances and regulations shall protect the integrity of Chesapeake Bay
44 Preservation Areas by incorporating standards to ensure (i) the protection of water quality; (ii) the
45 preservation of Resource Protection Area land categories, as set forth in 9 VAC 10-20-80, including the

1 100-foot wide buffer area; and (iii) the compatibility of development with Resource Management Area land
2 categories, as set forth in 9 VAC 10-20-90;

3
4 4. Local land development ordinances and regulations shall provide for (i) depiction of Resource
5 Protection Area and Resource Management Area boundaries on plats and site plans, including a notation
6 on plats of the requirement to retain an undisturbed and vegetated 100-foot wide buffer area, as specified
7 in subdivision 3 of 9 VAC 10-20-130; (ii) a plat notation of the requirement for pump-out and 100% reserve
8 drainfield sites for on-site sewage treatment systems, when applicable; and (iii) a plat notation of the
9 permissibility of only water dependent facilities or redevelopment in Resource Protection Areas, including
the 100-foot wide buffer area; and

10
11 5. Local governments shall require, during the plan of development review process, the delineation of the
12 buildable areas that are allowed on each lot. The delineation of buildable areas shall be based on the
13 performance criteria specified in Part IV (9 VAC 10-20-110 et seq.) of this chapter, local front and side
yard setback requirements, and any other relevant easements or limitations regarding lot coverage.

14 B. Local governments shall undertake the following, as necessary, to comply with § 10.1-2109 of the Act:

15
16 1. Local governments shall evaluate the relationship between the submission requirements, performance
17 standards, and permitted uses in local land development ordinances and regulations to identify any
18 obstacles to achieving the water quality goals of the Act and this chapter as set forth in § 10.1-2107.B of
19 the Act, 9 VAC 10-20-50 and 9 VAC 10-20-110. Local governments shall revise these ordinances and
20 regulations, as necessary, to eliminate any obstacles identified in the submission requirements or
21 development standards.

22
23 2. Local governments shall review and revise their land development ordinances and regulations adopted
24 pursuant to § 10.1-2109 and § 10.1-2109 and Articles 1 (§ 2.2-2200 et seq.), 2 (§ 2.2-2210 et seq.), 4 (§
25 2.2-2233 et seq.), 5 (§ 2.2-2239), 6 (§ 2.2-2240 et seq.), and 7 (§ 2.2-2280 et seq.) of Chapter 22 of Title
26 15.2 of the Code of Virginia to assure that their subdivision ordinances, zoning ordinances, and all other
27 components of their local Chesapeake Bay Preservation Act programs are consistent in promoting and
28 achieving the protection of state waters. In addition, local governments shall identify and resolve any
29 conflicts among the components of the local programs and with other local ordinances, regulations and
30 administrative policies, to assure that the intent of the Act and this chapter is fulfilled.

31
32 3. Local governments shall review and revise their land development ordinances and regulations to
33 ensure consistency with the water quality protection goals, objectives, policies, and implementation
strategies identified in the local comprehensive plan.

34 PART VII.

35 LOCAL ASSISTANCE AND LOCAL PROGRAM CONSISTENCY REVIEW PROCESS.

36
37 **9 VAC 10-20-200. (Repealed.)**

38 **9 VAC 10-20-210. (Repealed.)**

39
40 **9 VAC 10-20-211. Purpose.**

41 The purpose of this part is to assist local governments in the timely preparation of local programs to
42 implement the Act and to establish an administrative procedure for determining local program consistency
43 with the Act.

44 **9 VAC 10-20-215. Local assistance manual.**

45 A. The department will prepare a manual to provide guidance to assist local governments in the
46 preparation of local programs in order to implement the Act and this chapter. The manual will be updated
47 periodically to reflect the most current planning and zoning techniques and effective best management
48 practices. The manual will be made available to the public.

49 B. The manual will recommend a schedule for the completion of local program elements and their
50 submission to the board for its information to ensure timely achievement of the requirements of the Act and
51 timely receipt of assistance. The board will consider compliance with the schedule in allocating financial and
52 technical assistance.

