

PROPOSED AMENDMENT  
TO  
CHAPTER 118 (CHESAPEAKE BAY PRESERVATION ORDINANCE)  
OF  
THE CODE OF THE COUNTY OF FAIRFAX VIRGINIA

Revisions to advertised amendments recommend by staff  
January 28, 2014

*Advertised amendments (9/10/13) are indicated by single underlines for additions and single strikethroughs for deletions. The revisions (11/14/13) to the proposed amendments recommended by staff are indicated by a double underlines for additions and double strikethroughs for deletions. The revisions (1/28/14) to the proposed amendments recommended by staff are indicated by a double underlines with italics for additions and double strikethroughs with italics for deletions.*

1 Amend Article 1. General Provisions and Definitions, by revising Section 118-1-2  
2 Authority, to read as follows:

3  
4 Section 118-1-2. Authority.

5  
6 This ordinance is enacted pursuant to the authority and mandates of the Chesapeake Bay  
7 Preservation Act, Article 2.5 (§ 62.1-44.15:67 et seq.) of Chapter 3.1 of Title 62.1 [formerly  
8 Article 1 (~~§ Sections 10.1-2100~~, et seq.) of Chapter 21 of Title 10.1], of the *Code of Virginia*.

9  
10 Amend Article 1. General Provisions and Definitions, by revising Section 118-1-6,  
11 Definitions, paragraphs (f), (g), (k), and (v) to read as follows:

12  
13 (f) "Chesapeake Bay Preservation Area" or "CBPA" means any land designated by the County  
14 pursuant to Part III of the Chesapeake Bay Preservation Area Designation and Management  
15 Regulations and § 62.1-44.15:72 ~~Section 10.1-2107~~ of the *Code of Virginia*. A Chesapeake Bay  
16 Preservation Area shall consist of a Resource Protection Area and a Resource Management Area.

17  
18 (g) "Development" means the construction, rehabilitation, rebuilding or substantial alteration  
19 of residential, commercial, industrial, institutional, recreational, transportation, or utility uses,  
20 facilities or structures ~~which results in a net increase in impervious area within an RPA and/or a~~  
21 ~~net increase in impervious area within an RMA of greater than 20%, relative to conditions prior~~  
22 ~~to development.~~

23  
24 (k) "Impervious area" or "impervious surface" means a surface composed of any material that  
25 significantly impedes or prevents natural infiltration of water into the soil. Impervious surfaces  
26 include, but are not limited to, roofs, buildings, streets, and concrete, asphalt, or compacted  
27 gravel surfaces. ~~"Impervious area" or "impervious surface" does not include the water surface~~  
28 ~~area of a swimming pool.~~

29  
30 (v) "Redevelopment" means the process of developing land that is or has been previously  
31 ~~developed-substantial alteration, rehabilitation, or rebuilding of a property for residential,~~  
32 ~~commercial, industrial, or other purposes where there is no net increase in impervious area by the~~

1 ~~proposed redevelopment within an RPA and no more than a net increase in impervious area~~  
 2 ~~within an RMA of 20% relative to conditions prior to redevelopment, or any construction,~~  
 3 ~~rehabilitation, rebuilding, or substantial alteration of residential, commercial, industrial,~~  
 4 ~~institutional, recreational, transportation, or utility uses, facilities or structures within an IDA.~~

5  
 6 **Amend Article 2 Allowed Uses, Development and Redevelopment, by revising Section**  
 7 **118-2-1 Allowed Uses, Development and Redevelopment in Resource Protection Areas**  
 8 **paragraphs (b) and (e) to read as follows:**

9  
 10 (b) Redevelopment outside of IDAs only if there is no increase in the amount of impervious  
 11 cover and no further encroachment within the RPA, including and all development or  
 12 redevelopment within IDAs, subject to compliance with the performance criteria of Article 3 of  
 13 this Chapter; and

14  
 15 (e) Flood control and stormwater management facilities that drain or treat water from multiple  
 16 development projects or from a significant portion of a watershed, provided that:

17  
 18 (1) Such facilities are allowed and constructed in accordance with the Stormwater  
 19 Management Act (§ 62.1-44.15:24 et seq.) of the Code of Virginia, the Virginia Stormwater  
 20 Management Program (VSMP) Permit Regulations (~~4 VAC 50-60 et seq.~~ 9 VAC 25-870-92 et  
 21 seq.), and Chapter 124 of the Code;

22 (2) The Director has conclusively established that location of the facility within the  
 23 Resource Protection Area is the optimum location;

24 (3) The size of the facility is the minimum necessary to provide necessary flood control  
 25 or stormwater treatment, or both;

26 (4) The facility must be consistent with ~~Fairfax County's stormwater management~~  
 27 ~~program as approved by the Chesapeake Bay Local Assistance Board~~ a comprehensive  
 28 stormwater management plan approved in accordance with ~~4 VAC 50-60-92~~ 9 VAC 25-870-92  
 29 of the VSMP Permit Regulations;

30 (5) All applicable permits for construction in state or federal waters must be obtained  
 31 from the appropriate state and federal agencies, such as the U.S. Army Corps of Engineers, the  
 32 Virginia Department of Conservation and Recreation, the Virginia Department of Environmental  
 33 Quality, and the Virginia Marine Resources Commission; and

34 (6) Approval must be received from the Director prior to construction; and

35 (7). Routine maintenance is allowed to be performed on such facilities to assure that they  
 36 continue to function as designed.

