

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

PROPOSED REGULATION: 9 VAC 10-20 et seq. Chesapeake Bay Preservation Area Designation and Management Regulations.

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 protect 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.

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

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

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

"Highly erodible soils" means soils (excluding vegetation) with an erodibility index (EI) from sheet and rill erosion equal to or greater than eight. The erodibility index for any soil is defined as the product of the formula $RKLS/T$, as defined by the ~~"Food Security Act (F.S.A.) Manual" of August, 1988 in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resource Conservation Service,~~ where K is the soil susceptibility to water erosion in the surface layer; R is the

rainfall and runoff; LS is the combined effects of slope length and steepness; and T is the soil loss tolerance.

"Highly permeable soils" means soils with a given potential to transmit water through the soil profile. Highly permeable soils are identified as any soil having a permeability equal to or greater than six inches of water movement per hour in any part of the soil profile to a depth of 72 inches (permeability groups "rapid" and "very rapid") as found in the "National ~~Soils~~ Soil Survey Handbook" of ~~July, 1983~~ November 1996 in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resource Conservation Service.

"Impervious cover" 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.

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

"Intensely Developed Areas" means those areas designated by the local government pursuant to 9 VAC 10-20-100 ~~of this chapter~~.

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

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

"Local program adoption date" means the date a local government meets the requirements of subsections A and B of 9 VAC 10-20-60 of Part II.

"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 § 404 of the federal Clean Water Act, in 33 CFR 328.3b.

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

"Public Road" means a publicly-owned road designed and constructed in accordance with water quality protection criteria at least as stringent as requirements applicable to the Virginia

Department of Transportation, including regulations promulgated pursuant to (i) the Erosion and Sediment Control Law (§ 10.1-560 et seq. of the Code of Virginia) and (ii) the Virginia Stormwater Management Act (§ 10.1-603.1 et seq. of the Code of Virginia). This definition includes those roads where the Virginia Department of Transportation exercises direct supervision over the design or construction activities, or both, and cases where secondary roads are constructed or maintained, or both, by a local government in accordance with the standards of that local government.

"Redevelopment" means the process of developing land that is or has been previously developed so that there is no increase in the amount of impervious cover and no further encroachment within the Resource Protection Area.

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

"Resource Protection Area" means that component of the Chesapeake Bay Preservation Area comprised of lands at or near the shoreline that have an intrinsic water quality value due to the ecological and biological processes they perform or are sensitive to impacts which may result in significant degradation to the quality of state waters.

"Shoreline" means the line describing the interface between land that is continually or, in the case of tidal flows, routinely submerged under water and land that is not continually or routinely submerged.

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

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

"Tidal wetlands" means vegetated and nonvegetated wetlands as defined in § 62.1-13.2 of the Code of Virginia.

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

"Tributary stream" means any perennial stream that is so depicted on the most recent U.S. Geological Survey 7½ minute topographic quadrangle map (scale 1:24,000), or any stream segment that has a drainage area of at least 320 acres (one-half square mile), or both. Alternatively, local governments may conduct more thorough investigations to accurately determine the perenniality of streams.

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

"Water-dependent facility" means a development of land that cannot exist outside of the Resource Protection Area and must be located on the shoreline 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; and (v) fisheries or other marine resources facilities.

PART II. LOCAL GOVERNMENT PROGRAMS.

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

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

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

Local programs shall contain the elements listed below. ~~Local governments shall adopt elements A and B concurrently and no later than 12 months after the adoption date of these regulations. Elements C through G shall also be in place within 12 months after the adoption date.~~

A. A map delineating Chesapeake Bay Preservation Areas.

B. Performance criteria applying in Chesapeake Bay Preservation Areas that employ the requirements in Part IV (9 VAC 10-20-110 et seq.) of this chapter.

C. A comprehensive plan or revision that incorporates the protection of Chesapeake Bay Preservation Areas and of the quality of state waters, in accordance with criteria set forth in Part V (9 VAC 10-20-170 et seq.) of this chapter.

D. A zoning ordinance or revision that (i) incorporates measures to protect the quality of state waters in Chesapeake Bay Preservation Areas, as set forth in 9 VAC 10-20-191, and (ii) requires compliance with all criteria set forth in Part IV (9 VAC 10-20-110 et seq.) of this chapter.

E. A subdivision ordinance or revision that (i) incorporates measures to protect the quality of state waters in Chesapeake Bay Preservation Areas, as set forth in 9 VAC 10-20-201, and (ii) assures that all subdivisions in Chesapeake Bay Preservation Areas comply with the criteria set forth in Part IV (9 VAC 10-20-110 et seq.) of this chapter.

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

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

PART III.

CHESAPEAKE BAY PRESERVATION AREA DESIGNATION CRITERIA.

9 VAC 10-20-70. Purpose.

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

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

A. Resource Protection Areas shall consist of sensitive lands at or near the shoreline that have an intrinsic water quality value due to the ecological and biological processes they perform or are sensitive to impacts which may cause significant degradation to the quality of state waters. In their natural condition, these lands provide for the removal, reduction, or assimilation of sediments, nutrients, and potentially harmful or toxic substances in runoff entering the bay and its tributaries, and minimize the adverse effects of human activities on state waters and aquatic resources.