53 C. The manual is for the purpose of guidance only.

1
2 **9 VAC 10-20-220. (Repealed.)**
3

4 **9 VAC 10-20-221. Board to establish liaison.**

5 The board will establish liaison with each local government to assist the local government in developing
6 and implementing its local program, in obtaining technical and financial assistance, and in complying with
7 the Act and this chapter.
8

9 **9 VAC 10-20-225. Planning district comments.**

10 Local governments are encouraged to enlist the assistance and comments of regional planning district
11 agencies early in the development of their local programs.
12

13 **9 VAC 10-20-230. (Repealed.)**

14 **9 VAC 10-20-231. Preparation and submission of management program.**

15 Local governments must adopt the full management program, which will consist of Phases I - III as
16 defined in this section and including any revisions to comprehensive plans, zoning ordinances, subdivision
17 ordinances, and other local authorities necessary to implement the Act. Prior to adoption, local governments
18 may submit any proposed revisions to the board for comments. Criteria are provided below for local
19 government use in preparing local programs and the board's use in determining local program consistency.

20 1. Phase I shall consist of the designation of Chesapeake Bay Preservation Areas and adoption of the
21 performance criteria. This phase of designating Chesapeake Bay Preservation Areas as an element of
22 the local program should include:

23 a. Utilizing existing data and mapping resources to identify and describe tidal wetlands, nontidal
24 wetlands, tidal shores, water bodies with perennial flow, flood plains, highly erodible soils including
25 steep slopes, highly permeable areas, and other sensitive environmental resources as necessary to
26 comply with Part III (9 VAC 10-20-70 et seq.) of this chapter;

27 b. Determining, based upon the identification and description, the extent of Chesapeake Bay
28 Preservation Areas within the local jurisdiction;

29 c. Preparing an appropriate map or maps delineating Chesapeake Bay Preservation Areas;

30 d. Preparing amendments to local ordinances that incorporate the performance criteria of Part IV (9
31 VAC 10-20-110 et seq.) of this chapter or the model ordinance prepared by the board;

32 e. Establishing, if necessary, and incorporating a plan of development review process. Local
33 governments shall make provisions as necessary to ensure that any development of land within
34 Chesapeake Bay Preservation Areas shall be accomplished through a plan of development procedure
35 pursuant to § 15.2-2286 A 8 of the Code of Virginia to ensure compliance with the Act and this chapter.
36 Any exemptions from those review requirements shall be established and administered in a manner that
37 ensures compliance with this chapter.

38 f. Conducting a public hearing. Prior to adopting Chesapeake Bay Preservation Areas and the
39 performance criteria, each local government shall hold a public hearing to solicit public comment
40 regarding these local program components.

41 g. Providing copies of the adopted program documents and subsequent changes thereto to the board
42 for consistency review, as set forth in subdivision 5 of this section.
43

44 2. Phase II shall consist of local governments reviewing and revising their comprehensive plans, as
45 necessary, for compliance with § 10.1-2109 of the Act, in accordance with the provisions set forth in Part
46 V (9 VAC 10-20-170 et seq.) of this chapter.
47

48 3. Phase III shall consist of local governments reviewing and revising their land development regulations
49 and processes, which include but are not limited to zoning ordinances, subdivision ordinances, erosion
50 and sediment control ordinances, and the plan of development review process, as necessary, to comply
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1 with § 10.1-2109 of the Act and to be consistent with the provisions set forth in Part VI (9 VAC 10-20-181
2 et seq.) of this chapter.

3
4 4. Consistent with §§ 10.1-2108, 10.1-2109, and 10.1-2113 of the Act, local governments may use civil
5 penalties to enforce compliance with the requirements of local programs.

6
7 5. Review by the board.