37  
 38 It is not the intent of this subsection to allow a best management practice that collects and treats  
 39 runoff from only an individual lot or some portion of the lot to be located within a Resource  
 40 Protection Area.

41  
 42 **Amend Article 3 Land Use and Development Performance Criteria, by revising Section**  
 43 **118-3-2. General Performance Criteria for Resource Management Areas and Resource**  
 44 **Protection Areas to read as follows:**

45  
 46 **Section 118-3-2. General Performance Criteria for Resource Management Areas and**  
 47 **Resource Protection Areas.**

48  
 49 Unless ~~waived or modified by other~~ an exception is granted pursuant to provisions of this  
 50 Chapter, it shall be demonstrated to the satisfaction of the Director that any use, development, or

1 redevelopment of land in Chesapeake Bay Preservation Areas meets the following performance  
2 criteria:

3  
4 (a) No more land shall be disturbed than is necessary to provide for the proposed use,  
5 development, or redevelopment.

6  
7 (b) Indigenous vegetation shall be preserved to the maximum extent practicable consistent with  
8 the use, development, or redevelopment proposed.

9  
10 ~~(c) Where the best management practices utilized require regular or periodic maintenance in  
11 order to continue their functions, such maintenance shall be ensured through a maintenance  
12 agreement with the owner or through some other mechanism or agreement that achieves an  
13 equivalent objective.~~

14  
15 (cd) Impervious cover shall be minimized consistent with the use, development, or  
16 redevelopment proposed.

17  
18 (de) Any land disturbing activity that exceeds an area of 2,500 square feet shall comply with  
19 the requirements of Chapter 104 of the Fairfax County Code. The construction of single family  
20 dwellings, septic tanks and drainfields shall not be exempt from this requirement. Enforcement  
21 for noncompliance with the erosion and sediment control requirements referenced in this criteria  
22 shall be conducted under the provisions of Chapter 104 of the County Code.

23  
24 (ef) For any development or redevelopment, stormwater runoff shall be controlled by the use of  
25 best management practices (BMPs) in accordance with the requirements of Chapter 124 of the  
26 County Code. as follows:

27  
28 ~~(1) For development, the projected total phosphorus runoff pollution load for the proposed  
29 development shall be reduced by no less than forty (40) percent compared to phosphorus loads  
30 projected for the development without BMPs. This requirement shall not apply to any  
31 development that does not require a site plan pursuant to Article 17 of the Zoning Ordinance,  
32 that does not require subdivision approval pursuant to Chapter 101 of the Fairfax County Code,  
33 and that does not result in an impervious area of 18% or greater on the lot or parcel on which the  
34 development will occur.~~

35 ~~—— (2) For development and redevelopment within the Water Supply Protection Overlay  
36 District, the phosphorus removal requirements for the overlay district shall apply if such  
37 requirements impose a higher standard than the requirements of this Chapter.~~

38 ~~—— (3) For redevelopment of any property not currently served by one or more BMPs, the total  
39 phosphorus runoff pollution load from the property shall be reduced by at least ten (10) percent  
40 from the phosphorus runoff pollution load prior to redevelopment.~~

41 ~~—— (4) For redevelopment of any property that is currently and adequately served by one or  
42 more BMPs, the projected phosphorus runoff pollution load after redevelopment shall not exceed  
43 the existing phosphorus runoff pollution load.~~

44 ~~—— (5) Best management practices (BMPs) shall be reviewed, modified, waived and/or  
45 approved by the Director in accordance with Article 6 of the Public Facilities Manual. Waivers  
46 or modifications shall be subject to the following criteria:~~

47  
48 (i) The requested waiver or modification to the criteria is the minimum necessary  
49 to afford relief;

50 (ii) Granting the waiver or modification will not confer upon the applicant any  
51 special privileges that are denied by this part to other property owners who are subject to its  
52 provisions and who are similarly situated;

1           ~~(iii) The waiver or modification is in harmony with the purpose and intent of this~~  
2 ~~part and is not of substantial detriment to water quality;~~

3           ~~(iv) The waiver or modification request is not based upon conditions or~~  
4 ~~circumstances that are self-created or self-imposed;~~