B. The Resource Protection Area shall include:

1. Tidal wetlands;
2. Nontidal wetlands connected by surface flow and contiguous to tidal wetlands or tributary streams;
3. Tidal shores;
4. Such other lands ~~under~~ considered by the local government to meet the provisions of subsection A of ~~9 VAC 10-20-80~~ this section and to be necessary to protect the quality of state waters; and
5. A buffer area not less than 100 feet in width located adjacent to and landward of the components listed in subdivisions 1 through 4 above, and along both sides of any tributary stream. The full buffer area shall be designated as the landward component of the Resource Protection Area notwithstanding the presence of permitted uses ~~or equivalent measures~~, encroachments, and permitted vegetation clearing in compliance with Part IV (9 VAC 10-20-110 et seq.) of this chapter. ~~Designation of this area shall not be subject to reduction unless based on reliable site-specific information as provided in subsection B of 9 VAC 10-20-110, and subsections C and E of 9 VAC 10-20-220.~~

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

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

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

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

1. Floodplains;
2. Highly erodible soils, including steep slopes;
3. Highly permeable soils;

4. Nontidal wetlands not included in the Resource Protection Area;

5. Such other lands ~~under~~ considered by the local government to meet the provisions of subsection A of ~~9 VAC 10-20-90~~ this section and to be necessary to protect the quality of state waters.

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

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

a. Known Resource Management Area land types;

b. Developable land within the jurisdiction;

c. Areas targeted for redevelopment; and

d. Areas served by piped or channelized stormwater drainage systems which provide no treatment of stormwater discharges.

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

a. Known Resource Management Area land types;

b. Developable land within the jurisdiction;

c. Areas targeted for redevelopment; and

d. Areas served by piped or channelized stormwater drainage systems which provide no treatment of stormwater discharges.

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

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

5. It is not the intent of the board, nor is it the intent of the Act or this chapter, to require that local governments designate all lands within their jurisdiction as Chesapeake Bay Preservation Areas. The extent of the Resource Management Area designation should always be based on the prevalence and relation of Resource Management Area land types and other appropriate land areas to water quality protection.

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

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

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

A 1. Development has severely altered the natural state of the area such that it has more than 50% impervious surface;

B 2. Public sewer and water ~~is~~ systems, or a constructed stormwater drainage system, or both, have been constructed and ~~currently serves~~ served the area by the ~~effective date~~ local program

adoption date. This condition does not include areas planned for public sewer and water or constructed stormwater drainage systems;

€ 3. Housing density is equal to or greater than four dwelling units per acre.

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

Local governments may exercise judgement in determining site-specific boundaries of Chesapeake Bay Preservation Area components and in making determinations of the application of this chapter, based on more reliable or specific information gathered from actual field evaluations of the parcel, in accordance with plan of development requirements in subdivision 1 e of 9 VAC 10-20-231.

PART IV.

LAND USE AND DEVELOPMENT PERFORMANCE CRITERIA.

9 VAC 10-20-110. Purpose.

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

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

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

B D. ~~Local governments may exercise judgement in determining site-specific boundaries of Chesapeake Bay Preservation Area components and in making determinations of the application of this chapter, based on more reliable or specific information gathered from actual field evaluations of the parcel, in accordance with plan of development requirements in Part V.~~ Local governments shall incorporate the criteria in this part into their comprehensive plans, zoning ordinances, subdivision ordinances, and such other police and zoning powers as may be appropriate, in accordance with §§

10.1-2108 and 10.1-2111 of the 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 seq.) of this chapter. The criteria may be employed in conjunction with other planning and zoning concepts to protect the quality of state waters.

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

~~It~~ Local governments must be demonstrated to the satisfaction of local governments ensure that any use, development, or redevelopment of land in Chesapeake Bay Preservation Areas meets the following performance criteria:

1. No more land shall be disturbed than is necessary to provide for the ~~desired~~ proposed use or development.
2. Indigenous vegetation shall be preserved to the maximum extent ~~possible~~ practicable, consistent with the use ~~and or~~ development ~~allowed~~ proposed.
3. Where the best management practices utilized require regular or periodic maintenance in order to continue their functions, such maintenance shall be ensured by the local government through a maintenance agreement with the owner or developer or some other mechanism that achieves an equivalent objective.
4. All development exceeding 2,500 square feet of land disturbance shall be accomplished through a plan of development review process consistent with ~~§ 15.1-491(h)~~ § 15.2-2286 A 8 of the Code of Virginia and subdivision 1 e of 9 VAC 10-20-231.
5. Land development shall minimize impervious cover consistent with the proposed use or development ~~allowed~~.
6. Any land disturbing activity that exceeds an area of 2,500 square feet (including construction of ~~all single family houses~~, septic tanks and drainfields, but otherwise as defined in § 10.1-560 of the Code of Virginia) shall comply with the requirements of the local erosion and sediment control ordinance.
7. On-site sewage treatment systems not requiring a Virginia Pollutant Discharge Elimination System (VPDES) permit shall:
 - a. Have pump-out accomplished for all such systems at least once every five years; However, if deemed appropriate by the local health department and subject to conditions the local health department may set, local governments may offer to the owners of such systems, as an alternative to the mandatory pump-out, the option of having a plastic filter installed in the outflow pipe from the septic tank to filter solid material from the effluent while

sustaining adequate flow to the drainfield to permit normal use of the septic system. Such a filter should satisfy standards established in the Sewage Handling and Disposal Regulations (12 VAC 5-610-10 et seq. of the Virginia Administrative Code) administered by the Virginia Department of Health.

b. For new construction, provide a reserve sewage disposal site with a capacity at least equal to that of the primary sewage disposal site. This reserve sewage disposal site requirement shall not apply to any lot or parcel recorded prior to October 1, 1989, if the lot or parcel is not sufficient in capacity to accommodate a reserve sewage disposal site, as determined by the local health department. Building 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 Control Board. All sewage disposal site records shall be administered to provide adequate notice and enforcement. As an alternative to the 100 percent reserve sewage disposal site, local governments may offer the owners of such systems the option of installing an alternating drainfield system meeting the following conditions:

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

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

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

(a) sand mounds;

(b) low-pressure distribution systems; and

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

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

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

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

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

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

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

(9) The local government shall notify the owner(s) annually of the requirement to switch the valve to the opposite drainfield.

