

Board of Supervisors
County of Prince George, Virginia

Ordinance

At a regular meeting of the Board of Supervisors of the County of Prince George held in the Boardroom, Third Floor, County Administration Building, 6602 Courts Drive, Prince George, Virginia this 22nd day of May 2018:

Present:

Alan R. Carmichael, Chairman
Donald R. Hunter, Vice Chairman
Floyd M. Brown, Jr.
Marlene J. Waymack
T. J. Webb

Vote:

On motion of _____, seconded by _____, which carried a vote _____, the following Ordinance was adopted in order to further public necessity, convenience, general welfare and good zoning practice:

ORDINANCE TO AMEND THE CODE OF THE COUNTY OF PRINCE GEORGE, VIRGINIA, 2005, AS AMENDED, CHAPTER 90 "ZONING", BY AMENDING § § 90-673 VIOLATIONS.

BE IT ORDAINED by the Board of Supervisors of Prince George County:

(1) That §90-673 of The Code Of The County Of Prince George, Virginia, 2005, as amended, are amended and re-codified to read as follows:

CHAPTER 90 ZONING

...

ARTICLE XIVA. - CHESAPEAKE BAY PROTECTION

Sec. 90-661. - Findings of fact.

- (a) The Chesapeake Bay and its tributaries are one of the most important and productive estuarine systems in the world, providing economic and social benefits to the citizens of the county and the commonwealth. The health of the bay is vital to maintaining the county's economy and the welfare of its citizens.
- (b) The Chesapeake Bay waters have been degraded significantly by many sources of pollution, including nonpoint source pollution from land uses and development. Existing high quality waters are worthy of protection from degradation to guard against further pollution. Certain lands that are proximate to the shoreline have intrinsic water quality value due to the ecological and biological processes they perform. Other lands have severe development constraints from flooding, erosion, and soil limitations. Protected from disturbance, they offer significant ecological benefits by providing water quality maintenance and pollution control as well as flood and shoreline erosion control. These lands together, designated by the county as Chesapeake Bay Preservation Areas (hereinafter "CBPAs"), need to be protected from destruction and damage in order to protect the quality of water in the bay and consequently the quality of life in the county and the commonwealth.

(Ord. of 8-10-2004, § 17-531)

Sec. 90-662. - Purpose and intent.

- (a) This article is enacted to implement the requirements of Code of Virginia, § 10.1-2100 et seq., the Chesapeake Bay Preservation Act, and amends The Code of the County of Prince George, Virginia. The intent of the board of supervisors and the purpose of the overlay district is to:
 - (1) Protect existing high quality state waters;
 - (2) Restore 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 which might reasonably be expected to inhabit them;
 - (3) Safeguard the clear waters of the commonwealth from pollution;
 - (4) Prevent any increase in pollution; and
 - (5) Promote water resource conservation in order to provide for the health, safety, and welfare of the present and future citizens of the county.
- (b) This district shall be in addition to and shall overlay all other zoning districts where they are applied so that any parcel of land lying in the Chesapeake Bay Preservation Area Overlay District shall also lie in one or more of the other zoning districts provided for by this chapter. Unless otherwise stated in these regulations, the review and approval procedures provided for in sections 90-821—90-824 shall be followed in reviewing and approving development and uses governed by this article.

(c) This article is enacted under the authority of Code of Virginia, § 10.1-2100 et seq. (the Chesapeake Bay Preservation Act) and Code of Virginia, § 15.2-2283. Code of Virginia, § 15.2-2283, states that zoning ordinances may "also include reasonable provisions, not inconsistent with applicable state water quality standards, to protect surface water and groundwater as defined in Code of Virginia § 62.1-255."

(Ord. of 8-10-2004, § 17-532)

Sec. 90-663. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Agricultural lands means those lands that are currently (i.e., natural or native vegetation has been removed) used and managed primarily for the commercial sale of crops and livestock and consist of a minimum of five acres.

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

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 the board of supervisors pursuant to part III of the Chesapeake Bay Preservation Area Designation and Management Regulations, 9 VAC 10-20-et seq., and Code of Virginia, § 10.1-2107. A Chesapeake Bay Preservation Area shall consist of a resource protection area and a resource management area.

Construction footprint means the area of all impervious surface, including but not limited to buildings, roads and drives, parking areas, sidewalks and the area necessary for construction of such improvements.

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

Diameter at breast height (DBH) means the diameter of a tree measured outside the bark at a point 4.5 feet above the ground.

Drip-line means a vertical projection to the ground surface from the furthest lateral extent of a tree's leaf canopy.

Floodplain means all lands that would be inundated by floodwater 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 soils is defined as the product of the formula $RKLS/T$, 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 soil 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 Soil Survey Handbook" of November 1996 in the "Field Office Technical Guide" of the U. S. Department Of Agriculture Natural Resources 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.

Intensely Developed Area (IDA) means a portion of a resource protection area or resource management area designated by the board of supervisors where little of the natural environment remains and where development is currently concentrated.

Land disturbance means any activity upon land which causes, contributes to, or results in the removal or covering of the vegetation upon such land, including, but not limited to, clearing, grading, filling, dredging, or excavating. This term shall not include minor activities such as home gardening, planting of trees and shrubs, and home maintenance.

Lot coverage means the impervious area of any lot or parcel including, but not limited to buildings, drives, parking areas, sidewalks, patios, decks, etc.

Nonpoint source pollution means pollution consisting of constituents such as sediment, nutrients, and organic and toxic substances from diffuse sources, such as runoff from agricultural and urban land development and use.

Nontidal wetlands means those wetlands other than tidal wetlands that are inundated or saturated by surface water or groundwater 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 Section 404 of the federal Clean Water Act, in 33 CFR 328.3b, as now or hereafter amended.

Noxious weeds means weeds that are difficult to control effectively, such as Johnson grass, kudzu, and multiflora rose.

Plan of development means the process for site plan or subdivision plat review to ensure compliance with Code of Virginia, § 10.1-2109 and this article, prior to any clearing and grading of a site and the 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 state department of transportation, including regulations promulgated pursuant to the Erosion and Sediment Control Law (Code of Virginia, § 10.1-603.1 et seq.). This definition includes those roads where the state department of transportation exercises direct supervision over the design or construction activities, or both, and cases where roads are constructed and maintained, or both, by the county in accordance with the standards of the county.