5           ~~(v) Reasonable and appropriate conditions are imposed, as warranted, that will~~  
6 ~~prevent the allowed activity from causing a degradation of water quality; and~~

7           ~~(vi) Other findings, as appropriate and required herein, are met.~~

8  
9           ~~(6) The following options shall be considered to comply with paragraph (f) of this Section:~~

10  
11 ~~\_\_\_\_\_ (i) Incorporation on the site of BMPs that achieve the required control as set forth~~  
12 ~~in paragraphs (1) through (5) above. For the purposes of this subsection, the “site” may include~~  
13 ~~multiple projects or properties that are adjacent to one another or lie within the same drainage~~  
14 ~~area where a single BMP or a system of BMPs will be utilized by those projects in common to~~  
15 ~~satisfy water quality protection requirements;~~

16 ~~\_\_\_\_\_ (ii) Compliance with a locally adopted regional stormwater management program,~~  
17 ~~which may include a Virginia Pollution Discharge Elimination System (VPDES) permit issued~~  
18 ~~by the Department of Environmental Quality to a local government for its municipally owned~~  
19 ~~separate storm sewer system discharges, that is reviewed and found by the Chesapeake Bay~~  
20 ~~Local Assistance Board to achieve water quality protection equivalent to that required by this~~  
21 ~~subsection; or~~

22 ~~\_\_\_\_\_ (iii) Compliance with a site-specific VPDES permit issued by the Department of~~  
23 ~~Environmental Quality, provided that the local government specifically determines that the~~  
24 ~~permit requires measures that collectively achieve water quality protection equivalent to that~~  
25 ~~required by this subsection.~~

26  
27           ~~(7) The requirements of paragraph (f) of this Section may be waived or modified for a~~  
28 ~~property if the Director determines that the provision of BMPs is not practical or desirable due to~~  
29 ~~constraints imposed by the dimensions or location of the property. Waivers or modifications~~  
30 ~~shall be subject to the following criteria:~~

31  
32           ~~(i) The requested waiver or modification to the criteria is the minimum necessary~~  
33 ~~to afford relief;~~

34           ~~(ii) Granting the waiver or modification will not confer upon the applicant any~~  
35 ~~special privileges that are denied by this part to other property owners who are subject to its~~  
36 ~~provisions and who are similarly situated;~~

37           ~~(iii) The waiver or modification is in harmony with the purpose and intent of this~~  
38 ~~part and is not of substantial detriment to water quality;~~

39           ~~(iv) The waiver or modification request is not based upon conditions or~~  
40 ~~circumstances that are self-created or self-imposed;~~

41           ~~(v) Reasonable and appropriate conditions are imposed, as warranted, that will~~  
42 ~~prevent the allowed activity from causing a degradation of water quality; and~~

43           ~~(vi) Other findings, as appropriate and required herein, are met.~~

44  
45 ~~\_\_\_\_\_ (8) Any maintenance, alteration, use or improvement to an existing structure or use that~~  
46 ~~does not degrade the quality of surface water discharge, as determined by the Director, may be~~  
47 ~~exempted from the requirements of paragraph (f).~~

48  
49           ~~(fg) The Director shall require certification on all plans of development that all wetlands~~  
50 ~~permits required by law will be obtained prior to commencement of land disturbing activities in~~  
51 ~~any area subject to the plan of development review. No land disturbing activity on the land~~

1 subject to the plan of development shall commence until all such permits have been obtained by  
2 the applicant and evidence of such permits has been provided to the Director.  
3

4 (gh) All on-site sewage disposal systems requiring a Virginia Pollutant Discharge Elimination  
5 System (VPDES) permit shall be subject to the restrictions imposed by the State Water Control  
6 Board or the Virginia Department of Health. All on-site sewage disposal systems not requiring a  
7 VPDES permit shall be administered by the Director of the Department of Health and shall  
8 comply with the following provisions:  
9

10 (1) Each disposal system shall be pumped out at least once every five years.

11 (2) For new development or redevelopment, each disposal system shall be provided with a  
12 reserve sewage disposal site with a capacity at least equal to that of the primary sewage disposal  
13 site.  
14

15 (i) Compliance with Chapter 68 of the Fairfax County Code shall be deemed to  
16 constitute compliance with this requirement. This requirement shall not apply to any parcel of  
17 land for which a site plan or preliminary subdivision plat was filed on or before May 21, 1973,  
18 and approved by November 20, 1976 if the Director of the Department of Health determines the  
19 parcel to have insufficient capacity to accommodate a reserve sewage disposal site except as may  
20 be required in the Commonwealth of Virginia Sewage Handling and Disposal Regulations.  
21

22 (ii) Building shall be prohibited on the area of all such sewage disposal sites,  
23 including the reserve sewage disposal site, until the structure is connected to a public sewer or an  
24 on-site sewage treatment system which operates under a permit issued by the State Water  
25 Control Board.