8. ~~Stormwater management criteria which accomplish the goals and objectives of this chapter shall apply. For development, the post-development nonpoint source pollution runoff load shall not exceed the pre-development load based upon average land cover conditions. Redevelopment of any site not currently served by water quality best management practices shall achieve at least a 10% reduction of nonpoint source pollution in runoff compared to the existing runoff load from the site. Post-development runoff from any site to be redeveloped that is currently served by water quality best management practices shall not exceed the existing load of nonpoint source pollution in surface runoff.~~ Stormwater management criteria consistent with the water quality protection provisions (4 VAC 3-20-71 et seq.) of the Virginia Stormwater Management Regulations (4 VAC 3-20-10 et seq. of the Virginia Administrative Code) shall be satisfied.

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

(1) ~~Incorporation on the site of best management practices that achieve~~ meet the required control water quality protection requirements set forth in this subsection;

(2) ~~Compliance with a locally adopted regional stormwater management program incorporating pro-rata share payments pursuant to the authority provided in § 15.1-~~

~~466(j) of the Code of Virginia that results in achievement of equivalent water quality protection reviewed and found by the board to achieve water quality protection equivalent to that required by this subsection; and~~

(3) Compliance with an individual permit issued by a state or locally implemented program of stormwater discharge permits pursuant to § 402(p) of the federal Clean Water Act, as set forth in 40 CFR Parts 122, 123, 124, and 504; and, provided that the local government specifically determines that the permit requires measures that collectively achieve water quality protection equivalent to that required by this subsection.

~~(4) For a redevelopment site that is completely impervious as currently developed, restoring a minimum 20% of the site to vegetated open space.~~

b. Any maintenance, alteration, use, or improvement to an existing structure which does not degrade the quality of surface water discharge, as determined by the local government, may be exempted from the requirements of this subsection.

c. Stormwater management criteria for redevelopment shall apply to any redevelopment, whether or not it is located within an Intensely Developed Area designated by a local government.

9. Land upon which agricultural activities are being conducted, including but not limited to crop production, pasture, and dairy and feedlot operations, or lands otherwise defined as agricultural land by the local government, shall have a soil and water quality conservation ~~plan.~~ assessment conducted regarding the effectiveness of existing practices pertaining to soil erosion and sediment control, nutrient management, and management of pesticides to ensure that ~~Such a plan shall be based upon the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resource Conservation Service and accomplish water quality protection is being accomplished~~ consistent with the Act and this chapter. ~~Such a plan will be approved by the local Soil and Water Conservation District by January 1, 1995.~~

~~The board will request the Department of Conservation and Recreation to evaluate the existing state and federal agricultural conservation programs for effectiveness in providing water quality protection. In the event that, by July 1, 1991, the Department of Conservation and Recreation finds that the implementation of the existing agricultural conservation programs is inadequate to protect water quality consistent with the Act and these regulations, the board will consider the promulgation of regulations to provide more effective protection of water quality from agricultural activities and may require implementation of best management practices on agricultural lands within Chesapeake Bay Preservation Areas.~~

a. Recommendations for additional conservation practices need address only those conservation issues applicable to the tract or field being assessed. Any soil and water quality conservation practices that are recommended as a result of such an assessment and are subsequently implemented with financial assistance from federal or state cost-share programs must be designed, consistent with cost-share practice standards effective in January, 1998 in the “Field Office Technical Guide” of the U.S. Department of Agriculture Natural Resource Conservation Service or the January, 2001 edition of the “Virginia Cost Share BMP Manual” of the Virginia Department of Conservation and Recreation, respectively. Unless otherwise specified in this section, general standards pertaining to the various agricultural conservation practices being assessed shall be as follows:

(1) For erosion and sediment control recommendations, the goal shall be, where feasible, to 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. However, in no case shall erosion exceed the soil loss consistent with an Alternative Conservation System, referred to as an “ACS”, as defined in the “Field Office Technical Guide” of the U.S. Department of Agriculture Natural Resource Conservation Service.

(2) For nutrient management, whenever nutrient management plans are developed, the operator or landowner must provide soil test information, consistent with the Virginia Nutrient Management Training and Certification Regulations (4 VAC 5-15-10 et seq. of the Virginia Administrative Code).

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

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

c. The findings and recommendations of such assessments and any resulting soil and water quality conservation plans will be submitted to the local Soil and Water Conservation District Board, which will be the plan-approving authority.

10. Silvicultural activities in Chesapeake Bay Preservation Areas are exempt from this chapter provided that silvicultural operations adhere to water quality protection procedures prescribed by the Virginia Department of Forestry in the January, 1997 edition of "Forestry Best Management Practices Handbook for Water Quality in Virginia". The Virginia Department of Forestry will oversee and document installation of best management practices and will monitor ~~instream~~ in-stream impacts of forestry operations in Chesapeake Bay Preservation Areas. ~~In the event that, by July 1, 1991, the Department of Forestry programs are unable to demonstrate equivalent protection of water quality consistent with the Act and these regulations, the Department of Forestry will revise its programs to assure consistency of results and may require implementation of best management practices.~~

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

9 VAC 10-20-130. Performance Use and development criteria for Resource Protection Areas.

~~The following criteria shall apply specifically within Resource Protection Areas and supplement the general performance criteria~~ In addition to the general performance criteria set forth in 9 VAC 10-20-120, the criteria in this section are applicable in Resource Protection Areas.

