

**ADOPTION OF AN AMENDMENT TO
CHAPTER 118 (CHESAPEAKE BAY PRESERVATION ORDINANCE)
OF THE 1976 CODE OF THE COUNTY OF FAIRFAX, VIRGINIA**

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium of the Government Center at Fairfax, Virginia, on Tuesday, October 8, 2024, the Board after having first given notice of its intention so to do, in the manner prescribed by law, adopted an amendment regarding Chapter 118 (Chesapeake Bay Preservation Ordinance) of the 1976 Code of the County of Fairfax, Virginia, said amendment so adopted being in the words following, to-wit:

**BE IT ORDAINED BY THE BOARD OF SUPERVISORS OF FAIRFAX COUNTY,
VIRGINIA:**

That Chapter 118 (Chesapeake Bay Preservation Ordinance) is amended, as follows:

Amend Article 1, General Provisions and Definitions, Section 118-1-6, Definitions, by adding definitions of Adaptation measures, Canopy tree, Mature tree, Nature-based solution, and Understory tree, and revising the definitions of Chesapeake Bay Preservation Area or CBPA, Impervious area or impervious surface, Nontidal wetlands, Resource Protection Area or RPA, Silvicultural activity, and Water-dependent development or Water-dependent facility as follows, and renumber the remaining:

(a) Adaptation measure means a project, practice, or approach to mitigate or address an impact of climate change, including sea-level rise, storm surge, and flooding, including increased or recurrent flooding.

(g) Canopy tree means a tree that typically reaches 35 feet in height or taller when mature.

(h) Chesapeake Bay Preservation Area or CBPA means any land designated by the County pursuant to Part III of the Chesapeake Bay Preservation Area Designation and Management Regulations and § 62.1-44.15:742 of the Code of Virginia. A Chesapeake Bay Preservation Area shall consist consists of a Resource Protection Area and a Resource Management Area.

(k) Impervious area or impervious surface means a surface composed of any material that significantly impedes or prevents natural infiltration of water into the soil. Impervious surfaces include, but are not limited to, roofs, buildings, streets, parking areas, and any concrete, asphalt or compacted gravel surface.

(r) Mature tree means a canopy tree with a diameter at breast height (DBH) of 12 inches or greater or an understory tree with a DBH of four inches or greater.

(s) Nature-based solution means an approach that reduces the impacts of sea-level rise, flooding, and storm events through the use of environmental processes and natural systems.

(u) Nontidal wetlands means those wetlands other than tidal wetlands that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, as defined by the U.S. Environmental Protection Agency pursuant to Sec. 404 of the Federal Clean Water Act, in 33 CFR 328.3b33 CFR Part 328.3(c), dated November 13, 1986, or as subsequently amended.

(bb) Resource Protection Area or RPA means that component of the Chesapeake Bay Preservation Area comprised of lands adjacent to water bodies with perennial flow that have an intrinsic water quality value due to the ecological and biological processes they perform or are sensitive to impacts which that may result in significant degradation of to the quality of state waters. In their natural condition, these lands provide for the removal, reduction, or assimilation of sediments, nutrients, and potentially harmful or toxic substances from runoff entering the Bay and its tributaries, and minimize the adverse effects of human activities on state waters and aquatic resources.

(cc) Silvicultural activity activities means any forest management activity, activities including but not limited to the harvesting of timber, the construction of roads and trails for forest management purposes, and the preparation of property for reforestation that is conducted in accordance with the silvicultural best management practices developed and enforced by the State

Forester pursuant to Virginia Code § 10.1-1105 and is located on property defined as real estate devoted to forest use under Virginia Code § 58.1-3230.

(gg) Understory tree means a tree that typically reaches 12 feet to 35 feet in height when mature.

~~(ffkk)~~ *Water-dependent development or Water-dependent facility* means the development of land or a facility that cannot exist outside of a Resource Protection Area and must be located ~~within a Resource Protection Area on the shoreline, either in whole or in part,~~ by reason of the intrinsic nature of its operation. These facilities include, ~~but are not limited to~~ (i) ports; (ii) the intake and outfall structures of power plants, water treatment plants, sewage treatment plants, and storm sewers; (iii) marinas and other boat docking structures; (iv) beaches and other public water-oriented recreation areas; (v) fisheries or other marine resources facilities; and (vi) stream bank stabilization measures.