26 (hi) Land upon which agricultural activities are being conducted, including but not limited to  
27 crop production, pasture, and dairy and feedlot operations, or lands otherwise defined as  
28 agricultural land by the local government, shall have a soil and water quality conservation  
29 assessment conducted that evaluates the effectiveness of existing practices pertaining to soil  
30 erosion and sediment control, nutrient management, and management of pesticides, and where  
31 necessary, results in a plan that outlines additional practices needed to ensure that water quality  
32 protection is being accomplished consistent with the Chesapeake Bay Preservation Act and this  
33 chapter.  
34

35 (1) Recommendations for additional conservation practices need address only those  
36 conservation issues applicable to the tract or field being assessed. Any soil and water quality  
37 conservation practices that are recommended as a result of such an assessment and are  
38 subsequently implemented with financial assistance from federal or state cost-share programs  
39 must be designed, consistent with cost-share practice standards effective in January 1999 in the  
40 "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resources  
41 Conservation Service or the June 2000 edition of the "Virginia Agricultural BMP Manual" of the  
42 Virginia Department of Conservation and Recreation, respectively. Unless otherwise specified in  
43 this section, general standards pertaining to the various agricultural conservation practices being  
44 assessed shall be as follows:  
45

46 (i) For erosion and sediment control recommendations, the goal shall be, where  
47 feasible, to prevent erosion from exceeding the soil loss tolerance level, referred to as "T," as  
48 defined in the "National Soil Survey Handbook" of November 1996 in the "Field Office  
49 Technical Guide" of the U.S. Department of Agriculture Natural Resources Conservation  
50 Service. However, in no case shall erosion exceed the soil loss consistent with an Alternative  
51 Conservation System, referred to as an "ACS", as defined in the "Field Office Technical Guide"

1 of the U.S. Department of Agriculture Natural Resources Conservation Service.

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

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

9  
10 (2) A higher priority shall be placed on conducting assessments of agricultural fields and  
11 tracts adjacent to Resource Protection Areas. However, if the landowner or operator of such a  
12 tract also has Resource Management Area fields or tracts in his operation, the assessment for that  
13 landowner or operator may be conducted for all fields or tracts in the operation. When such an  
14 expanded assessment is completed, priority must return to Resource Protection Area fields and  
15 tracts.

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

19  
20 (i) Unless required by other provisions of the County Code, the Director may grant exceptions  
21 to the requirements of this Section subject to the following criteria:

22  
23 (1) The requested exception to the criteria is the minimum necessary to afford relief;

24 (2) Granting the exception will not confer upon the applicant any special privileges that  
25 are denied by this article to other property owners who are subject to its provisions and who are  
26 similarly situated;

27 (3) The exception is in harmony with the purpose and intent of this article and is not of  
28 substantial detriment to water quality;

29 (4) The exception request is not based upon conditions or circumstances that are self-  
30 created or self-imposed;

31 (5) Reasonable and appropriate conditions are imposed, as warranted, that will prevent  
32 the allowed activity from causing a degradation of water quality; and

33 (6) Other findings, as appropriate and required herein, are met.

34  
35  
36 **Amend Article 3 Land Use and Development Performance Criteria, by revising Section**  
37 **118-3-3 Additional Performance Criteria for Resource Protection Areas paragraph (c) to**  
38 **read as follows:**

39  
40 (c) Redevelopment, outside of IDAs, is allowed within RPAs only if there is no increase in the  
41 amount of impervious area within the RPA and no further encroachment within the RPA and  
42 shall conform to ~~the criteria set forth in this Chapter~~ all applicable erosion and sediment control  
43 and stormwater management criteria in Chapters 104 and 124 of the County Code as well as all  
44 applicable stormwater management requirements of Commonwealth of Virginia and federal  
45 agencies.

46  
47 **Amend Article 5 Nonconformities, Waivers, Exceptions, and Exemptions, by revising**  
48 **Section 118-5-2. Public Utilities, Railroads, Public Roads, and Facilities Exemptions**

1 **paragraph (a) to read as follows:**

2  
3 (a) The construction, installation, operation and maintenance of electric, natural gas, fiber-optic  
4 and telephone transmission lines, railroads, and public roads and their appurtenant structures in  
5 accordance with:

6 (1) The Erosion and Sediment Control Law (~~§ 62.1-44.15:51 Section 10.1-560~~ et seq. of the  
7 *Code of Virginia*) and with Chapter 104 of the ~~Fairfax County Code~~ and with the Stormwater  
8 Management Act (~~§ 62.1-44.15:24 Section 10.1-603.1~~ et seq. of the *Code of Virginia*) and with  
9 Chapter 124 of the County Code;

10 (2) An erosion and sediment control plan and a stormwater management plan approved by  
11 the Virginia Department of Conservation and Recreation; or

12 (3) Local water quality protection criteria at least as stringent as the above state  
13 requirements will be deemed to constitute compliance with this chapter.