~~A 1. Allowable development~~ Permitted uses. ~~A water quality impact assessment shall be required for any proposed development in accordance with Part V. Land development may be allowed in the Resource Protection Area only if it (i) is water dependent; or (ii) constitutes the continuance or redevelopment of a use existing at the time of local program adoption; (iii) is a new use established pursuant to subdivision 4 a of this section; (iv) is a road or driveway crossing satisfying the conditions set forth in subdivision 1 d of this section; or (v) is a flood control or stormwater management facility satisfying the conditions set forth in subdivision 1 e of this section.~~

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

~~1~~ b. A new or expanded water-dependent facility may be allowed provided that the following criteria are met:

~~a. (1) It does not conflict with~~ is proposed to be located in an area designated for such facilities in the comprehensive plan;

~~b. (2) It complies with the performance criteria set forth in this part 9~~ VAC 10-20-120;

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

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

~~2~~ c. Redevelopment shall conform to applicable ~~stormwater management and~~ erosion and sediment control ~~criteria in this part~~ and stormwater management criteria set forth in subsections 6 and 8, respectively, of 9 VAC 10-20-120, as well as all applicable stormwater management requirements of other state and federal agencies.

~~3~~ d. Roads and driveways not exempt under subdivision 1 of subsection B of 9 VAC 10-20-150 and which, therefore, must comply with the provisions of this chapter, may be constructed in or across Resource Protection Areas if each of the following conditions is met:

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

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

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

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

e. Subdivision-scale and regional-scale flood control and stormwater management facilities may be constructed in Resource Protection Areas if all applicable permits for construction in state or federal waters have been obtained from the appropriate state and federal agencies, such as the U.S. Army Corps of Engineers, the Virginia Department of Environmental Quality, and the Virginia Marine Resources Commission.

2. Exemptions in Resource Protection Areas. The following land disturbances in Resource Protection Areas – (i) water wells; (ii) passive recreation facilities such as boardwalks, trails and pathways; and (iii) historic preservation and archaeological activities – may be exempt from the

criteria of Part IV (9 VAC 10-20-110 et seq.) of this chapter, provided that they comply with the following requirements:

a. Local governments shall establish administrative procedures to review such exemptions.

b. Any land disturbance exceeding an area of 2,500 square feet shall comply with the erosion and sediment control criteria in subsection 6 of 9 VAC 10-20-120.

~~B 3. Buffer area requirements. The 100-foot wide buffer area shall be the landward component of the Resource Protection Area as set forth in subdivision 5 of subsection B of 9 VAC 10-20-80. Notwithstanding permitted uses, encroachments, and vegetation clearing, as set forth in this subsection, the 100-foot wide buffer area is never reduced in width. To minimize the adverse effects of human activities on the other components of the Resource Protection Area, state waters, and aquatic life, a 100-foot wide buffer area of vegetation that is effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from run-off runoff shall be retained if present and established where it does not exist. The 100-foot wide buffer area shall be deemed to achieve a 75% reduction of sediments and a 40% reduction of nutrients. Except as noted in this subsection, a combination of a buffer area not less than 50 feet in width and appropriate best management practices located landward of the buffer area which collectively achieve water quality protection, pollutant removal, and water resource conservation at least the equivalent of the 100-foot buffer area may be employed in lieu of the 100-foot buffer. The following additional performance criteria shall apply:~~

~~1.— In order to maintain the functional value of the buffer area, indigenous vegetation may be removed only to provide for reasonable sight lines, access paths, general woodlot management, and best management practices, as follows:~~

~~a.— 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 run-off, preventing erosion, and filtering nonpoint source pollution from run-off.~~

~~b.— Any path shall be constructed and surfaced so as to effectively control erosion.~~

~~c.— Dead, diseased, or dying trees or shrubbery may be removed at the discretion of the landowner, and silvicultural thinning may be conducted based upon the recommendation of a professional forester or arborist.~~

~~d.— 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.~~

~~2~~ 4. Permitted encroachments into the buffer area. When the application of the buffer area would result in the loss of a buildable area on a lot or parcel recorded prior to October 1, 1989, ~~modifications to the width of~~ encroachments into the buffer area may be allowed in accordance with the following criteria:

- a. ~~Modifications to~~ Encroachments into the buffer area shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities.
- b. Where ~~possible~~ practicable, ~~an~~ a vegetated area which will maximize water quality protection, mitigate the effects of the buffer encroachment, and is equal to the area encroaching of encroachment into the buffer area shall be established elsewhere on the lot or parcel ~~in a way to maximize water quality protection.~~
- c. ~~In no case shall the reduced portion of the buffer area be less than 50 feet in width.~~ Regarding the provisions of this subsection, the encroachment may not extend into the seaward 50 feet of the buffer area.

~~3. Redevelopment within Intensely Developed Areas may be exempt from the requirements of this subsection. However, while the immediate establishment of the buffer area may be impractical, local governments shall give consideration to implementing measures that would establish the buffer in these areas over time in order to maximize water quality protection, pollutant removal, and water resource conservation.~~

5. Permitted modifications of the buffer area.

a. In order to maintain the functional value of the buffer area, existing vegetation may be removed 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 at the discretion of the landowner, and silvicultural thinning may be conducted based upon the recommendation of a professional forester or arborist.

(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.