8
9 a. The board will review proposed elements of a program phase within 60 days according to review
10 policies adopted by the board. If the proposed program phase is consistent with the Act, the board will
11 schedule a conference with the local government to determine what additional technical and financial
12 assistance may be needed and available to accomplish the proposed program phase. If the proposed
13 program phase or any part thereof is not consistent, the board will notify the local government in writing,
14 stating the reasons for a determination of inconsistency and specifying needed changes. Copies of the
15 adopted program documents and subsequent changes thereto shall be provided to the board.

16
17 b. The board will review locally adopted elements of a program phase according to review policies
18 adopted by the board and as set forth in 9 VAC 10-20-250.

19
20 PART VIII.
21 IMPLEMENTATION AND ENFORCEMENT.

22 **9 VAC 10-20-240. Applicability.**

23
24 The Act requires that the board ensure that local governments comply with the Act and regulations and
25 that their comprehensive plans, zoning ordinances, and subdivision ordinances are in accordance with the
26 Act. To satisfy these requirements, the board has adopted this chapter and will monitor each local
27 government's compliance with the Act and this chapter.

28
29 **9 VAC 10-20-250. Administrative proceedings.**

30 Section 10.1-2103.8 of the Act provides that the board shall ensure that local government comprehensive
31 plans, subdivision ordinances and zoning ordinances are in accordance with the provisions of the Act, and
32 that it shall determine such compliance in accordance with the provisions of the Administrative Process Act.
33 When the board determines to decide such compliance, it will give the subject local government at least 15
34 days notice of its right to appear before the board at a time and place specified for the presentation of factual
35 data, argument and proof as provided by § 9-6.14:11 of the Code of Virginia. The board will provide a copy
36 of its decision to the local government. If any deficiencies are found, the board will establish a schedule for
37 the local government to come into compliance.

38
39 1. In order to carry out its mandated responsibilities under § 10.1-2103.10 of the Act, the board will:

40
41 a. Require that each Tidewater local government submit an annual implementation report outlining the
42 implementation of the local program. The board will develop reporting criteria which outline the
43 information to be included in the reports and the time frame for their submission. The board will use the
44 information in these reports to assess local patterns of compliance with the Act and this chapter and to
45 evaluate the need for an administrative proceeding to more closely review any individual local
46 government's compliance. All proceedings of this nature will be developed and conducted in
47 accordance with this section.

48
49 b. Develop a compliance review process. Reviews will occur on a five-year cycle, and, when feasible,
50 will be conducted as part of the local government's comprehensive plan review and update process.
51 The review process shall consist of a self-evaluation by each local government of local program
52 implementation and enforcement as well as an evaluation by department staff. Based on these
53 evaluations, the board will make a consistency finding regarding the implementation of each local
54 program.

55
56 (1) The self-evaluation shall be conducted by each local government according to procedures
57 developed by the board.

58
59 (2) At a minimum, the department staff's evaluation will include a review of previous annual reports
60 and site visits.

1
2 2. Certification of a local program. Upon a satisfactory finding resulting from the compliance review
3 process, the board will certify that the local program is being implemented and enforced by the local
4 government consistent with the Act and this chapter and is, therefore, in compliance. Such a certification
5 shall be valid for a period of five years until the local government's next scheduled review, unless the
6 board finds a pattern of noncompliance during the interim period of time, pursuant to subdivision 1 of this
7 section.

8
9 **9 VAC 10-20-260. Legal proceedings.**

10 Section 10.1-2103.10 of the Act provides that the board shall take administrative and legal actions to
11 ensure compliance by local governments with the provisions of the Act. Before taking legal action against a
12 local government to ensure compliance, the board shall, unless it finds extraordinary circumstances, initiate
13 an administrative proceeding under the Act and 9 VAC 10-20-250 to obtain such compliance and give the
14 local government at least 15 days notice of the time and place at which it will decide whether or not to take
15 legal action. If it finds extraordinary circumstances, the board may proceed directly to request the Attorney
16 General to enforce compliance with the Act and this chapter. Administrative actions will be taken pursuant to
17 9 VAC 10-20-250.

18 **9 VAC 10-20-270. (Repealed.)**

19 **9 VAC 10-20-280. (Repealed.)**