Amend Article 1, General Provisions and Definitions, Section 118-1-7 Areas of Applicability, to revise 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)~~ 33 CFR Part 328.3(c). 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 Article 2, Allowed Uses, Development and Redevelopment, Section 118-2-1, Allowed Uses, Development and Redevelopment in Resource Protection Areas, to revise paragraph (e) and add new paragraph (f) to read as follows:

- (e) Flood control and stormwater management facilities that drain or treat water from multiple development projects or from a significant portion of a watershed, provided that:
- (1) Such facilities are allowed and constructed in accordance with the Virginia Erosion and Stormwater Management Act (Va Code § 62.1-44.15:24 et seq.) ~~of the Virginia Code~~, the Virginia Erosion and Stormwater Management Regulation (VESMR) Program (VSMP) Permit Regulations (9 VAC 25-870-92 et seq.), and Chapter 124.1 of the County Code;
 - (2) The Director has conclusively established that location of the facility within the Resource Protection Area is the optimum location;
 - (3) The size of the facility is the minimum necessary to provide necessary flood control or stormwater treatment, or both;
 - (4) The facility must be consistent with a comprehensive stormwater management plan approved in accordance with 9 VAC 25-875-~~6600-92~~ of the VESMRP Permit Regulations;
 - (5) All applicable permits for construction in state or federal waters must be obtained from the appropriate state and federal agencies, such as the U.S. Army Corps of Engineers, the Virginia Department of Conservation and Recreation, the Virginia Department of Environmental Quality, and the Virginia Marine Resources Commission;
 - (6) Approval ~~must be~~ is received from the Director ~~prior to~~ before commencing construction; and
 - (7) Routine maintenance is allowed to be performed on such facilities to assure that they continue to function as designed.

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

- (f) Adaptation measures, subject to compliance with the performance criteria in Article 3 of this Chapter.

Amend Article 2, Allowed Uses, Development and Redevelopment, Section 118-2-4, Exceptions, to add new paragraph (b) to read as follows:

- (a) Exceptions to these requirements may be allowed as set forth in Article 5 and Article 6 of this Chapter.
- (b) Exceptions to the requirements of Articles 3, 4, 5 or 6 will not be granted where:
 - (1) The assessment of climate change and sea-level rise as outlined in Section 118-4-3(g) has not occurred; or
 - (2) The proposed adaptation measure allows for the use of fill in a Resource Protection Area in contravention to the requirements of Section 118-3-3(g)(3).

Amend Article 3, Land Use and Development Performance Criteria, Section 118-3-2, General Performance Criteria for Resource Management Areas and Resource Protection Areas, paragraph (b), to read as follows:

(b) Indigenous vegetation ~~shall~~ must be preserved to the maximum extent practicable consistent with the use, development, or redevelopment proposed. Mature trees must be protected during development and redevelopment and only removed where necessary, including to provide for the proposed use or development. Compliance with Chapter 122 of the Fairfax County Code will be relied on during the land development process to comply with this subsection.

Amend Article 3, Land Use and Development Performance Criteria, Section 118-3-2, General Performance Criteria for Resource Management Areas and Resource Protection Areas, paragraphs (d) and (e) to read as follows:

(d) Any land-disturbing activity that exceeds an area of 2,500 square feet ~~shall~~ must comply with the requirements of Chapter ~~104~~ 124.1 of the County Code. The construction of single-family dwellings, septic tanks and drainfields ~~shall not be~~ are not exempt from this requirement. Enforcement for noncompliance with the erosion and sediment control requirements referenced in this ~~criteria~~ criterion ~~shall~~ must be conducted under the provisions of Chapter ~~104~~ 124.1 of the County Code.

(e) For any development or redevelopment, stormwater runoff ~~shall~~ must be controlled by the use of best management practices (BMPs) in accordance with the requirements of Chapter 124.1 of the County Code.

Amend Article 3, Land Use and Development Performance Criteria, Section 118-3-3, Additional Performance Criteria for Resource Protection Areas, to revise paragraph (c), (d) and (e), and add paragraphs (g), (h) and (i) to read as follows:

(c) Redevelopment, outside of IDAs, is allowed within RPAs only if there is no increase in the amount of impervious area within the RPA and no further encroachment within the RPA and ~~shall conform to it conforms with~~ all applicable erosion and sediment control and stormwater management criteria in Chapters ~~104 and~~ 124.1 of the County Code as well as all applicable stormwater management requirements of Commonwealth of Virginia and federal agencies.