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

Resource management area (RMA) means that component of the Chesapeake Bay Preservation Area that is not classified as the resource protection area. RMAs include land types that, if

improperly used or developed, have the potential for causing significant water quality degradation or for diminishing the functional value of the resource protection area.

Resource protection area (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 may result in significant degradation to the quality of state waters.

Silvicultural activities means forest management 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 are conducted in accordance with the silvicultural best management practices developed and enforced by the state forester pursuant to Code of Virginia, § 10.1-1105, and are located on property defined as real estate devoted to forest use under Code of Virginia, § 58.1-3230.

Substantial alteration means expansion or modification of a building or development that 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 Code of Virginia, § 28.2-1300.

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.

Wetlands means tidal and nontidal wetlands.

(Ord. of 8-10-2004, § 17-533)

Cross reference— Definitions generally, § 1-2.

Sec. 90-664. - Areas of applicability.

- (a) The Chesapeake Bay Preservation Area (CBPA) Overlay District shall apply to all lands identified as a CBPA as designated by the county and as shown on the Official Preservation Area District Map prepared as a part of the county's Chesapeake Bay Preservation Area Program. The CBPA Map together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this article.
 - (1) The resource protection areas shall consist 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 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. The resource protection area includes:

- a. Tidal wetlands;
 - b. Nontidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow;
 - c. Tidal shores;
 - d. A vegetated buffer area not less than 100 feet in width located adjacent to and landward of the components listed in subsections (a) through (d) above, and along both sides of any water body with perennial flow.
- (2) Resource management areas shall include land types that, if improperly used or developed, have potential for causing significant water quality degradation or for diminishing the functional value of the resource protection area. The resource management area shall be provided contiguous to the entire inland boundary of the resource protection area, and shall consist of an area 150 feet in width, or an area composed of any of the following land categories, whichever is larger:
- a. Floodplains;
 - b. Highly erodible soils, including steep slopes defined as those greater than 15 percent;
 - c. Highly permeable soils;
 - d. Nontidal wetlands not included in the resource protection area
- (b) The CBPA Overlay District Map shows only the general location of CBPAs and should be consulted by persons contemplating activities within the county prior to engaging in a regulated activity. The specific location of RPAs on a lot or parcel shall be delineated on each site or parcel as required under section 90-669 through the review and approval of the plan of development process or as required under section 90-671 through the review and approval of a water quality impact assessment.
- (c) Portions of resource protection areas and resource management areas designated by the county as intensely developed areas shall serve as redevelopment areas. Areas so designated shall comply with all erosion and sediment control requirements and the performance standards for redevelopment in section 90-667 (Performance standards).
- (d) If the boundaries of a Chesapeake Bay Preservation Area include only a portion of a lot, parcel, or development project, the entire lot, parcel, or development project shall comply with the requirements of the overlay district. The division of property shall not constitute an exemption from this requirement.

(Ord. of 8-10-2004, § 17-534)

Sec. 90-665. - Conflict with other regulations.

In any case where the requirements of this article conflict with any other provisions of The Code of Prince George County, Virginia, or existing state and federal regulations, whichever imposes the more stringent restrictions shall apply.

(Ord. of 8-10-2004, § 17-535)

Sec. 90-666. - Site specific delineation of RPA limits.

- (a) Delineation by applicant. The site-specific boundaries of the resource protection area shall be determined by the applicant through the performance of an environmental site assessment, subject to approval by the planning director or his designee and in accordance with section 90-669 (Plan of development process) or section 90-668 (Water quality impact assessment). The Official Preservation Area District Map may be used as a guide to the general location of resource protection areas.
- (b) Delineation by planning director or his designee. The planning director or his designee, when requested by the applicant wishing to construct a single-family residence, may waive the requirement for an environmental site assessment and perform the delineation. The planning director or his designee may use hydrology, soils, plant species, and other data, and consult with other appropriate resources as needed to perform the delineation.
- (c) Where conflict arises over delineation. Where the applicant has provided a determination of the resource protection area, the boundaries of this district shall be as shown on the overlay district boundary map unless a field survey conducted by the U.S. Army Corps of Engineers, an applicable agency of the state or federal government, a licensed engineer, licensed soil scientist or other professional designated by the Virginia Department of Environmental Quality, finds such boundary to be in error. If the adjusted boundary delineation is contested by the applicant, the applicant may seek relief.

(Ord. of 8-10-2004, § 17-536)

Sec. 90-667. - Performance standards.

- (a) Purpose and intent. The performance standards establish the means to minimize erosion and sedimentation potential, reduce land application of nutrients and toxics, and maximize rainwater infiltration. Natural ground cover, especially woody vegetation, is most effective in holding soil in place and preventing site erosion. Indigenous vegetation, with its adaptability to local conditions without the use of harmful fertilizers or pesticides, filters stormwater runoff. Keeping impervious cover to a minimum enhances rainwater infiltration and effectively reduces stormwater runoff potential.

The purpose and intent of these requirements is also to implement the following objectives: prevent a net increase in nonpoint source pollution from new development; achieve a ten-percent reduction in nonpoint source pollution from redevelopment; and achieve a 40-percent reduction in nonpoint source pollution from agricultural uses.

- (b) General performance standards for development and redevelopment.

- (1) Land disturbance shall be limited to the area necessary to provide for the proposed use or development.
 - a. In accordance with an approved site plan, the limits of clearing or grading shall be strictly defined by the construction footprint. These limits shall be clearly shown on submitted plans and physically marked in the development site.
 - b. Ingress and egress during construction shall be limited to one access point, unless otherwise approved by the planning director or his designee and authorized by an approved site plan.
- (2) Indigenous vegetation shall be preserved to the maximum extent practicable consistent with the proposed use or development permitted and in accordance with the Virginia Erosion and Sediment Control Handbook.
 - a. Existing trees over six inches in diameter at breast height (DBH) shall be preserved outside the approved construction footprint. However, 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. Diseased trees or trees weakened by age, storm, fire, or other injury may be removed, when approved by the planning director or his designee for the county. Other woody vegetation on site shall also be preserved outside the approved construction footprint.
 - b. Site clearing for construction activities shall be allowed as approved by the planning director or his designee for the county through the plan of development review process.
 - c. Prior to clearing, grading and/or filling, suitable protective barriers, like safety fencing, shall be erected five feet outside the drip-line of any around [sic] any tree or stand of trees to be preserved. Protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
- (3) Land development shall minimize impervious cover consistent with the proposed use or development.
 - a. Pervious surfaces, such as grid and modular pavements, shall be used for any required parking area, alley or other low traffic driveway, unless otherwise approved by the planning director or his designee.
 - b. Parking space size shall be 162 square feet. Parking space width shall be nine feet; parking space length shall be 18 feet. Two-way aisles shall be a minimum of 22 feet in width.
- (4) Notwithstanding any other provisions of this article pertaining thereto, any land disturbing activity exceeding 2,500 square feet, including construction of all single-family houses, shall comply with the requirements of the erosion and sediment control ordinance (section 38-31 et seq.).
- (5) All development and redevelopment within RMAs and RPAs that exceeds 2,500 square feet of land disturbance shall be subject to a plan of development process, including the