14  
15 The exemption of public roads is further conditioned on the optimization of the road alignment  
16 and design, consistent with other applicable requirements, to prevent or otherwise minimize  
17 encroachment in the Resource Protection Area and adverse effects on water quality.

18  
19 **Amend Article 5 Nonconformities, Waivers, Exceptions, and Exemptions, by revising**  
20 **Section 118-5-4. Waivers for Loss of Buildable Area in a Resource Protection Area**  
21 **paragraph (a) to read as follows:**

22  
23 (a) When the application of the RPA buffer area would result in the effective loss of a  
24 reasonable buildable area on a lot or parcel recorded prior to October 1, 1989, in accordance with  
25 all applicable provisions of the County Code in effect at the time of recordation, encroachments  
26 into the buffer area may be approved by the Director in accordance with the following criteria:

27  
28 (1) Encroachments into the buffer area shall be the minimum necessary to achieve a  
29 reasonable buildable area for a principal structure and necessary utilities;

30 (2) Where practicable, a vegetated area that will maximize water quality protection,  
31 mitigate the effects of the buffer encroachment, and is equal to the area of encroachment into the  
32 buffer area shall be established elsewhere on the lot or parcel;

33 (3) The encroachment may not extend into the seaward 50 feet of the buffer area;

34 (4) The proposed development shall not exceed 10,000 square feet of land disturbance in  
35 the RPA buffer, exclusive of land disturbance necessary for the installation of a soil absorption  
36 field associated with an individual sewage disposal facility and land disturbance necessary to  
37 provide access to the lot or parcel and principal structure pursuant to Section 118-2-1(d);

38 (5) The proposed development shall not create more than 5,000 square feet of impervious  
39 surface within the RPA buffer, exclusive of impervious surface necessary to provide access to  
40 the lot or parcel and principal structure pursuant to Section 118-2-1(d);

41 (6) The lot or parcel must meet the minimum lot size specified for the zoning district in  
42 which located or meet the requirements of Section 2-405 of Chapter 112, the Zoning Ordinance,  
43 and any other applicable ordinances and laws;

44 (7) The requirements of Section 118-3-2 shall be satisfied or waived pursuant to Section  
45 ~~118-3-2(f)(7)~~ 118-3-2(i); and

46 (8) The requirements of Section 118-3-3 shall be satisfied except as specifically provided  
47 for in this section to permit an encroachment into the RPA buffer area.

48

1 **Amend Article 6 Exceptions, by revising Sections 118-6-1 Granting of Exceptions, 118-6-2**  
 2 **Conduct of Public Hearings, 118-6-3 Required Notice for Public Hearings, and 118-6-7**  
 3 **Exceptions for Loss of Buildable Area in a Resource Protection Area to read as follows:**

4  
 5 **Section 118-6-1. Granting of Exceptions.**

6  
 7 Exceptions to the criteria and requirements of this Chapter to permit encroachment into the  
 8 RPA that do not qualify for administrative review under Article 5 may be granted ~~by the~~  
 9 ~~Exception Review Committee or~~ by the Exception Review Committee or by the Board of  
 10 Supervisors ~~in conjunction with a rezoning or special exception approval~~ in conjunction with a  
 11 rezoning or special exception approval as set forth in this Article with appropriate conditions  
 12 necessary to preserve the purposes and intent of this Chapter. No exception shall be granted  
 13 under this Article except after notice and a public hearing and upon the findings as required  
 14 herein. All exception requests shall be in writing and submitted to the Director. All exception  
 15 requests shall be submitted in accordance with the requirements of Section 118-6-5 unless  
 16 modified by the Director and will not be accepted until all the submission requirements have  
 17 been met. Except as noted below, the Director shall, within 90 days of receipt of a complete  
 18 application for an exception pursuant to this Article, unless an extended period is mutually  
 19 agreed to by the applicant and the Director, forward such exception request to the ~~Board of~~  
 20 ~~Supervisors~~ Exception Review Committee Exception Review Committee for a public hearing  
 21 along with a recommendation for approval, denial, or approval with conditions. All exception  
 22 requests for property that is also the subject of a rezoning or special exception application shall  
 23 be scheduled concurrently for public hearing with the rezoning or special exception application  
 24 within twelve (12) months of the date of acceptance, unless an extended period is agreed to by  
 25 the applicant, and shall be forwarded by the Director to the Board of Supervisors for public  
 26 hearing along with a recommendation of approval, denial or approval with conditions. If an  
 27 application is denied or dismissed by the ~~Exception Review Committee or~~ Exception Review  
 28 Committee or Board of Supervisors, no new application concerning any or all of the same  
 29 property for the same general use as applied for originally shall be heard by ~~said Exception~~  
 30 ~~Review Committee or~~ said Exception Review Committee or ~~the~~ Board for a period of less than  
 31 twelve (12) months from the date of action by the ~~Exception Review Committee or~~ Exception  
 32 Review Committee or Board on the original application unless otherwise waived by the  
 33 ~~Exception Review Committee or~~ Exception Review Committee or Board. If an application is  
 34 withdrawn prior to commencement of the public hearing, there shall be no limit on a rehearing.  
 35 If an application is withdrawn after commencement of the public hearing, no new application  
 36 concerning any or all of the same property for the same general use as applied for originally shall  
 37 be heard by ~~said Exception Review Committee or~~ Exception Review Committee or ~~the~~ Board of  
 38 Supervisors for a period of less than twelve (12) months from the date of action by the ~~Exception~~  
 39 ~~Review Committee or~~ Exception Review Committee or Board on the original application unless  
 40 otherwise waived by the ~~Exception Review Committee or~~ Exception Review Committee or  
 41 Board. The time limits set forth in Section 15.2-2259 of the *Code of Virginia* shall be tolled  
 42 during the pendency of an exception request. Approval of an exception shall constitute approval  
 43 for the normal and routine maintenance of the facilities which are developed.

