

Board of Supervisors Minutes – February 12, 2014

VIRGINIA: At a regular meeting of the Board of Supervisors for Hanover County held in the Board Room of the Hanover County Administration Building on the 12th day of February, 2014, at 2:00 p.m.

Present: Mr. Sean M. Davis, Chairman
Mr. Wayne T. Hazzard, Vice-Chairman
Mrs. Angela Kelly-Wiecek
Mr. W. Canova Peterson
Mr. Aubrey M. Stanley
Mr. G.E. “Ed” Via, III
Mr. Elton J. Wade, Sr.
Mr. Cecil R. Harris, Jr., County Administrator
Mr. Sterling E. Rives, III County Attorney

I. Call to Order

At 2:00 p.m., the Chairman called the meeting to order. All Board members were present.

A. Invocation

The invocation was given by Mrs. Kelly-Wiecek.

B. Pledge of Allegiance

The Pledge of Allegiance was led by Mr. Peterson.

II. Consideration of Agenda Amendments

The Chairman asked if there were any agenda amendments. Hearing none, moved to citizens’ time.

III. Citizens’ Time

The Chairman opened citizens’ time and offered to anyone who wanted to address the Board of Supervisors for up to five minutes on any matter within the scope of the Board’s authority that is not on the agenda for that meeting to come forward.

Mr. Dan Johnson from the South Anna District thanked the Chairman and the Board on financial matters. He spoke on fiscal responsibility and the county’s current, better budgetary status.

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Mr. Johnson spoke on public safety and providing the resources for staff that provides public safety for the citizens of Hanover County. He requested approval of the entire budget.

Mr. Peterson thanked Mr. Johnson for his comments and noted the importance of recognizing that Board accomplishments result from a team effort of Board members, staff and citizens.

Seeing no others come forward, the Chairman closed citizens' time.

IV. Consent Agenda

The Chairman asked if there were any recommendations to amend the consent agenda. Mrs. Kelly-Wiecek asked that item IV-C be removed from the consent agenda for a separate vote.

On a motion by Mr. Stanley, seconded by Mr. Hazzard, the amended consent agenda was approved.

Vote:

Sean M. Davis	Aye
Wayne T. Hazzard	Aye
Angela Kelly-Wiecek	Aye
W. Canova Peterson	Aye
Aubrey M. Stanley	Aye
G. E. Via, III	Aye
Elton J. Wade, Sr.	Aye

Motion Approved.

A. Emergency Communications Department – Beaverdam Tower – Amendment to Lease with New Cingular Wireless PCS, LLC

Board Sheet Background:

The County entered into a lease on August 26, 2009 with New Cingular Wireless PCS, LLC for use of the Beaverdam Tower. New Cingular Wireless PCS, LLC agreed to pay an annual rent of \$27,500 with escalation of 3% annually after the base rental period applied at time of renewal. This lease amendment provides for the 4G upgrade of the original equipment located at 240 ft. Rental terms remain as set forth in the original lease. The amendment would also allow substitution of equipment or changes in equipment within the leased area without Board approval, but with prior written approval of the Director of Emergency Communications.

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Recommendation:

Motion to approve the lease amendment between Hanover County and New Cingular Wireless PCS, LLC to upgrade existing equipment and allow certain future equipment changes if approved in writing by the Director of Emergency Communications, and authorize the County Administrator to take all actions necessary to enter into and administer the lease, including the amendment.

B. Approval of Updated Memorandum of Understanding – Department of Public Works – Agreement between Hanover County and Hanover County School Board, Municipal Separate Storm Sewer System (MS4) Permit

Board Sheet Background:

Approval of Updated Memorandum of Understanding – Department of Public Works - Agreement between Hanover County and Hanover County School Board, Municipal Separate Storm Sewer System (MS4) Permit

Recommendation:

Motion to approve the updated Memorandum of Understanding between Hanover County and the Hanover County School Board and authorize the County Administrator to take all actions necessary to implement the agreement.

A copy of the Memorandum of Understanding is filed with the Board Papers.

D. Authorization to Advertise Public Hearing – Commissioner of Revenue – Ordinance No. 14-02, Amendment to Hanover County Code Section 22-43 regarding deadline for final disposition of applications for relief from reassessment with the Board of Equalization

Board Sheet Background:

Virginia Code Section 58.13331 has been amended to require written notice to a taxpayer appealing a tax assessment to be given at least 45 days prior to the hearing on the taxpayer's appeal for all applicable assessments after January 1, 2012. The deadlines set forth in Hanover County Code Section 22-43 (application for relief from reassessment must be filed by March 15; applications must be finally disposed of by April 3) do not allow sufficient time to meet the statutory notice requirements.