4**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. ~~The agricultural~~ Agricultural activities may encroach into the buffer area ~~may be reduced~~ as follows:

~~a. To a minimum width of 50 feet when the adjacent land is enrolled in a federal, state, or locally funded agricultural best management practices program, and the program is being implemented, provided that the combination of the reduced buffer area and the best management practices achieves water quality protection, pollutant removal, and water resource conservation at least the equivalent of the 100-foot buffer area;~~

~~b. To a minimum width of 25 feet when a soil and water quality conservation plan, as approved by the local Soil and Water Conservation District, has been implemented on the adjacent land, provided that the portion of the plan being implemented for the Chesapeake Bay Preservation Area achieves water quality protection at least the equivalent of that provided by the 100-foot buffer area in the opinion of the local Soil and Water Conservation District Board. Such plan shall be based upon the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resource Conservation Service and accomplish water quality protection consistent with the Act and this chapter;~~

~~c. The buffer area is not required for agricultural drainage ditches if the adjacent agricultural land has in place best management practices in accordance with a conservation plan approved by the local Soil and Water Conservation District.~~

(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.

(a) If nutrient management is identified as the predominant water quality issue, a nutrient management plan, including soil tests, must be developed, consistent with the November 1995 edition of the “Virginia Nutrient Management Standards and Criteria,” administered by the Virginia Department of Conservation and Recreation.

(b) In addition, if specific problems are identified which, in the opinion of the local Soil and Water Conservation District Board, are causing pollution of the nearby tributary stream or violate performance standards pertaining to the vegetated buffer area, such problems must be corrected within a specified period of time, consistent with time frames and conditions in the implementation guidelines of the Virginia Agricultural Stewardship Act (§§ 10.1-559.1 through 10.1-559.11 of the Code of Virginia). Such problems requiring correction shall be reported to the local government for the purposes of follow-up and, if necessary, enforcement.

(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 November 1995 edition of the “Virginia Nutrient Management Standards and Criteria,” administered by the Virginia Department of Conservation and Recreation. In addition, if specific problems are identified which, in the opinion of the local Soil and Water Conservation District Board, are causing pollution of the nearby tributary stream or violate performance standards pertaining to the vegetated buffer area, such problems must be corrected within a specified period of time, consistent with time frames and conditions in the implementation guidelines of the Virginia Agricultural Stewardship Act (§§ 10.1-559.1 through 10.1-559.11 of the Code of Virginia). Such problems requiring correction shall be reported to the local government for the purposes of follow-up and, if necessary, enforcement. 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.

6. Water quality impact assessment. A water quality impact assessment shall be required for any proposed development within the Resource Protection Area consistent with Part IV (9 VAC 10-20-110 et seq.) of this chapter and for any other development in Chesapeake Bay Preservation Areas that may warrant such assessment because of the unique characteristics of the site or intensity of the proposed use or development.

a. The purpose of the water quality impact assessment is to identify the impacts of proposed development on water quality and lands in the Resource Protection Areas consistent with the goals and objectives of the Act, this chapter, and local programs, and to determine specific measures for mitigation of those impacts. The specific content and procedures for the water quality impact assessment shall be established by each local government. Local governments should notify the board of all development requiring such an assessment. Upon request, the board will provide review and comment regarding any water quality impact assessment within 90 days, in accordance with the advisory state review requirements of § 10.1-2112 of the Act.

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

7. Buffer area requirements for Intensely Developed Areas. In Intensely Developed Areas and isolated redevelopment and in-fill sites which meet the criteria set forth in 9 VAC 10-20-100 for designating Intensely Developed Areas, establishment of vegetation in the 100-foot wide buffer area may not be required. However, while the immediate establishment of vegetation in the buffer area may be impractical, local governments shall give consideration to implementing measures that would establish vegetation in the buffer in these areas over time in order to maximize water quality protection, pollutant removal, and water resource conservation.

9 VAC 10-20-140. ~~Local program development.~~ Repealed.

~~Local governments shall incorporate the criteria in this part into their comprehensive plans, zoning ordinances, subdivision ordinances, and such other police and zoning powers as may be appropriate, in accordance with §§ 10.1-2111 and 10.1-2108 of the Act and Part V of this~~

~~chapter. The criteria may be employed in conjunction with other planning and zoning concepts to protect the quality of state waters.~~

9 VAC 10-20-150. ~~Administrative waivers and exemptions.~~ Nonconformities, exemptions, and exceptions.

A. ~~Nonconforming use~~ uses ~~and development waivers~~ noncomplying structures.

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

- a. There will be no net increase in nonpoint source pollutant load; and
- b. Any development or land disturbance exceeding an area of 2,500 square feet complies with all erosion and sediment control requirements of this part.

2. It is not the intent of this chapter to prevent the reconstruction of pre-existing structures within Chesapeake Bay Preservation Areas from occurring as a result of casualty loss unless otherwise restricted by local government ordinances.

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

1. Construction, installation, operation, and maintenance of electric, gas, fiber-optic, and telephone transmission lines, railroads, and public roads and their appurtenant structures in accordance with (i) regulations promulgated pursuant to the Erosion and Sediment Control Law (§ 10.1-560 et seq. of the 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 Department of Conservation and Recreation, or (iii) local water quality protection criteria at least as stringent as the above stated requirements will be deemed to constitute compliance with this chapter. The exemption of public roads is further conditioned on the following:

- a. Optimization of the road alignment and design, consistent with other applicable requirements, to prevent or otherwise minimize (i) encroachment in the Resource Protection Area and (ii) adverse effects on water quality; and
- b. Local governments may choose to exempt (i) all public roads as defined in 9 VAC 10-20-40, or (ii) only those public roads constructed by the Virginia Department of Transportation.