(d) Buffer area requirements: To minimize the adverse effects of human activities on the other components of the RPA, state waters, and aquatic life, a buffer area that is effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff ~~shall~~ must be retained, if present, and established where it does not exist. Notwithstanding permitted uses, encroachments, and vegetation clearing, authorized by this Chapter, the buffer area ~~is not cannot~~ be reduced in width. Where land uses such as agriculture or silviculture within the area of the buffer cease and the lands are proposed to be converted to other uses, the full buffer ~~shall~~ must be reestablished in accordance with Section 118-3-3(f). Where the buffer must be established or reestablished, the planting of trees must be incorporated as appropriate to site conditions and in such a manner to maximize the buffer function. Inclusion of native species in tree planting is preferred.

(e) Permitted Modifications of the Buffer Area.

(1) In order to maintain the functional value of the buffer area, indigenous vegetation may be removed, subject to approval by the Director, from a buffer area only to provide

for reasonable sight lines, access paths, general woodlot management, habitat management and other uses authorized by this Chapter, subject to the following:

- (4i) Trees may be pruned or removed as necessary to provide for sight lines and vistas, provided that where removed, they ~~shall be~~ are replaced with other vegetation that is equally effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff. Mature trees must be preserved and trimmed or pruned in lieu of removal as site conditions permit and any removal should be limited to the fewest number of trees feasible. When trees are removed to provide for sight lines and vistas, they must be replaced with trees that are appropriate for site conditions and in such a manner as to maximize the buffer function and to protect the quality of state waters. Inclusion of native species in tree replanting is preferred. Trees may be pruned or removed from the RPA buffer in an area no greater than 5,000 square feet or 25% of the buffer area, whichever is less, for all sight lines and vistas combined. The bounds of this area ~~shall~~ must be determined in a manner acceptable to the Director and be based on identified vantage points and the portion of the shoreline to be viewed. Trees may not be removed where reasonable sight lines or vistas can be created by pruning trees alone. Pruning ~~shall~~ must be performed in accordance with the Public Facilities Manual. No more than 25% of the trees 6 inches or greater in diameter at breast height (4.5 feet) may be removed from the areas designated for sight lines and vistas. Trees may not be pruned or removed within any RPA component listed in Section 118-1-7(b)(1) through (4). A written request for a determination by the Director that the proposed removal of vegetation from the RPA buffer is in accordance with the requirements of this Chapter is required. Such request ~~shall~~ must include a plan showing the following: (i) the vantage points for the sight lines and vistas, (ii) the portion of the shoreline to be viewed, (iii) the area in which trees are to be pruned or removed, (iv) the location of all trees six inches or greater in diameter at breast height (4.5 feet) or as required by the Director, and (v) the location of the trees to be removed or pruned. The request ~~shall~~ must also indicate the type of replacement vegetation proposed. Trees may not be pruned or removed from the RPA buffer until a written determination is obtained from the Director that the proposed activity is in accordance with the requirements of this Chapter.
- (2ii) Any path ~~shall~~ must be constructed and surfaced ~~so as~~ to effectively control erosion. Paths serving individual residential lots ~~shall~~ may not be ~~no~~ more than four feet in width except as necessary for handicapped access.
- (3iii) Noxious weeds and dead, diseased, or dying trees or shrubbery may be removed provided that where removed, they ~~shall~~ are replaced with other vegetation that is equally effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff. Vegetation may not be removed from any RPA component listed in Section 118-1-7(b)(1) through (4).
- (4iv) 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.

Mature trees may be removed only as necessary for the installation and maintenance of the projects consistent with the best available technical advice, project plans, and applicable permit conditions or requirements. Trees must be utilized in the project when vegetation is being established as appropriate to the site conditions and the project specifications. Inclusion of native species in tree planting is preferred. ~~Shoreline For shoreline~~ erosion control projects in tidal wetlands must be consistent with Chapter 13 Title 28.2, of the Code of Virginia and the accompanying Tidal Wetlands Guidelines in conjunction with the requirements of this Chapter, including Section 118-3-3(h) ~~which propose the use of sea walls, rip-rap, groins or other structural means of stabilization, it shall be demonstrated to the satisfaction of the Director that vegetative techniques cannot be effectively utilized.~~

(e) On agricultural lands, the buffer area must be managed to prevent concentrated flows of surface water from breaching the buffer area and appropriate measures, as recommended by the Northern Virginia Soil and Water Conservation District, may be taken to prevent noxious weeds 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 Northern Virginia 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 Management Training and Certification Regulations (4 VAC 50-85) administered by the ~~Virginia Department of Conservation and Recreation~~ Soil and Water Conservation Board.