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The Commissioner of Revenue and County Attorney's Office propose revision of Hanover County Code Section 22-43 by changing April 3 to June 1 in order to provide sufficient time to meet statutory notice requirements.

Recommendation:

Motion to advertise a public hearing to be held March 12, 2014 at 7:00 p.m. on Ordinance No. 14-02, Amendment to Hanover County Code Section 22-43 regarding deadline for final disposition of applications for relief from reassessment with the Board of Equalization.

C. Approval and Authorization to Advertise a Change in the Meeting Time of the Hanover County Board of Supervisors' Meeting on February 26, 2014 (removed from consent agenda)

Board Sheet Background:

It is requested that the Board of Supervisors approve and authorize advertisement of a change in their February 26, 2014 meeting time to begin at 2:00 p.m. instead of 6:00 p.m., as previously advertised.

Mrs. Kelly-Wiecek stated that the request to change the meeting start time to 2:00 p.m. was so that the Board will have more time to receive input and feedback from departments on their needs as they relate to the overall budget.

Mrs. Kelly-Wiecek made a motion to approve and authorize advertisement of a change in the February 26, 2014 meeting time to begin at 2:00 p.m. instead of 6:00 p.m., seconded by Mr. Hazzard.

Vote:

Sean M. Davis	Aye
Wayne T. Hazzard	Aye
Angela Kelly-Wiecek	Aye
W. Canova Peterson	Aye
Aubrey M. Stanley	Aye
G. E. Via, III	Aye
Elton J. Wade, Sr.	Aye

Motion Approved.

V. Introduction of Chief of Animal Control

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Mr. Jim Taylor, Deputy County Administrator, began by thanking the Hanover County Sheriff's Department for their assistance in overseeing the Animal Control Department. In attendance were Major Davidson and Major Woody. Mr. Taylor stated he also wanted to recognize Captain Farmer and Lieutenant Schaeffer for their countless hours working with Animal Control.

Mr. Taylor introduced Mr. Jeff Parker as the new Chief of Animal Control. He explained that Mr. Parker has been serving as the Acting Chief of Animal Control since September and has been with the County since 2006.

Mr. Parker addressed the Board and thanked them for the opportunity to serve Hanover County as the Chief of Animal Control. He stated that the department's main goal is providing great customer service. He updated the Board on upcoming events.

Mr. Davis, on behalf of the Board, congratulated Mr. Parker and thanked him for his service.

VI. Presentation of Quarterly Financial Reports

Board Sheet Background:

In accordance with the County Financial Policies, the financial report for the County's General Fund for the six months ended December 31, 2013, and a projection for the twelve months ended June 30, 2014 is given. Additionally, financial reports and projections for the Public Utilities and the School Division for the same periods are provided.

Ms. Karen Tancredi, Accounting Division Director, updated the Board on revenues, expenditures and changes in fund balance/net position for the General Fund, the Public Utilities Department and the School Division Operating Fund.

Highlights of the General Fund's Financial Performance:

Ms. Tancredi reported that year-to-date revenues total approximately \$90.3 million, approximately 45% of expected total year revenues which is consistent with the prior year. General property taxes, fines and forfeitures and revenues from the Federal government declined from the prior year by approximately \$435,000, \$9,000 and \$166,000, respectively. These decreases are more than offset by increases in other revenue sources such as other local taxes (\$419,000), charges for services (\$274,000), recovered costs (\$440,000) and revenue from the

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Commonwealth (\$218,000). The increases and decreases in the various line items net to a total increase of approximately \$1.2 million over the prior year.

Total year revenues are projected to be approximately \$203.1 million or approximately \$4.0 million higher than the appropriated budget. General property taxes are projected to increase from the prior year by approximately \$540,000 and to be favorable to budget by approximately \$1.6 million. This includes an increase of approximately \$500,000 for real property taxes due to a change in reassessment from 0.5% to 2.07% and an increased base last year. Additionally, personal property taxes are expected to be approximately \$1.0 million higher than budget. Other local taxes are projected to increase from the prior year and to be favorable to budget by approximately \$1.1 million. This favorability is primarily due to an increase in the estimates for sales tax and recordation tax of approximately \$800,000 and \$400,000, respectively.