2. Construction, installation, and maintenance of local water, sewer, ~~and local~~ gas, fiber optic and cable television lines shall be exempt from the criteria in this part provided that:

- a. To the degree possible, the location of such utilities and facilities should be outside Resource Protection Areas;
- b. No more land shall be disturbed than is necessary to provide for the ~~desired~~ proposed utility installation.
- c. All such construction, installation, and maintenance of such utilities and facilities shall be in compliance with all applicable state and federal permits and designed and conducted in a manner that protects water quality; and
- d. Any land disturbance exceeding an area of 2,500 square feet complies with all erosion and sediment control requirements of this part.

~~C. Exemptions in Resource Protection Areas. The following land disturbances in Resource Protection Areas may be exempt from the criteria of this part provided that they comply with subdivisions 1 and 2 below of this subsection: (i) water wells; (ii) passive recreation facilities such as boardwalks, trails, and pathways; and (iii) historic preservation and archaeological activities.~~

~~1. Local governments shall establish administrative procedures to review such exemptions.~~

~~2. Any land disturbance exceeding an area of 2,500 square feet shall comply with the erosion and sediment control requirements of this part.~~

C. Exceptions to the requirements of Part IV (9 VAC 10-20-110 et seq.) of this chapter may be granted, provided that: (i) exceptions to the criteria shall be the minimum necessary to afford relief, (ii) reasonable and appropriate conditions upon any exception granted shall be imposed as necessary so that the purpose and intent of the Act is preserved, and (iii) the provisions of § 15.2-2309 of the Code of Virginia are met. Each local government shall design an appropriate process or processes for the administration of exceptions, in accordance with § 15.2-2309 of the Code of Virginia and subsection 6 of 9 VAC 10-20-130.

9 VAC 10-20-160. ~~Exceptions to the criteria.~~ Repealed.

~~Exceptions to the requirements of these regulations may be granted, provided that: (i) exceptions to the criteria shall be the minimum necessary to afford relief, and (ii) reasonable and appropriate conditions upon any exception granted shall be imposed as necessary so that the purpose and intent of~~

the Act are preserved. Local governments shall design an appropriate process or processes for the administration of exceptions, in accordance with Part V.

PART V.
~~IMPLEMENTATION, ASSISTANCE, AND DETERMINATION OF CONSISTENCY.~~
COMPREHENSIVE PLAN CRITERIA.

9 VAC 10-20-170. Purpose.

The purpose of this part is to assist local governments in the ~~timely preparation of local programs to implement the Act, and to establish guidelines for determining local program consistency~~ development of a comprehensive plan or plan component that is consistent with the Act, and to establish guidelines for determining the consistency of the local comprehensive plan or plan component with the Act.

9 VAC 10-20-180. ~~Local assistance manual.~~ Repealed.

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

B.—~~The manual will recommend a schedule for the completion of local program elements and their submission to the board for its information, to ensure timely achievement of the requirements of the Act and timely receipt of assistance. The board will consider compliance with the schedule in allocating financial and technical assistance. Those elements of the manual necessary to assist local governments in meeting the requirements of subsections A and B of 9 VAC 10-20-60 will be completed by the effective date of this chapter.~~

C.—~~The manual is for the purpose of guidance only and is not mandatory.~~

9 VAC 10-20-190. ~~Board to establish liaison.~~ Repealed.

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

9 VAC 10-20-200. ~~Planning District comments.~~ Repealed.

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

9 VAC 10-20-210. Designation of Chesapeake Bay Preservation Areas. Repealed.

~~A. The designation of Chesapeake Bay Preservation Areas as an element of the local program should:~~

- ~~1. Utilizing existing data and mapping resources, identify and describe tidal wetlands, nontidal wetlands, tidal shores, tributary streams, floodplains, highly erodible soils including steep slopes, highly permeable areas, and other sensitive environmental resources as necessary to comply with Part III;~~
- ~~2. Determine, based upon the identification and description, the extent of Chesapeake Bay Preservation Areas within the local jurisdiction;~~
- ~~3. Prepare an appropriate map or maps delineating Chesapeake Bay Preservation Areas;~~
- ~~4. Prepare amendments to local ordinances which incorporate the performance criteria of Part IV or the model ordinance prepared by the board.~~

~~B. Review by the board. The board will review a proposed program within 60 days. If it is consistent with the Act, the board will schedule a conference with the local government to determine what additional technical and financial assistance may be needed and available to accomplish the proposed program. If not consistent, the board will notify the local government and recommend specific changes.~~

~~C. Adoption of designation and performance criteria. After being advised of program consistency, local governments shall hold a public hearing, delineate Chesapeake Bay Preservation Areas on an appropriate map or maps, and adopt the performance criteria. Copies of the adopted program documents and subsequent changes thereto shall be provided to the board.~~

9 VAC 10-20-220. Preparation and submission of management program. Repealed.

~~Local governments must adopt the full management program, including any revisions to comprehensive plans, zoning ordinances, subdivision ordinances, and other local authorities necessary to implement the Act, within 12 months of the adoption date of this chapter. Prior to adoption, local governments may submit any proposed revisions to the board for comments. Guidelines are provided below for local government use in preparing local programs and the board's use in determining local program consistency.~~

A 9 VAC 10-20-171. Comprehensive Plans.

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

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

- a. ~~Information used to designate~~ The location and extent of Chesapeake Bay Preservation Areas;
- b. ~~Other marine resources~~ Physical constraints to development, including soil limitations;
- c. Shoreline and streambank erosion problems ~~and location of erosion control structures;~~
- d. ~~Conflicts between existing~~ Existing and proposed land uses ~~and water quality protection;~~
- e. Catalog of existing pollution sources;
- f. Public and private waterfront access areas;
- e.g. A map or map series accurately representing the above information.

