

**Amendments to Chapter 118 (Chesapeake Bay Preservation Ordinance)
of
The Code of the County of Fairfax, Virginia**

Amend the Chesapeake Bay Preservation Ordinance, Section 118-1-6 (Definitions.), by revising Paragraph (dd) to read as follows:

(dd) "Water body with perennial flow" means a body of water flowing in a natural or man-made channel year-round during a year of normal precipitation, ~~except during periods of drought.~~ The term "water body with perennial flow" includes, but is not limited to, perennial streams, estuaries, and tidal embayments and may include drainage ditches or channels constructed in wetlands or from former natural drainageways, which convey perennial flow. ~~A perennial stream means any stream that is both perennial and so depicted on the map of Chesapeake Bay Preservation Areas adopted by the Board of Supervisors pursuant to Section 118-1-9(a). Streams identified as perennial on the adopted map are based on field studies conducted by the Department of Public Works and Environmental Services. Lakes and ponds that form the source of a perennial stream, or through which the perennial stream flows, are a part of the perennial stream. The width of a perennial stream may be measured from top-of-bank to top-of-bank or at the Ordinary High Water Mark (OHWM) as defined by 33 CFR Part 328.3(e). The aerial extent of a pond or lake is measured at the OHWM. Generally, the water table is located above the streambed for most of the year and groundwater is the primary source for stream flow. In the absence of pollution or other manmade disturbances, a perennial stream is capable of supporting aquatic life.~~

Amend the Chesapeake Bay Preservation Ordinance, Section 118-1-7 (Areas of Applicability.), by revising Paragraph (b) to read as follows:

(b) RPAs shall include any land characterized by one or more of the following features:

- (1) A tidal wetland;
- (2) A tidal shore;
- (3) A water body with perennial flow;
- (4) A nontidal wetland connected by surface flow and contiguous to a tidal wetland or water body with perennial flow;
- (5) A buffer area as follows:
 - (i) Any land within a major floodplain;
 - (ii) Any land within 100 feet of a feature listed in Sections 118-1-7(b)(1)-(4).

Streams identified as perennial on the map of Chesapeake Bay Preservation Areas adopted by the Board of Supervisors pursuant to Section 118-1-9(a) are based on field studies conducted by the Department of Public Works and Environmental Services. In administering the Ordinance, a stream must be both perennial and so depicted on the adopted map to be regulated as a water body with perennial flow. Lakes and ponds that form the source of a perennial stream, or through which the perennial stream flows, are a part of the perennial stream. The width of a perennial stream may be measured from top-of-bank to top-of-bank or at the Ordinary High Water Mark (OHWM) as defined by 33 CFR Part 328.3(e). The aerial extent of a pond or lake is measured at the OHWM. The full buffer area shall be designated as the landward component of the RPA notwithstanding the presence of permitted uses, encroachments, and permitted vegetation clearing in compliance with Article 3. Designation of the components listed in Sections 118-1-7(b)(1)-(4) shall not be subject to

modification unless based on reliable, site-specific information as provided for in Section 118-1-9.

Amend the Chesapeake Bay Preservation Ordinance, Section 118-1-9 (Chesapeake Bay Preservation Area Boundaries.), by revising Paragraph (d) to read as follows:

(d) Any landowner or agent of the landowner may submit a site-specific determination of the location of RPA boundaries (RPA boundary delineation study) certified by a professional engineer, land surveyor, landscape architect, soil scientist, or wetland delineator certified or licensed to practice in the Commonwealth of Virginia for review and approval by the Director. For land in agricultural use, such site-specific determination of the location of RPA boundaries may be made by an agricultural water quality specialist designated by the Northern Virginia Soil and Water Conservation District. Such site-specific determinations of RPA boundaries shall be performed in accordance with the requirements of this Chapter and the Public Facilities Manual.

(1) Any person who submits an RPA boundary delineation study for the purpose of reclassifying a water body from perennial to intermittent shall submit written proof of notification (copy of written notification letter and white receipts for certified mailings) of all owners of property abutting and immediately across the street from the parcel(s) containing the water body being studied and a minimum of one (1) homeowners' or civic association within the immediate vicinity as approved by the Department of Public Works and Environmental Services. Such notice shall include notice to owners of properties abutting and immediately across the street which lie in an adjoining county or municipality. This notification must be to a minimum of ten (10) property owners other than the owner of the parcel for which the study is prepared. If there are fewer than ten (10) different owners of property abutting and immediately across the street from the subject property, then additional notices shall be sent to other property owners in the immediate vicinity so that notices are sent to different owners of not less than ten (10) properties. Notice shall be sent to the last known address of the owner(s) as shown in the current Real Estate Assessment files. Notice to homeowners' or civic associations shall be sent to the registered address kept on file with the State Corporation Commission, or if none is on file, to the address kept on file by the County Office of Public Affairs. All written notice shall be sent by certified mail, return receipt requested.