Year-to-date expenditures and transfers total approximately \$100.8 million or 48% of the appropriated budget. Except for the timing of debt service payments and transfers, this is consistent with the prior year. Total year expenditures and transfers are projected to be approximately \$202.3 million or 97% of the appropriated budget as compared to 96% in the prior year. Personnel savings are estimated to be approximately \$1.4 million and operating savings are estimated to be approximately \$2.4 million with a return from the School Board of approximately \$2.8 million.

The total projected operating balance is approximately \$10.5 million which is primarily planned for use in the FY 2015 County and School budgets.

Of the total projected year-end fund balance of \$43.8 million, the unassigned fund balance is expected to be approximately \$25.4 million or 12.6% of projected revenues. Assignments are expected to total approximately \$17.5 million and are subject to change based on final year end results.

As of December 31, 2013, year-to-date reserve for contingencies budget transfers totaled \$156,774 and the remaining balance was \$986,742. Year-to-date transfers represent requests for the General District Court, Court Services and Treasurer.

Highlights of the Public Utilities Department's Financial Performance:

Ms. Tancredi reported that year to date revenues total \$15.2 million, approximately 50% of projected revenues. Projected revenues are expected to be \$30.6 million or approximately \$4.2

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million higher than the appropriated budget. This favorable variance is primarily the result of increased capacity fee revenue and donated assets. Water and sewer capacity fee revenues are expected to be 156% of appropriated budget, an increase of \$1.6 million. Donated assets, although not part of the appropriated budget, are included in total revenue. Donated assets are expected to reach \$3.5 million this fiscal year. The capital budget includes \$911,000 in grant funds. \$150,000 of grant revenue will be received during the current year. Water and sewer user fees are expected to be \$300,000 below budget.

Year to date expenses total \$9.2 million, approximately 49% of appropriated budget. Total expenses for the year are projected to be \$17.8 million which is 94% of the appropriated budget. Personnel costs are estimated to be \$283,000 below budget. Contract services, including long term water and sewer contracts, are expected to be \$296,000 below budget. Other charges are projected to be \$634,000 below budget, half of which is attributed to lower power costs.

The budgeted change in net position is the net effect of total operations, including non-cash transactions. The total balance in net position, excluding depreciation, is projected to increase by \$12.8 million which is \$5.4 million above budget. The increase includes \$3.5 million in donated assets.

Highlights of the School Division Operating Fund Financial Performance:

Ms. Tancredi reported that at this point in the year, the School Division anticipates an unspent appropriation of approximately \$2.8 million that will be returned to the County's General Fund.

FY 2014 appropriated revenues of \$163.0 million have decreased by \$18.2 million compared with appropriated revenues in the prior year of \$181.2 million. This is attributable primarily to the creation of the debt service fund of \$15.7 million, reduction of staffing in the fiscal year 2014 budget of approximately \$2.0 million and consolidation of services with the County of approximately \$400,000. FY 2014 appropriated expenditures of \$165.2 million have decreased by \$18.5 million compared with appropriated expenditures in the prior year of \$183.7 million. The factors affecting the reduction are substantially the same as noted for revenues.

Actual revenues continue to accrue as anticipated in FY 2014 compared to the appropriated budget, however, there are two offsetting state revenue items to monitor. With the introduction of the Governor's Caboose Bill in December, it appears that sales tax could be

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slightly over budgeted. As an offset, however, actual student enrollment this year is higher than anticipated by the State and the basic aid and other related state dollars should be more than sufficient to cover that potential shortfall.

The net change in fund balance is anticipated to be approximately \$2.8 million. This includes expenditure savings that are primarily the result of utility savings from continued energy containment efforts (and a mild climate so far this year) and attrition savings from employee turnover. These savings will likely increase as the year progresses.

Mr. Davis thanked Ms. Tancredi for the presentation. Mr. Hazzard complimented Ms. Tancredi on the positive report.

VII. Board of Supervisors Proposed Fiscal Year 2015 Initiatives – Mr. Harris

Mr. Harris reported that the County conducted a Citizens Survey in 2005, 2008 and 2011. As it has been done on a three year cycle, it is recommended that a Citizen Survey be conducted in 2014. The County has been able to use National Citizens Survey, which allows us to benchmark ourselves against other localities across the country. The survey is used to determine how the citizens feel about the services provided by the County and to then compare that to results from other localities. It is expected that the survey will be mailed in late summer to early fall.