approval of a site plan in accordance with the provisions of this chapter; or a subdivision plan in accordance with the subdivision ordinance (chapter 70); or a water quality impact assessment in accordance with section 90-668.

- (6) On-site sewage treatment systems in the Chesapeake Bay Preservation Area not requiring a Virginia Discharge Elimination System permit shall comply with the following:
 - a. Systems shall be pumped out at least once every five (5) years, unless the owner submits documentation every five (5) years, certified by an operator or on-site soil evaluator licensed or certified under Chapter 23(Section 54.1-2300 et seq) of Title 54.1 of the Code of Virginia as being qualified to operate, maintain or design on-site sewage systems, that the septic system has been inspected, is functioning properly, and the tank does not need to have the effluent pumped out of it. As an alternative to the mandatory pump-out or documentation, a plastic filter approved by the health department may be installed and maintained in the outflow pipe from the septic tank to filter solid material from the effluent.
 - b. A reserve sewage disposal site with a capacity at least equal to that of the primary sewage disposal site shall be provided on each lot or parcel proposed for new construction. 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 disposal site, as determined by the local health department.
 - c. Building or construction of any impervious surface shall be prohibited on the area of all sewage disposal sites until the development is served by the public sewer or an on-site sewage treatment system which operates under a permit issued by the state water control board.

- (7) For any use or development, stormwater runoff shall be controlled by the use of best management practices consistent with the water quality protection provisions of the Virginia Stormwater Management Regulations (4 VAC 3-20-10 et seq.) that achieve the following:
 - a. For development, the post-development nonpoint source pollution runoff load shall not exceed the pre-development load, based on the average total phosphorus loading of 0.45 pounds per acre per year.
 - b. For sites within intensely developed areas or other isolated redevelopment sites, the nonpoint source pollution load shall be reduced by at least ten percent. The planning director or his designee for the county may waive or modify this requirement for redevelopment sites that originally incorporated best management practices for stormwater runoff quality control, provided the following provisions are satisfied:
 1. In no case may the post-development nonpoint source pollution runoff load exceed the pre-development load;
 2. Runoff pollution loads must have been calculated and the BMPs selected for the expressed purpose of controlling nonpoint source pollution;

3. If the best management practices (BMPs) are structural, evidence shall be provided by the owner of record that facilities are currently in good working order and performing at the design levels of service through routine maintenance of the facilities.
 - (8) Prior to initiating grading or other on-site activities on any portion of a lot or parcel, all wetlands permits required by federal, state, and local laws and regulations shall be obtained and evidence of such submitted to the planning director or his designee of the county.
 - (9) Land upon which agricultural activities are being conducted shall undergo a soil and water quality conservation assessment. Such assessment shall evaluate the effectiveness of existing practices pertaining to soil erosion and sediment control, nutrient management and management of pesticides, and where necessary, results in a plan that outlines additional practices needed to ensure that water quality protection is accomplished consistent with this article and conducted by the James River Soil and Water Conservation District.
- (c) Buffer area requirements. To minimize the adverse effects of human activities on the other components of resource protection areas (RPA), 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 runoff shall be retained if present and established where it does not exist.

The buffer area shall be located adjacent to and landward of other RPA components and along both sides of any water body with perennial flow. The 100-foot full buffer area shall be designated as the landward component of the resource protection area notwithstanding permitted use encroachment and vegetation clearing and the buffer area is not reduced.

The 100-foot buffer area shall be deemed to achieve a 75-percent reduction of sediments and a 40 -percent reduction of nutrients.

- (1) The buffer area shall be maintained to meet the following additional performance standards:
 - a. In order to maintain the functional value of the buffer area, indigenous vegetation may be removed only, subject to approval by the planning director or his designee for the county, to provide for reasonable sight lines, access paths, general woodlot management, and best management practices including those that prevent upland erosion and concentrated flows of stormwater, as follows:
 1. Trees may be pruned or removed as necessary to provide for sight lines and vistas, provided that where removed, they shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff.
 2. Any path shall be constructed and surfaced so as to effectively control erosion.
 3. Dead, diseased, or dying trees or shrubbery and noxious weeds (such as Johnson grass, kudzu and multiflora rose) may be removed and thinning of trees allowed as permitted by the planning director or his designee of the county pursuant to sound horticultural practices.

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.
- (2) Permitted encroachments into the buffer area.
- a. When the application of the buffer areas would result in the loss of a buildable area on a lot or parcel recorded prior to October 1, 1989, the planning director, or his designee, may permit encroachments into the buffer area.
 1. Encroachments into the buffer areas shall be the minimum amount necessary to achieve a reasonable buildable area for a principal structure and necessary utilities;
 2. Where practicable, a vegetated area that will maximize water quality protection, mitigate the effects of the buffer encroachment, and is equal to the area of encroachment into the buffer area shall be established elsewhere on the lot or parcel; and
 3. The encroachment may not extend into the seaward 50 feet of the buffer area.
 - b. When the application of the buffer area would result in the loss of a buildable area on a lot or parcel recorded between October 1, 1989 and March 1, 2002, the planning director, or his designee, may permit encroachments into the buffer area in accordance with section 90-669 (Plan of development process) and the following criteria:
 1. The lot or parcel was created as a result of a legal process conducted in conformity with the county's subdivision regulations (chapter 70);
 2. Any specific conditions, mitigation measures or other such legally binding conditions or covenants imposed through a previously approved zoning case shall be binding and shall be met;
 3. If the use of a best management practice (BMP) was previously required, the BMP shall be evaluated by a certified engineer (retained by the applicant) to determine if it continues to function effectively and, if necessary, the BMP shall be reestablished or repaired and maintained by the owner of record as required; and
 4. The criteria in subsection (c)(2)a. of this section shall be met.
- (3) The planning director, or his designee, may waive the requirements for the reestablishment of vegetation within the RPA buffer on redevelopment sites within intensely developed areas (IDA) in accordance with section 90-669, Plan of development process.
- (4) On agricultural lands the agricultural buffer area shall be managed to prevent concentrated flows of surface water from breaching the buffer area and noxious weeds from invading the buffer area. The agricultural activities may encroach into the buffer area as follows:

- a. 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 James River 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 test, must be developed consistent with the Virginia Nutrient Management Training and Certification Regulations (4 VAC 5-15 et seq.) administered by the state department of conservation and recreation (DCR).
 - b. 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 Resources Conservation Service. A nutrient management plan, including soil test, must be developed consistent with the "Virginia Nutrient Management Training and Certification Regulations (4 VAC 5-15 et seq.) administered by the state department of conservation and recreation. In conjunction with the remaining buffer area, this collection of best management practices shall be presumed to achieve water quality protection at least the equivalent as provided by the 100-foot wide buffer area.
 - c. The buffer area is not required to be designated adjacent to agricultural drainage ditches if the adjacent agricultural land has in place at least one best management practice as considered by the James River Soil and Water Conservation District to address the more predominant water quality issue on the adjacent land—either erosion control or nutrient management—is being implemented on the adjacent land.
- (5) When agricultural or silvicultural uses within the buffer area cease and the lands are proposed to be converted to other uses, the full 100-foot wide buffer shall be reestablished. In reestablishing the buffer, management measures shall be undertaken to provide woody vegetation that assures the buffer functions are maintained or established.
- (d) Development criteria for resource protection areas.
- (1) Land development in resource protection areas may be allowed only when permitted by the planning director, or his designee, for the county and if it (i) is water-dependent; (ii) constitutes redevelopment; (iii) is a new use subject to the provisions of subsection (c)(2) of this section; or (iv) is a road or driveway crossing satisfying the conditions set forth in subsection (d)(1)c of this section.

- a. A new or expanded water dependent facility may be allowed provided that the following criteria are met:
 - 1. It does not conflict with the comprehensive plan;
 - 2. It complies with the performance criteria set forth in this section 90-667(b);
 - 3. Any nonwater-dependent component is located outside of the RPA; and
 - 4. Access to the water-dependent facility will be provided with the minimum disturbance necessary. Where practicable, a single point of access will be provided
- b. Redevelopment on isolated redevelopment sites outside of locally designated intensely developed areas sites shall be permitted only if there is no increase in the amount of impervious cover and no further encroachment within the RPA and it shall conform to the stormwater management requirements outlined under subsection (b)(6) of this section and the erosion and sediment control requirements outlined in subsection (b)(4) of this section.
- c. Roads and driveways not exempt under section 90-671 and which, therefore, must comply with the provisions of this article, may be constructed in or across RPAs if all of the following conditions are met:
 - 1. The planning director, or his designee, for the county makes a finding that there are no reasonable alternatives to aligning the road or drive in or across the RPA;
 - 2. The alignment and design of the road or driveway are optimized, consistent with other applicable requirements, to minimize encroachment in the RPA and minimize adverse effects on water quality;
 - 3. The design and construction of the road or driveway satisfy all applicable criteria of this article, including submission of a water quality impact assessment;
 - 4. The planning director, or his designee, for the county reviews the plan for the road or driveway proposed in or across the RPA in coordination with the plan of development requirements as required under section 90-669 or subdivision plan.

(2) A water quality impact assessment as outlined in section 90-668 shall be required for any proposed land disturbance, development or redevelopment within resource protection areas and for any other development within resource management areas when required by the planning director, or his designee, for the county because of the unique characteristics of the site or intensity of development, in accordance with the provisions of section 90-668.

Sec. 90-668. - Water quality impact assessment.

- (a) Purpose and Intent. The purpose of the water quality impact assessment is to: (i) identify the impacts of proposed land disturbance, development or redevelopment on water quality and lands in RPAs and other environmentally sensitive lands; (ii) ensure that, where land

disturbance, development or redevelopment does take place within RPAs and other sensitive lands, it will occur on those portions of a site and in a manner that will be least disruptive to the natural functions of RPAs and other sensitive lands; (iii) protect individuals from investing funds for improvements proposed for location on lands unsuited for such development because of high groundwater, erosion, or vulnerability to flood and storm damage; (iv) provide for administrative relief from terms of this article when warranted and in accordance with the requirements contained herein; and (v) specify mitigation which will address water quality protection.

- (b) Applicability. A water quality impact assessment shall be required (i) for any proposed land disturbance, development or redevelopment activity within a Resource Protection Area and (ii) for any other development in resource management areas as deemed necessary by the planning director or his designee for the county due to the unique site characteristics or intensity of the proposed use or development. There shall be two levels of water quality impact assessments: a minor assessment and a major assessment.
- (c) Minor water quality impact assessment. A minor water quality impact assessment pertains only to land disturbance, development or redevelopment activity within a CBPA which causes no more than 5,000 square feet of land disturbance and/or which proposes to encroach into the landward 50 feet of the 100-foot buffer area. A minor assessment must demonstrate that the undisturbed buffer area, enhanced vegetative plantings and any required best management practices will result in the removal of no less than 75 percent of sediments and 40 percent of nutrients from post-development stormwater runoff and that will retard runoff, prevent erosion, and filter nonpoint source pollution the equivalent of the full undisturbed 100-foot buffer area. A minor assessment shall include a site drawing drawn at 1"=100' or the same scale as the preliminary site plan or subdivision plat, and shall be certified as complete and accurate by a professional engineer or a certified land surveyor, which shows the following:
 - (1) Location of the components of the resource protection area, including the 100-foot buffer area; and the location of any water body with perennial flow;
 - (2) Location and nature of the proposed encroachment into the buffer area, including, type of paving material; areas of clearing or grading; location of any structures, drives, or other impervious cover; and sewage disposal systems or reserve drainfield sites;
 - (3) Type and location of proposed best management practices to mitigate the proposed encroachment;
 - (4) Location of existing vegetation on site, including the number and type of trees and other vegetation to be removed in the buffer to accommodate the encroachment or modification;
 - (5) Revegetation plan that supplements the existing buffer vegetation in a manner that provides for pollutant removal, erosion and runoff control.
- (d) Major water quality impact assessment. A major water quality impact assessment shall be required for any development which (i) exceeds 5,000 square feet of land disturbance within CBPAs and proposes to encroach into the landward 50 feet of the 100-foot buffer area; (ii) proposes to disturb any portion of the seaward 50 feet of the 100-foot buffer area or any other component of an RPA; or (iii) is located solely in a RMA when deemed necessary by