(2) Agricultural activities may encroach within the landward 75 feet of the ~~100-foot wide~~ 100-foot-wide buffer area when agricultural best management practices which, in the opinion of the Northern Virginia Soil and Water Conservation District Board, 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 most recent version of the "National Soil Survey Handbook" title 430-VI 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 50-85) administered by the ~~Virginia Department of Conservation and Recreation~~ Virginia Soil and Water Conservation Board. In conjunction with the remaining buffer area, this collection of best management practices must 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 Northern Virginia 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 that are causing pollution of the nearby water body with perennial flow or violate performance standards pertaining to the vegetated buffer area, the Director, in cooperation with the Northern Virginia Soil and Water Conservation District, shall recommend a compliance schedule to the landowner and require the problems to be corrected consistent with that schedule. This schedule shall expedite environmental protection while ~~taking into account accounting for~~ the seasons and other temporal considerations ~~so that to maximize~~ the probability for ~~successfully implementing~~ successful implementation of the corrective measures ~~is greatest~~.

(5) In cases where the landowner or ~~his~~ the landowner's agent or operator has refused assistance from the Northern Virginia Soil and Water Conservation District in complying with or documenting compliance with the agricultural requirements of this chapter, the district shall report the noncompliance to the Director. The Director shall require the landowner to correct the problems within a specified period of time not to exceed 18 months from their initial notification of the deficiencies to the landowner. The Director, in cooperation with the district, shall recommend a compliance schedule to the landowner. This schedule shall expedite environmental protection while ~~taking into account accounting for~~ the seasons and other temporal ~~considerations so that to maximize~~ the probability for ~~successfully implementing~~ successful implementation of the corrective measures ~~is greatest~~.

(g) Adaptation measures: Where allowed in the RPA, in addition to the criteria above, the adaptation measures must:

(1) Be a nature-based solution adaptation measure that uses environmental processes, natural systems, or natural features, is appropriate for site conditions, and is:

(i) A Best Management Practice approved by the Chesapeake Bay Program Partnership;

(ii) An approved Virginia Stormwater Best Management Practice listed in the Virginia Stormwater Best Management Practice Clearinghouse;

(iii) An approved Shoreline Protection Strategy in accordance with the Tidal Wetlands Guidelines as determined by the Virginia Marine Resource Commission; or

(iv) A project that is an eligible activity for funding by the Virginia Community Flood Preparedness Fund as determined by the Virginia Department of Conservation and Recreation.

(2) Be designed, installed, and maintained in accordance with the applicable adaptation measure specifications in accordance with the type of the adaptation measure identified in Section 118-3-3(g)(1).

(3) Allow for the use of fill only under the following conditions:

(i) The grading and slope created by the use of fill must not be greater than necessary based upon the project specifications and implemented in a manner that minimizes the impact of runoff;

(ii) The fill must have the necessary biogeochemical characteristics, including sufficient organic content, to support the growth of vegetation and adequate permeability to allow infiltration consistent with the project specifications;

(iii) The use of fill shall not enhance stormwater runoff from the Resource Protection Area, and any lateral flow onto adjacent properties must be controlled;

(iv) Any impacts on the management of stormwater upland of the Resource Protection Area created by the use of fill must be mitigated as necessary;

(v) The use of fill must not negatively impact septic systems and drainfields; and

(vi) The use of fill must be consistent with any applicable federal or state law, including floodplain management requirements in 44 C.F.R. Part 60.

(4) Maximize preservation of existing natural vegetation, including mature trees, and minimize land disturbance consistent with the adaptation measure specifications.

(5) Comply with all federal, state, and local requirements, including any required permits and conditions.

(6) Nothing in this provision authorizes the approval or allowance of an adaptation measure in contravention of floodplain management requirements, including the National Flood Insurance Program and established floodplain ordinances, nor does it require a locality to approve or allow an adaptation measure in contravention of its participation in the National Flood Insurance Program Community Rating System.