The next initiative recommended was to update the Economic Development Strategic Plan. This is updated every five years as part of the numerous visioning and strategic planning tools used. Staff will be working with the business community. A number of forums will be held to receive feedback. The proposed budget includes funds to begin the process of meeting the program's requirements over the next 10 years, using a combination of existing funds, grant money and some general fund money over time.

The next issue brought before the Board is the Chesapeake Bay Stormwater Management Mandate. The County recently received a \$417,000 state grant from DEQ that will be matched with other funds and used to begin implementing our strategy. Mr. Harris informed the Board that he will be reporting back to the Board soon on approval of that grant agreement and budget transfer. The implementation plan will need approval by the state before the end of the next calendar year.

Mr. Harris reported on the new courthouse facility, stating that the project team is currently working on the schematic design that will be used in the construction documents. The

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CUP that was approved for this project in 2009 will need to be extended and we would expect to submit that application later this spring. The hope is to complete the documents required to advertise for bids at the end of this year and award a construction contract in 2015, with construction hopefully to begin later that year. The construction is expected to take about 18 months.

Mr. Harris reported on the initiative to provide a merit pay increase to county and school employees. He stated that county and school employees who have helped the County through the recession are deserving of a compensation increase. His recommendation is that this is made a priority initiative in the upcoming FY 2015 budget.

Mr. Davis thanked Mr. Harris for the presentation and stated that comments and recommendations are welcome. He stated that the Board is in agreement that pay increases be based on merit.

VIII. Presentation of the County Website Redesign Project – Mr. Nelson

Mr. Nelson addressed the Board to begin the presentation of the redesign for the County website. He stated that there are many staff and citizens who have worked very hard on the project. He further stated that once the website goes live it will continue to be an ongoing process as staff looks for ways to further provide improvement.

Mr. Craig Williams, Applications Director for the Application Team, thanked the Board for the assistance of Mrs. Kelly-Wiecek and stated that she has been very helpful in ensuring that there was input from the public side as the project has progressed.

Mr. Williams explained that the reason for the redesign is to help citizens get the services they need. The current website is antiquated and the content is very cluttered. It is expensive to maintain and is not mobile friendly.

The Governance Team has worked very hard to determine the best changes. The new site is planned to go live on March 31st.

Ms. Trish Garman gave a presentation of the new website to the Board. Examples of improvements were explained. The new site is designed for the citizen/resident, has service oriented navigation, provides menus for all highly used services and consolidates related information. The site will provide greatly improved search and filtering options, is mobile-ready and contains improved maps/directions, pictures and graphics. The information is easy to find, with multiple paths to the same content and services and there are feedback forms on every page.

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Mr. Hazzard complemented the team on making a site that is very easy to navigate. Mr. Peterson stated he is very impressed with the site. He asked what the process will be to keep content up to date. Mr. Williams replied that the Governance Team has created a web standards document to provide guidelines on an annual review of each page on the site. The software is also capable of recognizing expiration dates for content that is only intended to be on the site for a certain amount of time.

Mr. Peterson asked if there are ways for users who cannot locate the information they need to request the content be provided. Mr. Williams explained numerous ways that this could be accomplished.

Mrs. Kelly-Wiecek stated that she has been very interested in this project from its start. She stressed the efficiency of the new site. She is very impressed with the motivation of the whole team in terms of making information available to citizens. This was done in a very efficient way and a very aggressive timeframe. She wanted to take this opportunity to thank each member of the team. She encouraged each Board member to invite others to visit the new site.

IX. Legislative Update – Mr. Rives

Mr. Davis announced that there will be a number of expanded topics that will be discussed by the Board and thanked Mr. Rives, County Attorney, for adding this expanded content and for his history of presenting the legislative reports in a very comprehensive manner.

Mr. Rives began his presentation by introducing Mr. Michael Kessner, who is interning with the County Attorney's office. Mr. Davis welcomed Mr. Kessner and thanked him for his service to the County.