(2) The written notification required in Paragraph (d)(1) above shall include the following information:

- (i) The tax map reference number;
- (ii) The street address of the parcel;
- (iii) The plan name and County identification number;
- (iv) The address and telephone number of the County Office where a copy of the study may be reviewed or to where questions may be directed;
- (v) The name, address, and telephone number of a representative of the applicant;

and

(vi) A reproduction of the portion of the map of Chesapeake Bay Preservation Areas adopted by the Board of Supervisors showing the segment of the stream proposed for reclassification and surrounding properties on an 8½ inch by 11 inch sheet.

(3) The written notification required in Paragraph (d)(1) above shall state that:

- (i) A request for a reclassification of a water body depicted on the County's map of

Chesapeake Bay Preservation Areas from perennial to intermittent has been submitted to the Department of Public Works and Environmental Services;

(ii) Approval of the study will result in the removal of the Resource Protection Area (RPA) designation along the water body being studied;

(iii) RPAs are the environmentally sensitive lands along water bodies with perennial flow and are protected from most development;

(iv) Any person wishing to comment on the study should submit comments to the County Office identified in the notice;

(v) Persons wishing to be notified of the approval of the study should submit a written request to that effect to the County Office identified in the notice;

(vi) The study is subject to approval after the expiration of thirty (30) days after the postmark date of the notice unless releases are executed by all property owners required to be notified; and

(vii) If releases are executed by all property owners required to be notified, the study may be approved sooner than thirty (30) days after the postmark date of the notice.

(4) The person submitting the study shall send a copy of the written notification letter to the Board Member in whose district the subdivision is located and the Chairman of the Board on the same date the abutting property owners specified in Paragraph (d)(1) above are notified.

(5) No study shall be approved within thirty (30) days following the postmark date on the white receipts for the certified mailings unless releases are executed by all property owners required to be notified. If releases are executed by all property owners, the study may be approved sooner than thirty (30) days after the postmark date on the white receipts for the certified mailings. The original executed releases shall be submitted to the Director on a standard form available from the Director.

(6) In addition to the above notification requirements for submission of a study, written notice of intent to submit a study shall be filed with the Director prior to or within three days of completion of the first set of observations of the stream that are required to be performed as part of the study by the Public Facilities Manual. Written proof of notification (copy of written notification letter and the white receipts for the certified mailings) of all persons required to be notified under Paragraph d(7) shall be provided at the time the notice of intent to submit a study is filed with the Director.

(7) In addition to the above notification requirements for submission of a study, all persons required to be notified under Paragraphs d(1) and d(4) above also shall be notified in writing of the property owner's intent to submit a study prior to or within three days of completion of the first set of observations of the stream that are required to be performed as part of the study by the Public Facilities Manual. Failure to notify any person required to be notified under this Paragraph, shall not be cause for rejection of a subsequently submitted study provided that the requirement for notification of a minimum of ten (10) property owners other than the owner of the parcel for which the study is prepared is met. All written notice shall be sent by certified mail, return receipt requested. The notice shall include all of the information required under paragraph d(2) except for references to the submitted study, plan name, and County identification number. The written notification shall state that:

(i) A notice of intent to submit a study for a reclassification of a water body

depicted on the County's map of Chesapeake Bay Preservation Areas from perennial to intermittent has been submitted to the Department of Public Works and Environmental Services;

(ii) Approval of the study will result in the removal of the Resource Protection Area (RPA) designation along the water body being studied;

(iii) RPAs are the environmentally sensitive lands along water bodies with perennial flow and are protected from most development;

(iv) Any person wishing to comment on the proposed reclassification should submit comments to the County Office identified in the notice;

(v) Persons wishing to be notified of the approval of the study should submit a written request to that effect to the County Office identified in the notice;

(vi) A second notice will be provided at the time the study is submitted.

Amend the Chesapeake Bay Preservation Ordinance, Section 118-6-9 (General Resource Protection Area Encroachment Request.), to read as follows:

Section 118-6-9. General Resource Protection Area Encroachment Request.

Exceptions to the criteria and requirements of this Chapter to permit encroachment into the RPA that do not qualify for review under Section 118-6-7, or Section 118-6-8, ~~or Section 118-6-9~~ may be granted subject to the additional finding that the water quality benefits resulting from the proposed facility or improvement exceed the associated water quality detriments. Where practicable, a vegetated area that will maximize water quality protection, mitigate the effects of the buffer encroachment, and is equal to the area of encroachment into the buffer area shall be established elsewhere on the lot or parcel.