(h) Any activity in the Resource Protection Area must be consistent with Chapter 13 Title 28.2, of the Code of Virginia and the accompanying Tidal Wetlands Guidelines which provide for “minimum standards for the protection and conservation of wetlands,” and “ensure protection of shorelines and sensitive coastal habitat from sea level rise and coastal hazard.” Shoreline management and alteration projects should be coordinated to address the requirements of the most updated Tidal Wetlands Guidelines in conjunction with the requirements of this Chapter, including Section 118-3-3(e)(1)(iv).

(i) The Director may exempt a living shoreline, as defined in Va. Code § 28.2-104.1, from additional performance criteria requirements, including a Water Quality Impact Assessment, when the County otherwise approves of the project, the project minimizes land disturbance and maintains or establishes a vegetative buffer inland of the living shoreline, the project complies with the fill conditions in Section 118-3-3(g)(3), a Resilience Assessment, as described in Section 118-4-3(g)(1)-(6), is conducted to assess the impacts of climate change and sea-level rise, and the project receives approval from the Virginia Marine Resources Commission or the Fairfax County Wetlands Board as applicable.

Amend Article 4, Water Quality Impact Assessments, Section 118-4-3, Water Quality Impact Assessments Components, to insert paragraph (g), and renumber the remainder to read as follows:

Section 118-4-3. - Water Quality Impact Assessment Components.

The Water Quality Impact Assessment shall:

- (a) Display the boundaries of the RPA;
- (b) Display and describe the location and nature of the proposed encroachment into and/or impacts to the RPA, including any clearing, grading, impervious surfaces, structures, utilities, and sewage disposal systems;
- (c) Provide justification for the proposed encroachment into and/or impacts to the RPA;
- (d) Describe the extent and nature of any proposed disturbance or disruption of wetlands;
- (e) Display and discuss the type and location of proposed best management practices to mitigate the proposed RPA encroachment and/or adverse impacts;
- (f) Demonstrate the extent to which the proposed activity will comply with all applicable performance criteria of this Chapter; ~~and~~
- (g) Include a Resilience Assessment that assesses the impacts of climate change and sea-level rise on any proposed land development in the Resource Protection Area during the plan of development or project review process. Such assessment must be based on the Resource Protection Area as delineated at the time of the proposed land development. Such assessment must at a minimum:
 - (1) Be based upon a potential impact range of 30 years or the lifespan of the project if less than 30 years;
 - (2) Utilize a model or forecast developed by or on behalf of the Commonwealth;
 - (3) Identify potential impacts:
 - (i) From projected sea-level rise using the 2017 National Oceanographic and Atmospheric Administration (NOAA) Intermediate-High scenario projection curve or any subsequently updated version thereof, on the project site;
 - (ii) From storm surge based upon the most updated NOAA hydrodynamic Sea, Lake, and Overland Surges from Hurricanes model on the project site; and
 - (iii) From flooding based upon the most updated Special Flood Hazard Area and the Limit of Moderate Wave Action on the project site. Such assessment of flooding should be in conjunction with the requirements and application of floodplain management requirements and programs.
 - (4) Assess the potential impacts of the proposed land development on buffer function, including loss of riparian buffer vegetation and vegetation migration; water migration; and the potential impacts of additional future land

disturbance or development in the Resource Protection Area connected to the proposed land development.

(5) Identify conditions, alterations, or adaptation measures for the proposed land development that address these potential impacts as necessary and appropriate based upon site conditions; nature, type, and size of proposed land development, including whether such proposed land development is in an Intensely Developed Area; extent of potential impacts; and the necessity to minimize future land disturbance.

(6) Based upon the assessment, the Director, Board or Exception Review Committee will, as necessary and appropriate, require conditions, alterations, or the installation of adaptation measures as part of the proposed land development consistent with the requirements of this chapter; and

(gh) Provide any other information deemed by the Director to be necessary to evaluate potential water quality impacts of the proposed activity.

Amend Article 4, Water Quality Impact Assessments, Section 118-4-4, Submission and Review Requirements for Water Quality Impact Assessments, to read as follows:

Unless modified by the Director, ~~a minimum of four copies of the Water Quality Impact Assessment shall be submitted to the Director for review in conjunction with the submission of a plan of development. The Director may, at his discretion, require additional copies of the Water Quality Impact Assessment to be submitted.~~ Where the Water Quality Impact Assessment is submitted pursuant to an exception request under Article 5 or Article 6, the Water Quality Impact Assessment and the exception request may be submitted as a combined document. Where the Water Quality Impact Assessment is submitted pursuant to a use in the Resource Protection Area allowed under this Chapter, the Water Quality Impact Assessment may be submitted as part of a site plan, subdivision construction plan, or grading plan.