the planning director or his designee for the county. The information required in this section shall be considered a minimum, unless the planning director or his designee determines that some of the elements are unnecessary due to the scope and nature of the proposed use and development of land.

The following elements shall be included in the preparation and submission of a major water quality impact assessment:

- (1) All of the information required in a minor water quality impact assessment, as specified in subsection (c) of this section;
- (2) A hydrogeological element that:
 - a. Describes the existing topography, soils, and hydrology of the site and adjacent lands.
 - b. Describes the impacts of the proposed development on topography, soils, hydrology and geology on the site and adjacent lands.
 - c. Indicates the disturbance or removal of wetlands and justification for such action;
 - d. Indicates the disruptions or reductions in the supply of water to wetlands, streams, lakes, rivers or other water bodies;
 - e. Indicates the disruptions to existing hydrology including wetland and stream circulation patterns;
 - f. Indicates the source location of and description of proposed fill material;
 - g. Indicates the location of dredging and location of dumping area for such dredged materials;
 - h. Indicates the estimation of pre- and post-development pollutant loads in runoff;
 - i. Indicates the estimation of percent increase in impervious surface on site, type(s) of surfacing material used;
 - j. Indicates the percent of site to be cleared for project;
 - k. Indicates the anticipated duration and phasing schedule of construction project;
 - l. Indicates the listing of all requisite permits from all applicable agencies necessary to develop project.
 - m. Describes the proposed mitigation measures for the potential hydrogeological impacts. Potential mitigation measures include:
 1. Additional proposed erosion and sediment control concepts beyond those normally required. These additional concepts may include the following: minimizing the extent of cleared area; perimeter controls; reduction of runoff velocities; measures to stabilize disturbed areas; schedule and personnel for site inspection;
 2. Proposed stormwater management system for nonpoint source quality and quantity control;
 3. Creation of wetlands to replace those lost.

4. Minimizing cut and fill.

(3) A vegetative element that:

- a. Identifies and delineates the location of all woody plant material on site, including all trees on site with six inches or greater diameter at breast height or, where there are groups of trees, said stands may be outlined.
- b. Describes the impacts the development or use will have on the existing vegetation. Information should include:
 1. General limits of clearing, based on all anticipated improvements, including buildings, drives, and utilities;
 2. Clear delineation of all trees and other woody vegetation which will be removed;
 3. Description of all plant species to be disturbed or removed.
- c. Describes the proposed measures for mitigation. Possible mitigation measures include:
 1. Proposed design plan and replanting schedule for trees and other woody vegetation removed for construction, including a list of proposed plants and trees to be used;
 2. Demonstration that the revegetation plan supplements the existing buffer vegetation in a manner that provides for pollutant removal, erosion and runoff control;
 3. Demonstration that the design of the plan will preserve to the greatest extent possible any significant trees and vegetation on the site and will provide maximum erosion control and overload flow benefits from such vegetation.
 4. Demonstration that indigenous plants are to be used to the greatest extent possible.

(e) Submission and review requirements.

- (1) Five copies of all site drawings and other applicable information as required by subsections (c) and (d) of this section shall be submitted to the planning director or his designee for the county for review.
- (2) All information required in this section shall be certified as complete and accurate by a professional engineer or certified land surveyor.
- (3) A minor water quality impact assessment shall be prepared and submitted to and reviewed by the planning director or his designee for the county.
- (4) A major water quality impact assessment shall be prepared and submitted to and reviewed by the planning director or his designee for the county in conjunction with a request for rezoning or a special exception permit, as deemed necessary by the planning director or his designee for the county.
- (5) As part of any major water quality impact assessment submittal, the planning director or his designee for the county may require review by the Virginia Department of

Environmental Quality. Upon receipt of a major water quality impact assessment, the planning director or his designee will determine if such review is warranted and may request CBLAD to review the assessment and respond with written comments. Any comments by CBLAD will be incorporated into the final review by the planning director or his designee, provided that such comments are provided by CBLAD within 90 days of the request.

(f) Evaluation procedure.

- (1) Upon the completed review of a minor water quality impact assessment, the planning director or his designee for the county will determine that any proposed encroachment into the RMA is consistent with the provisions of this article and make a finding based upon the following criteria:
 - a. The necessity of the proposed encroachment and the ability to place improvements elsewhere on the site to avoid disturbance of the buffer area;
 - b. Impervious surface is minimized;
 - c. Proposed mitigation measures, in the RMA, including the revegetation plan and site design, result in minimal disturbance to all components of the RPA, including the 100-foot buffer area;
 - d. Proposed mitigation measures will work to retain all buffer area functions: pollutant removal, erosion and runoff control;
 - e. Proposed best management practices, where required, achieve the requisite reductions in pollutant loadings;
 - f. The development, as proposed, is consistent with the purpose and intent of this article;
 - g. The cumulative impact of the proposed development, when considered in relation to other development in the vicinity, both existing and proposed, will not result in a significant degradation of water quality.
- (2) Upon the completed review of a major water quality impact assessment, the planning director or his designee for the county will determine whether or not the proposed development is consistent with the purpose and intent of this article and make a finding based upon the following criteria:
 - a. Within any RPA, the proposed development is water-dependent or a redevelopment;
 - b. The percentage of existing wetlands disturbed by the development. The number of square feet or acres to be disturbed;
 - c. The development will not result in significant disruption of the hydrology of the site;
 - d. The development will not result in unnecessary destruction of plant materials on site;
 - e. Proposed erosion and sediment control concepts are adequate to achieve the reductions in runoff and prevent off-site sedimentation;