44  
 45 **Section 118-6-2. Conduct of Public Hearings.**

46  
 47 All public hearings required by this Article shall be conducted in accordance with the  
 48 following provisions:

49  
 50 (a) No public hearing shall be held unless the required notice for same has been satisfied in  
 51 accordance with the provisions of Section 118-6-3.

52  
 53 (b) All hearings shall be open to the public. Any person may appear and testify at such

1 hearing, either in person or by an authorized agent or attorney.

2  
3 ~~(e) The Exception Review Committee shall by general rule prescribe procedures for the~~  
4 ~~conduct of hearings to be heard by the Exception Review Committee.~~

5  
6 (c) The Exception Review Committee shall by general rule prescribe procedures for the  
7 conduct of hearings to be heard by the Exception Review Committee.

8  
9 ~~(e) (d) (d)~~ The Chairman of the ~~Exception Review Committee~~ Board of Supervisors Exception  
10 Review Committee, upon a vote of the majority of the members, may continue or defer a hearing.  
11 If a hearing has been opened and public testimony has been received and there is cause for  
12 continuation of a hearing, no formal notice as required by Section 118-6-3 shall be required if the  
13 hearing is continued to a date certain. If a hearing is concluded, but action is deferred until a  
14 future date, no formal notice as set forth in Section 118-6-3 shall be required prior to action  
15 being taken. If a hearing has not been opened, and there is cause for deferral of the hearing,  
16 written notice to adjacent property owners as required by Section 118-6-3 shall be remailed,  
17 except such notice shall be mailed not less than five (5) days in advance of the public hearing.  
18

### 19 **Section 118-6-3. Required Notice for Public Hearings.**

20  
21 No public hearing shall be held unless documented evidence can be presented that the notice  
22 requirements herein have been satisfied. The subject of the public hearing need not be advertised  
23 in full, but may be advertised by reference. Every such advertisement shall contain a descriptive  
24 summary of the proposed action and shall contain a reference to the place or places within the  
25 County where copies of the subject of the public hearing may be examined.  
26

27 ~~(a) Exceptions not associated with proposed rezoning or special exception applications.~~

28  
29 ~~1- (a) (a)~~ Publication: Public notice of any hearing to be held by the ~~Exception~~  
30 ~~Review Committee~~ by the Exception Review Committee shall be published once a week for two  
31 (2) successive weeks in a local newspaper having general circulation in the County. ~~Such~~ The  
32 ~~second~~ Such notice shall be published not less than five (5) days nor more than twenty-one (21)  
33 days before the date of the hearing, and there shall be a minimum of six (6) days between the  
34 first and second publication. The notice shall specify the date, time and place of the hearing and  
35 the nature of the matter before the ~~Exception Review Committee~~ Board of Supervisors Exception  
36 Review Committee. The public notice shall be the responsibility of the ~~Exception Review~~  
37 ~~Committee~~ Director Exception Review Committee.  
38

39 ~~2- (b) (b)~~ Written Notice to Applicant: ~~For an application for an exception to be~~  
40 ~~heard by the Exception Review Committee, the Exception Review Committee~~ The Director For  
41 an application for an exception to be heard by the Exception Review Committee, the Exception  
42 Review Committee shall send written notice of the public hearing to the applicant. Such written  
43 notice shall be sent by either first class or certified mail postmarked a minimum of twenty (20)  
44 days before the day of the hearing.  
45