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

- a. Local governments should discuss each component of Chesapeake Bay Preservation Areas in relation to the types of land uses considered appropriate and consistent with the goals and objectives of the Act, this chapter, and their local programs.
- b. As a minimum, local governments ~~should~~ shall prepare policy statements for inclusion in the plan on the following issues, as applicable to the locality:

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

c. For each of the policy issues listed above, the plan should contain a discussion of the scope and importance of the issue, ~~alternative policies considered~~, the policy adopted by the local government for that issue, and a description of how the local policy will be implemented.

d. Within the policy discussion, local governments should address ~~consistency~~ the relationship between the plan, and all adopted existing and proposed land use, public services, land use value taxation ordinances and policies, and capital improvement plans and budgets to ensure a consistent local policy.

PART VI.
ZONING AND SUBDIVISION ORDINANCES.

9 VAC 10-20-181. Purpose.

The purpose of this part is to assist local governments in the development of zoning and subdivision ordinances that are consistent with the Act, and to establish guidelines for determining the consistency of zoning and subdivision ordinances with the Act.

B 9VAC10-20-191. Zoning Ordinances.

A. Local governments shall review and revise their zoning ordinances, as necessary, to comply with § 10.1-2109 of the Act. ~~The ordinances should:~~ To achieve this, each local government shall demonstrate and establish, as necessary, a development suitability hierarchy of land uses and performance standards within the local zoning ordinance that (i) protects sensitive environmental features as listed in 9 VAC 10-20-80 and 9 VAC 10-20-90; (ii) ensures that the uses permitted by the local zoning ordinance are consistent with the comprehensive plan, the Act and this chapter; (iii) minimizes the amount of impervious cover and land disturbance; and (iv) preserves existing vegetation and open space to the maximum extent practicable. Each local zoning ordinance should:

1. Make provisions for the protection of the quality of state waters; by:
 - a. Incorporating appropriate design considerations that concentrate development in areas without physical constraints to development as identified in the comprehensive plan or that address the appropriate development density in areas with physical constraints to development; and
 - b. Encouraging compact, efficient development concentrated in the most appropriate portions of the locality as identified in the comprehensive plan, in order to minimize land disturbance and impervious cover and preserve existing vegetation, drainage patterns, and open space.
2. Incorporate either explicitly or by direct reference, the performance criteria in Part IV (9 VAC 10-20-110 et seq.) of this chapter; . At a minimum, specific development standards that implement the following performance criteria from subdivisions 1, 2, and 5 of 9 VAC 10-20-120 (minimizing land disturbance and impervious cover and preserving existing vegetation, respectively) shall be included as part of the zoning ordinance.
3. ~~Be consistent~~ Ensure consistency with the water quality protection goals, objectives, policies, and implementation strategies identified in the local comprehensive plan within Chesapeake Bay Preservation Areas.

~~C.—Plan of development review. Local governments shall make provisions as necessary to ensure that any development of land within Chesapeake Bay Preservation Areas must be accomplished through a plan of development procedure pursuant to § 15.1-491(h) of the Code of Virginia to ensure compliance with the Act and this chapter. Any exemptions from those review requirements shall be established and administered in a manner that ensures compliance with this chapter.~~

B. Local governments should evaluate the relationship between the submission standards, performance standards, and permitted uses in local land management ordinances to identify any obstacles to achieving the water quality goals of the Act and this chapter. Local governments should

revise these ordinances as necessary to eliminate any identified obstacles based in the procedural or development standards.

Ð 9VAC10-20-201 . Subdivision ordinances.

Local governments shall review and revise their subdivision ordinances, as necessary, to comply with § 10.1-2109 of the Act. The ordinances ~~should~~ shall:

1. Make provisions for the protection of the quality of state waters by:
 - a. Incorporating specific development standards in the subdivision ordinance regarding (i) lot sizes, coverage, and layout, and (ii) street widths, materials and layout, in order to minimize land disturbance and impervious cover and preserve existing vegetation; and
 - b. Local governments may also incorporate other appropriate standards including, but not limited to, cluster development, conservation easements, open space design, planned unit developments, and common septic systems and artificial wetlands for sewage treatment.

- ~~1~~ 2. Include language to ensure the integrity of Chesapeake Bay Preservation Areas; by incorporating standards to ensure (i) the protection of water quality; (ii) the preservation of Resource Protection Area land categories, as set forth in 9 VAC 10-20-80, including the 100-foot wide buffer area; and (iii) the compatibility of development with Resource Management Area land categories, as set forth in 9 VAC 10-20-90.

- ~~2~~ 3. Incorporate, either explicitly or by direct reference, the performance criteria of Part IV (9 VAC 10-20-110 et seq.) of this chapter by including standards to (i) limit land disturbance; (ii) limit the clearing of existing vegetation; (iii) limit impervious cover; (iv) delineate Resource Protection Area and Resource Management Area boundaries on plats, including a notation on plats of the requirement to retain an undisturbed and vegetated 100-foot wide buffer area, as specified in subdivision 3 of 9 VAC 10-20-130; (v) require a plat notation of the requirement for pump-out and 100 percent reserve drainfield sites for on-site sewage treatment systems, when applicable; and (vi) require a plat notation of the permissibility of only water dependent facilities or redevelopment in Resource Protection Areas, including the 100-foot wide buffer area. To accomplish these standards, local governments shall require, at a minimum, the delineation of the buildable areas that are allowed on each lot. The delineation of buildable areas shall be based on the 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 coverages.

~~E. Water quality impact assessment. A water quality impact assessment shall be required for any proposed development within the Resource Protection Area consistent with Part IV and for any other~~

development in Chesapeake Bay Preservation Areas that may warrant such assessment because of the unique characteristics of the site or intensity of the proposed use or development.