- f. Proposed stormwater management concepts are adequate to control the stormwater runoff to achieve "no net increase" in pollutant loadings;
 - g. Proposed revegetation of disturbed areas will provide optimum erosion and sediment control benefits, as well as runoff control and pollutant removal equivalent of the full 100-foot undisturbed buffer area;
 - h. The development is consistent with the purpose and intent of the overlay district.
- (3) The planning director or his designee for the county shall require additional mitigation where potential impacts have not been adequately addressed. Evaluation of mitigation measures will be made by the planning director or his designee based on the criteria listed above and in subsections (1) and (2).
- (4) The Planning Director or his designee for the county shall find the proposal to be inconsistent with the purpose and intent of this article when the impacts created by the proposal cannot be mitigated. Evaluation of the impacts will be made by the planning director or his designee based on the criteria listed in subsection (f)(1) and (2) of this section.

(Ord. of 8-10-2004, § 17-538)

Sec. 90-669. - Plan of development process.

Any development or redevelopment exceeding 2,500 square feet of land disturbance shall be accomplished through a plan of development process prior to any development preparation activities on site, such as clearing or grading of the site and the issuance of any building permit, to assure compliance of all applicable requirements of this article.

- (1) Required information. In addition to the requirements of section 90-824, Site plan required, the plan of development process shall consist of the plans and studies identified in this section. These required plans and studies may be coordinated or combined, as deemed appropriate by the planning director or his designee for the county. The following plans or studies shall be submitted, unless otherwise provided for:
- a. A site plan in accordance with section 90-824;
 - b. An environmental site assessment;
 - c. A landscaping plan;
 - d. A stormwater management plan;
 - e. An erosion and sediment control plan in accordance with the provisions of sections 38-31—38-65, the erosion and sediment control ordinance of the county.
- (2) Environmental site assessment. An environmental site assessment shall be submitted in conjunction with preliminary site plan or preliminary subdivision plan approval.
- a. The environmental site assessment shall be drawn to scale at 1" = 100' or the same scale as the preliminary site plan or subdivision plat and shall clearly delineate the following environmental features:

1. Tidal wetlands;
 2. Tidal shores;
 3. Nontidal wetlands connected by surface flow and contiguous to tidal wetlands, or water bodies with perennial flow;
 4. A 100-foot buffer located adjacent to and landward of the components listed in subsections a. through d. above, and along both sides of any water body with perennial flow;
 5. Other sensitive environmental features as determined by the planning director or his designee for the county.
- b. Wetlands delineations shall be performed consistent with the procedures specified in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, 1986.
 - c. The environmental site assessment shall delineate the geographic extent of the resource protection area on the specific site or parcel.
 - d. The environmental site assessment shall be drawn at 1"=100' or the same scale as the preliminary site plan or subdivision plat, and shall be certified as complete and accurate by a professional engineer or a certified land surveyor. This requirement for certification by an engineer or surveyor may be waived by the planning director or his designee for the county, when the proposed use or development would result in less than 5,000 square feet of disturbed area.
- (3) Landscaping plan. A landscaping plan shall be submitted in conjunction with site plan review and approval or as part of subdivision plat approval. No clearing or grading of any lot or parcel will be permitted without an approved landscaping plan. Landscaping plans shall be prepared and/or certified by a design professional practicing within his areas of competence as prescribed by the Code of Virginia.
- a. Contents of the plan.
 1. The landscaping plan shall be drawn to scale at 1"=100' or the same scale as the preliminary site plan or subdivision plat, and shall clearly delineate the location, size, and description of existing and proposed plant materials. All existing trees on the site six inches or greater in diameter at breast height (DBH) shall be shown on the landscaping plan, or where there are groups of trees, such stands may be outlined instead. The specific number of trees six inches or greater DBH to be preserved outside of the building envelope shall be indicated on the plan. Trees and other woody vegetation proposed to be removed to create the desired construction footprint shall be clearly delineated on the landscaping plan.
 2. Any required RPA buffer area shall be clearly delineated and any plant material to be added to establish or supplement the buffer area, as required by this article, shall be shown on the landscaping plan.
 3. Within the buffer area, trees and other woody vegetation to be removed for sight lines, vistas, access paths, and best management practices, as provided for

in subsection (c)(1)a of this section, shall be shown on the plan. Vegetation required by this article to replace any existing trees within the buffer area shall also be depicted on the landscaping plan.

4. Trees and other woody vegetation to be removed for shoreline stabilization projects and any replacement vegetation required by this article shall be shown on the landscaping plan.
5. The plan shall depict grade changes or other work adjacent to trees that would adversely affect them. Specifications shall be provided as to how grade, drainage, and aeration would be maintained around trees to be preserved.
6. The landscaping plan will include specifications for the protection of existing trees and other vegetation during clearing, grading, and all phases of construction.
7. If the proposed development is a change in use from agricultural or silvicultural to some other use, the plan must demonstrate the reestablishment of vegetation in the buffer area.

b. Plant specifications.

1. All plant materials necessary to supplement the buffer area or vegetated areas outside the construction footprint shall be installed according to standard planting practices and procedures.
2. All supplementary or replacement plant materials shall be living and in a healthy condition. Plant materials shall conform to the standards of the most recent edition of the American Standard for Nursery Stock, published by the American Association of Nurserymen.
3. Where areas to be preserved, as designated on an approved landscaping plan, are encroached, replacement of existing trees and other vegetation will be achieved at a three planted trees to one removed. Replacement trees shall be a minimum one and one-half inches DBH at the time of planting.
4. Use of native or indigenous species.

c. Maintenance.

1. The applicant shall be responsible for the maintenance and replacement of all vegetation as may be required by the provisions of this article.
2. In buffer areas and areas outside the construction footprint, plant material shall be tended and maintained in a healthy growing condition and free from refuse and debris. Unhealthy, dying, or dead plant materials shall be replaced during the next planting season, as required by the provisions of this article.

(4) Stormwater management plan. A stormwater management plan shall be submitted as part of the plan of development process required by this article and in conjunction with site plan or subdivision plan approval.