46 ~~3- (c) (c)~~ Written Notice to Adjacent Property Owners: ~~For applications to be heard~~  
47 ~~by the Exception Review Committee, the~~ The For applications to be heard by the Exception  
48 Review Committee, the applicant shall send written notice to all owners of property abutting and  
49 immediately across the street from and within 500 feet of the subject property and one (1)  
50 homeowner association or civic association within the immediate area as approved by the  
51 ~~Department of Public Works and Environmental Services~~ Director Department of Public Works  
52 and Environmental Services. Such notice shall include notice to owners of properties abutting  
53 and immediately across the street and within 500 feet of the subject property which lie in an  
54 adjoining county or city. If such notice does not result in the notification of five (5) different

1 property owners, then additional notices shall be sent to other property owners in the immediate  
 2 vicinity so that notices are sent to different owners of not less than five (5) properties. Notice  
 3 shall be sent to the last known address of the owner(s) as shown in the current Real Estate Tax  
 4 Assessment files. Notice to homeowner associations or civic associations shall be sent to the  
 5 registered office address kept on file with the State Corporation Commission. The applicant  
 6 shall send a copy of the notification letter to the Board Member in whose district the subject  
 7 property is located on the same date the abutting property owners are notified. All written notice  
 8 shall be sent by certified mail, return receipt requested, and postmarked not less than fifteen (15)  
 9 days prior to the hearing as evidenced by the postmark date on the white receipts for the certified  
 10 mailings. Written notice shall include the tax map reference number, the street address of the  
 11 parcel, the date, time and place of the hearing, and the nature of the matter before the ~~Exception~~  
 12 ~~Review Committee~~ Board of Supervisors Exception Review Committee. A party's actual notice  
 13 of, or participation in, the proceedings for which the written notice is required shall waive the  
 14 right of that party to challenge the validity of the proceeding due to failure of the party to receive  
 15 the written notice required.

16  
 17 ~~(b) (d) Exceptions associated with proposed rezoning or special exception applications.~~

18  
 19 (d) If an exception is heard concurrently with a public hearing on proposed rezoning or  
 20 special exception applications, notification of the proposed exception shall be conducted  
 21 concurrently with the rezoning and special exception notification and shall meet the requirements  
 22 of Article 18 of the Zoning Ordinance in lieu of paragraph ~~(e)~~ ~~(a)~~ (c) above.

#### 23 24 **Section 118-6-7. Exceptions for Loss of Buildable Area in a Resource Protection Area.**

25  
 26 Where the application of the RPA criteria will result in the effective loss of a reasonable  
 27 buildable area on a lot or parcel recorded prior to November 18, 2003, in accordance with all  
 28 applicable provisions of the County Code in effect at the time of recordation and the proposed  
 29 development does not satisfy the criteria for an administrative waiver by the Director under  
 30 Section 118-5-4, exceptions may be approved in accordance with the following criteria:

31  
 32 (a) The proposed development does not exceed 10,000 square feet of land disturbance,  
 33 exclusive of land disturbance necessary for the installation of a soil absorption field associated  
 34 with an individual sewage disposal facility and land disturbance necessary to provide access to  
 35 the lot or parcel and principal structure pursuant to Section 118-2-1(d);

36 (b) The proposed development does not create more than 5,000 square feet of impervious  
 37 surface within an RPA, exclusive of impervious surface necessary to provide access to the lot or  
 38 parcel and principal structure pursuant to Section 118-2-1(d);

39 (c) The lot or parcel must meet the minimum lot size specified for the zoning district in which  
 40 located or meet the requirements of Section 2-405 of Chapter 112, the Zoning Ordinance, and  
 41 any other applicable ordinances and laws;

42 (d) Where practicable, a vegetated area that will maximize water quality protection, mitigate  
 43 the effects of the buffer encroachment, and is equal to the area of encroachment into the buffer  
 44 area shall be established elsewhere on the lot or parcel;

45 (e) The requirements of Section 118-3-2 shall be satisfied or an exception granted ~~waived~~  
 46 pursuant to Section ~~118-3-2(f)(7)~~ 118-3-2(i); and

47 (f) The requirements of Section 118-3-3 shall be satisfied except as specifically provided for in  
 48 this section to permit an encroachment into the RPA buffer area.