Mr. Rives reported on the status of the following bills: HB 333, HB 66, HB 67, HB 178, GB 199, HB 431, GB 434, HB 513, HB 527, HB 597, HB 617, HB 633, HB 697, HB 1173, HB 788, HB 1088, HB 1127, HB 1230, HJ 40 Study, SB 48, SB 523, HB 519, HB 1089, HB 268 and HB 1084. There were comments and/or questions by the Board on the following bills:

House Bill 333 eliminates the post-Labor Day opening requirement for local schools. This is inconsistent with the Board's traditional and current position on post-Labor Day opening. It has passed out of the House and will go over to Senate Education.

HB 199 has passed out of the House. It would require the Division of Legislative Services to identify and forward to the Commission on Local Government (Commission) joint resolutions introduced calling for a study of local government expenditures or revenues. The bill

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also authorizes, but does not require, the Department of Planning and Budget and the Department of Taxation to forward to the Commission bills introduced requiring additional local government expenditures or a reduction in local government revenue. This applies to legislative bills and not budget bills.

Mrs. Kelly-Wiecek stated that it will be good to have this information so that the Board members can call it to our local legislators' attention when necessary.

HB 527 provides that for purposes of zoning, a residential facility in which no more than eight individuals with mental illness, intellectual disability, or developmental disabilities reside, with one or more resident or nonresident staff members, shall be considered a residential occupancy by a single family. Currently, such facilities are required to have one or more resident counselors or other staff persons to qualify for this zoning designation.

Mr. Davis asked if this bill means that there can now be individuals with intellectual or developmental disabilities in a facility without a staff person there. Mr. Rives explained that the bill means that now there does not need to be a staff member residing there. Mrs. Kelly-Wiecek asked what the motivation for this bill was. Mr. Davis stated that his concern was that the residing staff was originally required and this can now cause some concern in the community. Mr. Rives stated that the level of care will still be decided at the state level but there will no longer be a requirement that the care giver reside.

Mr. Peterson asked if these were considered single family residences and was informed that they are (for up to eight people). Mr. Via asked if these facilities need Board approval and was informed that they do not. Mr. Stanley asked for clarification as to whether this will mean that there is still 24 hour care for the residents, just not by someone who resides in the home. Mr. Rives replied that this will depend upon the needs of the individuals that reside in the facility and will be based on state regulations.

House Bill 597 will change the composition of the Richmond Metropolitan Authority (RMA). Renames the Authority as the Richmond Regional Transportation Authority and equalizes Board representation among the City of Richmond, Chesterfield County, and Henrico County. The bill requires that certain actions of the Authority related to construction or acquisition of limited access highways or acquisition of rights to operate existing toll roads receive approval from the local governing bodies. Local approval is also required for the issuance of bonds by the Authority. The bill allows the governing body of each locality to appoint one of its own members as a member of the Board of the Authority, clarifies the

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appointment process for the three Richmond representatives on the Board, and prohibits Board members from receiving health insurance or other benefits for their service on the Board.

Mr. Peterson stated that the RMA has done an excellent job over the years. The Board has been in support of the RMA until the proposed name change to Richmond Regional Transportation Authority. Mr. Peterson has discussed the County's opposition to the name change with the patron of the bill. Mr. Peterson was told that due to the opposition, the name would instead be changed to the Richmond Metropolitan Transportation Authority.

Mrs. Kelly-Wiecek explained that, while this bill concerned members of the Richmond Regional Planning District Commission, Planning District Commission 15 took no official position on the bill. It was conveyed that Hanover County believes strongly that there should be no taxation without representation. The Commission is pleased with the outcome.

Mr. Peterson asked that Mr. Rives continue to track this bill for any potential changes.

HB 1173 allows any locality that does not operate a municipal separate storm sewer system (MS4) to opt out of establishing Virginia Stormwater Management Programs. Localities that notify the Department of Environmental Quality (DEQ) of their decision to opt out shall have their stormwater programs managed by the DEQ.

Mrs. Kelly-Wiecek asked that a summary of the report on HB 1173 be forwarded to her office.

Mr. Peterson left the room at 3:45:47 p.m.

Mr. Peterson returned at 3:46:56 p.m.

HB 1084 provides that any applicant aggrieved by the grant or denial by a locality of any approval or permit, however described or delineated, where such grant included or denial was based upon an unconstitutional condition pursuant to the United States Constitution or Constitution of Virginia, shall be entitled to an award of damages, reasonable attorney fees, and court costs and to an order remanding the matter to the locality with a direction to grant or issue such permits or approvals without such conditions. The bill also provides that once an unconstitutional condition has been proven by the aggrieved applicant to have been a factor in the grant or denial of the approval or permit, the court shall presume, absent clear and convincing evidence to the contrary, that such applicant's acceptance of or refusal to accept the unconstitutional condition was the controlling basis for such impermissible grant or denial.