- a. Contents of the plan. The stormwater management plan shall contain maps, charts, graphs, tables, photographs, narrative descriptions, explanations, and citations to

supporting references as appropriate to communicate the information required by this article. At a minimum, the stormwater management plan must contain the following:

1. Location and design of all planned stormwater control devices;
 2. Procedures for implementing nonstructural stormwater control practices and techniques;
 3. Pre- and post-development nonpoint source pollutant loadings with supporting documentation of all utilized coefficients and calculations;
 4. For facilities, verification of structural soundness, and certification by a professional engineer.
- b. Designed site facilities. Site specific facilities shall be designed for the ultimate development of the contributing watershed based on zoning, comprehensive plans, local public facility master plans, or other similar planning documents.
 - c. Calculations. All engineering calculations must be performed in accordance with the procedures outlined in the current edition of the Virginia Stormwater Management Handbook.
 - d. Schedule established. The plan shall establish a schedule for inspection and maintenance of stormwater management facilities that includes all maintenance requirements and persons responsible for performing maintenance. If the designated maintenance responsibility is with a party other than the county, then a maintenance agreement shall be executed between the responsible party and the county.
- (5) Erosion and sediment control plan. An erosion and sediment control plan shall be submitted that satisfies the requirements of this article and is in accordance with sections 38-31—38-65, the county's erosion and sediment control ordinance, in conjunction with site plan or subdivision plan approval.
- (6) Final plan. Final plans for property within CBPAs shall be final plats for land to be subdivided or site plans for land not to be subdivided as required in section 90-824.
- a. Generally. Final plans for all lands within CBPAs shall include the following additional information:
 1. The delineation of the resource protection area boundary, including the 100-foot buffer component;
 2. Plat or plan note stating that no land disturbance is allowed in the buffer area without review and approval by the planning director or his designee for the county;
 3. All wetlands permits required by law;
 4. A maintenance agreement as deemed necessary and appropriate by the planning director or his designee for the county to ensure proper maintenance by the owner of record of best management practices in order to continue their functions.

b. Installation and bonding requirements.

1. Where buffer areas, landscaping, stormwater management facilities or other specifications of an approved plan are required, no final certificate of occupancy shall be issued until the installation of the required plant materials or facilities is completed in accordance with the approved site plan.
 2. When the occupancy of a structure is desired prior to the completion of the required landscaping, stormwater management facilities, or other specifications of an approved plan, a certificate of occupancy may be issued only if the applicant provides to the county a form of surety satisfactory to the planning director or his designee for the county in an amount equal to the remaining plant materials, related materials, or installation costs of the required landscaping or facilities and/or maintenance costs for any required stormwater management facilities.
 3. All required landscaping shall be installed and approved by the first planting season following issuance of a certificate of occupancy, or the surety may be forfeited to the county.
 4. All required stormwater management facilities or other specifications shall be installed and approved within 18 months of project commencement. Should the applicant fail, after proper notice, to initiate, complete or maintain appropriate actions required by the approved plan, the surety may be forfeited to the county. The county may collect from the applicant the amount by which the reasonable cost of required actions exceeds the amount of the surety held.
 5. After all required action of the approved site plan has been completed, the applicant must submit a written request for final inspection. If the requirements of the approved plan have been completed to the satisfaction of the planning director or his designee for the county, such unexpended or un-obligated portion of the surety held shall be refunded to the applicant or terminated within 60 days following receipt of the applicant's request for final inspection. The planning director or his designee may require a certificate of substantial completion from a professional engineer or class III B surveyor before making a final inspection.
- (7) Administrative responsibility. Administration of the plan of development process shall be in accordance with section 90-824. The county shall approve, approve subject to conditions, or disapprove the plans in accordance with the reviewing authorities' recommendations. The planning director or his designee shall return notification of plan review results to the applicant, including recommended conditions or modifications. If the results and/or recommended conditions or modifications are acceptable to the applicant, the plan shall be so modified, if required, and approved.
- (8) Denial of plan, appeal of conditions or modifications. If the final plan or any component of the plan of development process is disapproved or recommended conditions or modifications are unacceptable to the applicant, the applicant may appeal such administrative decision to the county planning commission. In granting or denying an appeal, the planning commission must find such plan to be in accordance with all

applicable ordinances and include necessary elements to mitigate any detrimental impact on water quality and upon adjacent property and the surrounding area, or such plan meets the purpose and intent of the performance standards in this article. If the planning commission finds that the applicant's plan does not meet the above stated criteria, it shall deny approval of the plan.

(Ord. of 8-10-2004, § 17-539)

Sec. 90-670. - Nonconforming uses and noncomplying structures.

The lawful use of a building or structure which existed on November 19, 1991, or which exists at the time of any amendments to this article, and which is not in conformity with the provisions of the overlay district may be continued in accordance with sections 90-741—90-747. No change or expansion of use shall be allowed with the exceptions that:

- (1) The planning director or his designee for the county may grant a nonconforming use and/or waiver for structures on legal nonconforming lots or parcels to provide for remodeling and alterations to such nonconforming structures provided that:
 - a. There will be no net increase in nonpoint source pollution load;
 - b. Any development or land disturbance exceeding an area of 2,500 square feet complies with all erosion and sediment control requirements of this article.
- (2) An application for a nonconforming use and/or waiver shall be made to and upon forms furnished by the planning director or his designee for the county and shall include for the purpose of proper enforcement of this article, the following information:
 - a. Name and address of applicant and property owner;
 - b. Legal description of the property and type of proposed use and development;
 - c. A sketch of the dimensions of the lot or parcel, location of buildings and proposed additions relative to the lot lines, and boundary of the resource protection area;
 - d. Location and description of any existing private water supply or sewage system.
- (3) A nonconforming use and development waiver shall become null and void 12 months from the date issued if no substantial work has commenced.
- (4) An application for the expansion of a nonconforming structure may be approved by the planning director or his designee, provided that the following findings are demonstrated by the applicant:
 - a. The request for the waiver is the minimum necessary to afford relief;
 - b. Granting the waiver will not confer upon the applicant any specific privileges that are denied by this article to other property owners in similar situations;
 - c. The waiver is in harmony with the purpose and intent of this article and does not result in water quality degradation;
 - d. The waiver is not based on conditions or circumstances that are self-created or self-imposed;

- e. Reasonable and appropriate conditions are imposed, as warranted, that will prevent the waiver from causing a degradation of water quality;
- f. Other findings, as appropriate and required by county are met; and
- g. In no case shall this provision apply to accessory structures.