49  
 50 ~~Delete Article 7 Exception Review Committee in its entirety.~~

#### 51 52 **ARTICLE 7.**

53

~~**Exception Review Committee.** *Deleted by Amendment xx 13-118, adopted December 3, 2013, effective December 4, 2013.*~~

~~**Section 118-7-1. Purpose.**~~

~~—The purpose of the Exception Review Committee shall be to administer the provisions of Article 6 of this Chapter in such a manner that the intent of the Chapter is maintained.~~

~~**Section 118-7-2. Authority and Establishment.**~~

~~—The Exception Review Committee is established in accordance with the requirements of this Chapter and 9 VAC 10-20-140. The official title of this body shall be the “Exception Review Committee”.~~

~~**Section 118-7-3. Membership.**~~

~~—(a) The Exception Review Committee shall be composed of eleven (11) members, all of whom shall be residents of the County, with demonstrated knowledge of and interest in environmental issues and shall be appointed by the Board of Supervisors for a term of four (4) years. There shall be one (1) member representing each Magisterial District and two (2) at-large members.~~

~~—(b) Members shall exempt themselves from voting on any action in which their financial interests or those of their immediate family or employer are directly involved.~~

~~**Section 118-7-4. Officers.**~~

~~—The officers of the Exception Review Committee shall consist of a Chairman, Vice-Chairman, and Secretary.~~

~~—The Chairman, Vice-Chairman, and Secretary shall be elected by majority vote of the Exception Review Committee at the first Committee meeting each calendar year.~~

~~**Section 118-7-5. Meetings.**~~

~~—(a) The Exception Review Committee shall meet at a time and place to be designated by resolution of the Exception Review Committee.~~

~~—(b) Six (6) members of the Exception Review Committee shall constitute a quorum but a lesser number may meet and adjourn.~~

~~—(c) Special meetings may be called by the Chairman provided at least five (5) days notice of such meeting is given each member in writing.~~

~~—(d) All public hearings conducted by the Exception Review Committee shall be in accordance with the provisions of Section 118-6-2. All hearings shall be open to the public, and any person affected may appear and testify at such hearing, either in person or by an authorized agent or attorney.~~

~~**Section 118-7-6. Records.**~~

~~—(a) The Exception Review Committee shall keep written records and minutes of all its proceedings, showing evidence presented, findings of fact by the Exception Review Committee, and the vote of each member upon each question, or if absent or failing to vote, such fact.~~

1 —(b) Every decision of the Exception Review Committee shall be recorded in accordance with  
 2 standard forms prescribed by the Exception Review Committee, and shall fully set forth the  
 3 circumstances of the application and the findings on which the decision is based. Every decision  
 4 of the Exception Review Committee shall be made by resolution adopted by a majority of all of  
 5 the members present, except as otherwise specifically provided in this Chapter.  
 6

### 7 **Section 118-7-7. Duties.**

8  
 9 —The purpose of the Exception Review Committee shall be to administer the provisions of  
 10 Article 6 of this Chapter, hold public hearings as required herein, and approve/disapprove  
 11 exception requests in such a manner that the intent of the Chapter is maintained.  
 12

## 13 Exception Review Committee.

### 14 Section 118-7-1. Purpose.

15  
 16 The purpose of the Exception Review Committee shall be to administer the provisions of  
 17 Article 6 of this Chapter in such a manner that the intent of the Chapter is maintained.  
 18  
 19

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 25

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 53 such meeting is given each member in writing.

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14 standard forms prescribed by the Exception Review Committee, and shall fully set forth the  
15 circumstances of the application and the findings on which the decision is based. Every decision  
16 of the Exception Review Committee shall be made by resolution adopted by a majority of all of  
17 the members present, except as otherwise specifically provided in this Chapter.

18  
19 **Section 118-7-7. Duties.**

20  
21 The purpose of the Exception Review Committee shall be to administer the provisions of  
22 Article 6 of this Chapter, hold public hearings as required herein, and approve/disapprove  
23 exception requests in such a manner that the intent of the Chapter is maintained.

24  
25 **Amend Article 8 Appeals to read as follows:**

26  
27 **ARTICLE 8.**

28  
29 **Appeals.**

30  
31 (a) An applicant aggrieved by any decision of the Director of the Department of Public Works  
32 and Environmental Services or the Director of the Department of Health in the administration of  
33 this Chapter may, within fifteen (15) days of such decision, appeal the decision to the Board of  
34 Supervisors.

35  
36 ~~(b) An applicant or any other party aggrieved by any decision of the Exception Review~~  
37 ~~Committee in the administration of this Chapter may, within thirty (30) days of such decision,~~  
38 ~~appeal the decision to the Board of Supervisors. (b) An applicant or any other party aggrieved by~~  
39 any decision of the Exception Review Committee in the administration of this Chapter may,  
40 within thirty (30) days of such decision, appeal the decision to the Board of Supervisors.

41  
42 ~~(c)~~ Such appeal shall be filed with the Clerk to the Board of Supervisors and shall state with  
43 specificity the provisions of this Chapter which the applicant alleges to have been violated by the  
44 decision and the reasons therefore. A copy of the appeal shall also be delivered to the Director  
45 of the Department of Public Works and Environmental Services within such thirty (30) day  
46 period.

47  
48 ~~(d)~~ The time limits set forth in Section 15.2-2259 of Va. Code Ann. shall be tolled during the  
49 pendency of an application filed pursuant to Paragraph (a) above.