Amend Article 5, Nonconformities, Waivers, Exceptions, and Exemptions, Section 118-5-2, Public Utilities, Railroads, Public Roads, and Facilities Exemptions, to revise paragraph (a) to read as follows:

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

- (1) The Erosion and Sediment Control Law (Va. Code § 62.1-44.15:51 et seq. of the Virginia Code) and with ~~Chapter 104 of the County Code~~ and with the Virginia Erosion and Stormwater Management Act (Va. Code § 62.1-44.15:24 et seq. of the Virginia Code) and with Chapter 124.1 of the County Code;
- (2) An erosion and sediment control plan and a stormwater management plan approved by the Virginia Department of Environmental Quality Conservation and Recreation; or
- (3) Local water quality protection criteria at least as stringent as the above state requirements will be deemed to constitute compliance with this chapter.

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

(b) The construction, installation, and maintenance of water lines, sanitary sewer lines including pumping stations, natural gas lines, underground telecommunications and cable television lines and appurtenant structures owned, permitted, or both by Fairfax County or a regional service authority and subject to the following, as determined by the Director:

(1) To the degree possible, the location of such utilities and facilities ~~shall~~must be outside RPAs;

(2) No more land ~~shall~~may be disturbed than is necessary to provide for the proposed utility installation;

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

(4) Any land disturbance exceeding an area of 2,500 square feet ~~shall~~must comply with Chapter ~~104-124.1~~ of the Fairfax County Code.

Amend Article 5, Nonconformities, Waivers, Exceptions, and Exemptions, Section 118-5-3, Additional Exemptions, to revise paragraph (a)(1) to read as follows:

(a) Within Resource Protection Areas: Water wells, site amenities for passive recreation, historic preservation activities, and archaeological activities, provided that:

(1) Any land disturbance exceeding an area of 2,500 square feet ~~shall~~must comply with Chapter ~~104-124.1~~ of the Fairfax County Code;

Amend Article 5, Nonconformities, Waivers, Exceptions, and Exemptions, Section 118-5-5, Exceptions for Minor Additions, to revise paragraph (c)(7) to read as follows:

(c) The Director may approve, deny, or approve with conditions individual exception requests upon a finding that:

(7) Any development or land disturbance exceeding an area of 2,500 square feet complies with all erosion and sediment control requirements of this Chapter and Chapter ~~104-124.1~~ of the County Code.

Amend Article 8, Appeals, Section 118-8-1, Procedures, to insert paragraph (e), to read as follows:

(a) An applicant aggrieved by any decision of the Director of Land Development Services or the Director of the Department of Health in the administration of this Chapter may, within 15 days of such decision, appeal the decision to the Board of Supervisors.

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

- 452 (c) An ~~Such~~ appeal to the Board of Supervisors ~~shall~~ must be filed with the Clerk to the Board
 453 of Supervisors and ~~shall~~ must state with specificity the provisions of this Chapter ~~which~~ that
 454 the applicant alleges to have been violated by the decision and the reasons therefore. A copy
 455 of ~~the~~ such appeal must also be delivered to the Director of Land Development Services
 456 within ~~such~~ the 30-day period.
- 457 (d) The time limits set forth in ~~Section Va. Code § 15.2-2259 of Va. Code Ann.~~ shall be tolled
 458 during the pendency of an application filed pursuant to Paragraph (a) above.
- 459 (e) An applicant aggrieved by a decision by the Board of Supervisors may, within 30 days of the
 460 decision, appeal the decision in the appropriate court. Any appeal filed more than 30 days
 461 after the decision is untimely and constitutes of a waiver of the right to appeal.

This amendment will become effective on October 9, 2024, at 12:01 a.m. and the requirements will be applicable to any new plans and applications submitted on or after this date, except that all previously approved Water Quality Impact Assessments and RPA exception and exemption requests remain valid for the period indicated in the approval.

Applicants who submit a plan or application before the effective date that is then accepted for review without further modification may continue to use the criteria in effect at the time of submission only if the plan or application is approved within six months of the effective date and any previously approved Water Quality Impact Assessments and RPA exception and exemption approvals remain valid for the time period granted in the approval.

GIVEN under my hand this 8th day of October, 2024.

Jill G. Cooper
 Clerk for the Board of Supervisors