~~1. The purpose of the water quality impact assessment is to identify the impacts of proposed development on water quality and lands in Resource Protection Areas consistent with the goals and objectives of the Act, this chapter, and local programs, and to determine specific measures for mitigation of those impacts. The specific content and procedures for the water quality impact assessment shall be established by local governments. Local governments should notify the board of all development requiring such assessment. Upon request, the board will provide review and comment on any water quality impact assessment within 90 days, in accordance with advisory state review requirements of § 10.1-2112 of the Act.~~

~~2. The assessment shall be of sufficient specificity to demonstrate compliance with the criteria of the local program.~~

~~F. Review by the board. The board will review any proposed management program within 90 days. If it is consistent with the Act, the board will schedule a conference with the local government to determine what additional technical and financial assistance may be needed and available to accomplish the long term aspects of the local program. If the program or any part thereof is not consistent, the board will notify the local government in writing stating the reasons for a determination of inconsistency and recommending specific changes. Copies of the adopted program documents and subsequent changes thereto shall be provided to the board.~~

4. Local governments shall review and revise their subdivision ordinances to assure that their subdivision ordinances, comprehensive plans, zoning ordinances, and all other components of their local Chesapeake Bay Preservation Act programs are consistent with each other in promoting and achieving the protection of state waters. In addition, local governments shall identify and resolve any conflicts among the components of the local programs and with other local regulations and administrative policies, to assure that the intent of the Act and this chapter are fulfilled.

PART VII.

LOCAL ASSISTANCE AND LOCAL PROGRAM CONSISTENCY REVIEW PROCESS

9 VAC 10-20-211. Purpose.

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

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

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

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

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

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

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

9 VAC 10-20-225. Planning District comments.

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

9 VAC 10-20-230. Certification of local program. Repealed.

Upon request, the board will certify that a local program complies with the Act and this chapter.

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

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

1. Phase I shall consist of the designation of Chesapeake Bay Preservation Areas and adoption of the Performance Criteria. This phase of designating Chesapeake Bay Preservation Areas as an element of the local program should include:

- a. Utilizing existing data and mapping resources to identify and describe tidal wetlands, nontidal wetlands, tidal shores, tributary streams, flood plains, highly erodible soils including steep slopes, highly permeable areas, and other sensitive environmental resources as necessary to comply with Part III (9 VAC 10-20-70 et seq.) of this chapter;
 - b. Determining, based upon the identification and description, the extent of Chesapeake Bay Preservation Areas within the local jurisdiction;
 - c. Preparing an appropriate map or maps delineating Chesapeake Bay Preservation Areas;
 - d. Preparing amendments to local ordinances which incorporate the performance criteria of Part IV (9 VAC 10-20-110 et seq.) of this chapter or the model ordinance prepared by the board;
 - e. Establishing, if necessary, and incorporating a plan of development review process. Local governments shall make provisions as necessary to ensure that any development of land within Chesapeake Bay Preservation Areas shall be accomplished through a plan of development procedure pursuant to § 15.2-2286 A 8 of the Code of Virginia to ensure compliance with the Act and this chapter. Any exemptions from those review requirements shall be established and administered in a manner that ensures compliance with this chapter.
 - f. Conducting a public hearing. Prior to adopting Chesapeake Bay Preservation Areas and the performance criteria, each local government shall hold a public hearing to solicit public comment regarding these local program components.
 - g. Providing copies of the adopted program documents and subsequent changes thereto to the board for consistency review, as set forth in subsection 5 of this section.
2. Phase II shall consist of local governments reviewing and revising their comprehensive plans, as necessary, for compliance with § 10.1-2109 of the Act, in accordance with the provisions set forth in Part V (9 VAC 10-20-170 et seq.) of this chapter.
 3. Phase III shall consist of local governments reviewing and revising their zoning and subdivision ordinances, as necessary, to comply with § 10.1-2109 of the Act, in accordance with the provisions set forth in Part VI (9 VAC 10-20-181 et seq.) of this chapter.
 4. Consistent with §§ 10.1-2108, 10.1-2109, and 10.1-2113 of the Act, and to the degree that a local program is adopted pursuant to or as a part of local zoning authority, local governments may use civil penalties, consistent with § 15.2-2209 of the Code of Virginia, to enforce compliance with the requirements of local programs.

5. Review by the board.

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

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

PART VI VIII.
IMPLEMENTATION AND ENFORCEMENT.

9 VAC 10-20-240. Applicability.

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

9 VAC 10-20-250. Administrative proceedings.

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

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

a. Request that each Tidewater local government submit an annual implementation report outlining the implementation of the local program. The board will develop reporting criteria

which outline the information to be included in the reports and the time frame for their submission. The board will use the information in these reports to assess local patterns of compliance with the Act and this chapter and to evaluate the need for an administrative proceeding to more closely review any individual local government's compliance. All proceedings of this nature will be developed and conducted in accordance with this section.

b. Develop a four-year compliance review process which will consist of a self-evaluation by each local government of local program implementation and enforcement as well as an evaluation by Department staff. Based on these evaluations, the board will make a consistency finding regarding the implementation of each local program.

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

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

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

9 VAC 10-20-260. Legal proceedings.

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

9 VAC 10-20-270. Adoption date. Repealed.

~~The adoption date of these regulations shall be November 15, 1990.~~

9 VAC 10-20-280. Effective date. Repealed.

~~The effective date of this chapter shall be October 1, 1991, at which date this chapter shall supersede the Emergency Chesapeake Bay Preservation Area Designation and Management Regulations (VR 173-02-01.1).~~