(Ord. of 8-10-2004, § 17-540)

Sec. 90-671. - Exemptions.

- (a) Public utilities, railroads, public roads, and facilities. 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 (i) regulations promulgated pursuant to the Erosion and Sediment Control Law (Code of Virginia, § 10.1-560 et seq.) and the Stormwater Management Act (Code of Virginia, § 10.1-603.1 et seq.), (ii) an erosion and sediment control plan and a stormwater management plan approved by the Virginia Department of Environmental Quality, or (iii) local water quality protection criteria at least as stringent as the above state requirements, are deemed to comply with this article.
- (b) Local utilities and other service lines. Construction, installation, and maintenance of water, sewer, natural gas, underground telecommunications and cable television lines owned, permitted or both, by a local government or regional service authority shall be exempt from the overlay district, provided that:
 - (1) To the degree possible, the location of such utilities and facilities should be outside resource protection areas;
 - (2) No more land shall 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 with all applicable state and federal requirements and 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 complies with all erosion and sediment control requirements of the county.
- (c) Silvicultural activities. Silvicultural activities are exempt from the requirements of this article, provided that silvicultural operations adhere to water quality protection procedures prescribed by the state department of forestry in the 1997 edition of "Forestry Best Management Practices for Water Quality in Virginia."
- (d) Resource protection areas. The following land disturbances in resource protection areas may be exempt from the overlay district, provided that they comply with the requirements listed below in subdivisions 1 through 3:
 - (1) Water wells;
 - (2) Passive recreation facilities such as boardwalks, trails, and pathways; and
 - (3) Historic preservation and archaeological activities:

- a. Any required permits, except those to which this exemption specifically applies, shall have been issued; and
- (b. Sufficient and reasonable proof is submitted that the intended use will not deteriorate water quality; and
- c. The intended use does not conflict with nearby planned or approved uses.
- d. Any land disturbance exceeding an area of 2,500 square feet shall comply with all erosion and sediment control requirements of the county.

(Ord. of 8-10-2004, § 17-541)

Sec. 90-672. - Exceptions.

- (a) A request for an exception to the requirements of section 90-667(c) shall be made in writing to the county board of zoning appeals. It shall identify the impacts of the proposed exception on water quality and on lands within the resource protection area through the performance of a water quality impact assessment which complies with the provisions of section 90-668.
- (b) The County of Prince George shall notify the affected public of any such exception requests and shall consider these requests in a public hearing in accordance with Code of Virginia, 15.2-2204, except that only one hearing shall be required.
- (c) The county board of zoning appeals shall review the request for an exception and the water quality impact assessment and may grant the exception with such conditions and safeguards as deemed necessary to further the purpose and intent of this article if the board of zoning appeals finds:
 - (1) Granting the exception will not confer upon the applicant any special privileges denied by this article to other property owners in the CBPA Overlay District;
 - (2) The exception request is not based on conditions or circumstances that are self-created or self-imposed, nor does the request arise from conditions or circumstances either permitted or nonconforming that are related to adjacent parcels;
 - (3) The exception request is the minimum necessary to afford relief;
 - (4) The exception request will be in harmony with the purpose and intent of the CBPA Overlay District, not injurious to the neighborhood or otherwise detrimental to the public welfare, and is not of substantial detriment to water quality; and
 - (5) Reasonable and appropriate conditions are imposed which will prevent the exception request from causing a degradation of water quality.
- (d) If the county board of zoning appeals cannot make the required findings or refuses to grant the exception, the board of zoning appeals shall return the request for an exception together with the water quality impact assessment and the written findings and rationale for the decision to the applicant.

A request for an exception to the requirements of provisions of this article other than section 90-667(c) shall be made in writing to the county board of zoning appeals. The board of zoning appeals may grant these exceptions provided that:

- (1) Exceptions to the requirements are the minimum necessary to afford relief; and
- (2) Reasonable and appropriate conditions are placed upon any exception that is granted, as necessary, so that the purposes and intent of this article are preserved.
- (3) Exceptions to section 90-667(b) may be made, provided that the findings noted in section 90-672(c) are made by the applicant.

Sec 90-673. - Violations

1. Whenever the Administrator or his/her designee determines that there are reasonable grounds to believe that there has been a violation of any provisions of this Article, based upon his/her investigation, the Administrator or his/her designee shall give notice of such alleged violation as follows:

The notice shall:

1. be in writing,
2. include a statement of the reasons for its issuance,
3. allow a reasonable time not to exceed a period of thirty (30) days for the performance of any act it requires,
4. be mailed by first class mail; and
5. contain an outline of remedial actions which, if taken, will effect compliance with the provisions of this Article.

2. Any person who:

(i) violates any provision of this Article or

(ii) violates or fails, neglects, or refuses to obey any final notice, order, rule, regulation, or variance or permit condition from Prince George County, as authorized under this Article, shall, upon such finding by an appropriate circuit court, be assessed a civil penalty not to exceed \$5,000 for each day of violation. Such civil penalties may, at the discretion of the court assessing them, be directed to be paid into the treasury of Prince George County for the purpose of abating environmental damage to or restoring Chesapeake Bay Preservation Areas, in such a manner as the court may direct by order, except that where the violator is the county itself, or its agent, then the court shall direct the penalty to be paid into the state treasury.

3. With the consent of Prince George County and any person who:

(i) violates any provision of any local ordinance related to the protection of water quality in Chesapeake Bay Preservation Areas or

(ii) violates or fails, neglects, or refuses to obey any official's notice, order, rule, regulation, or variance or permit condition from Prince George County as authorized under this Article, a consent order may be issued against such person for the one-time payment of civil charges for each violation in specific sums, not to exceed \$10,000 for each violation. Such civil charges shall be paid into the treasury of Prince George County for the purpose of abating environmental damage to or restoring Chesapeake Bay Preservation Areas, except that where the violator is the County of Prince George, or its agent, the civil charges shall be paid into the state treasury. Civil charges shall be in lieu of any appropriate civil penalty that could be imposed under paragraph 1. Civil charges may be in addition to the cost of any restoration required or ordered by Prince George County.

Secs. 90-674~~3~~—90-690. - Reserved.