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Mr. Rives updated the Board on the history of this bill and the implications it could have on the County. He described the process for issuance of certain permits and approvals in the County. Mr. Davis asked if Mr. Rives believed that in Hanover County there is a comprehensive approach that balanced the needs of the community as well as the legitimate business needs. Mr. Rives responded that this balance is precisely what the process ensures. There are often competing interests between developers versus concerns of the community. The job of a local body is to balance those concerns and work towards a resolution.

Mr. Davis stated that this could have an overbearing effect on local government to deal with development and land use issues. Mrs. Kelly-Wiecek stated one issue of concern is that, the vast majority of land use decisions are balancing an individual's property rights against another individual's property rights. She is concerned that this has gone as far as it has and believes it damages the County's ability to protect the taxpayers from having to pay for lawsuits that could come. The cost to a locality could be staggering. It is important to note that the applicant need not even notify the locality of the objection. They can agree to it and later decide that they would like to take the issue to court and then the taxpayers would have to pay for those legal fees. It is very important that the Board relays to the legislators what a vital role the County plays in advocating for the individual citizens and businesses.

Mr. Hazzard asked if property owners who have *not* been denied a permit themselves, but have adjoining property and are displeased by a decision, would be able to seek payment of legal fees or court costs if they pursue litigation related to a permit. Mr. Rives responded that the bill applies only to aggrieved applicants. Mr. Hazzard asked for guidance on offering advice to constituents once this bill goes into effect. Mr. Rives will provide information as guidelines are determined.

Mrs. Kelly-Wiecek stated she has spoken to Senator Obenshain about suggested changes to some of the language in the bill and will be following up with the Senator on those suggestions.

Mr. Davis stated that he firmly believes that the discussion at this meeting and references to this bill will be reviewed at a later date regarding our opposition. This is going to be a much larger issue. In Hanover County, Hickory Hill was the largest single piece of property from Maine to Key West on the eastern shore that was developed as a single piece of property for years. To have it rezoned and developed, with the historic significance that it had and the work done by the Board, staff and particularly Mr. Stanley, who had community meetings, meetings in

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citizens' homes and worked it out to where the project went forward, is important to note. By the final public hearing there were very few people present to voice opposition. The point made there is that all of the work the County, the Board, Planning staff, Mr. Stanley and his district did to move a project forward where everyone felt it was a good project certainly could preclude issues arising in the future. We have a good track record of trying to work with people and balance those needs.

X. 4:11:19 p.m. - Recess

7:00:13 - Reconvene

Mr. Wade was not present.

XI. Citizens' Time

The Chairman opened citizens' time and offered to anyone who wanted to address the Board of Supervisors for up to five minutes on any matter within the scope of the Board's authority that is not on the agenda for that meeting to come forward.

Mr. Randy Sherrod, Chickahominy District, spoke on behalf of Friends of Hanover Schools. Mr. Sherrod expressed concerns about the five-year Capital Improvement Plan, technology and low teacher morale. They ask that the Board find a way to provide what the schools need. There has been an 11% drop in staffing. Morale is low, attrition is growing and instructional staff does not have time to meet individual needs of students. Workloads are unmanageable. Henrico and Chesterfield high school teachers instruct fewer blocks.

Seeing no one else come forward, the Chairman closed Citizens' Time.

XII. Public Hearings

A. Public Hearing –Department of Public Works – Ordinance Numbers 13-09, 13-10, and 13-12, Amendment of Erosion and Sediment Control and Chesapeake Bay Preservation Ordinances and Adoption of Stormwater Management Ordinance

Mr. Flagg, Director of Public Works, came forward to present this ordinance. He noted that minor changes have been made to ESC 13-9 to address Mr. Peterson's previous concern. Mr. Peterson indicated the change satisfies the concern he had.

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Summary:

Effective July 1, 2013, the State Water Control Law (Virginia Code § 62.1-44.2 et seq.) incorporated the Chesapeake Bay Preservation Act (Virginia Code § 62.1-44.15:67 et seq.), the Erosion and Sediment Control Law (Virginia Code § 62.1-44.15:51 et seq.), and the Virginia Stormwater Management Act (Virginia Code § 62.1-44.15:24 et seq.), and placed all of these under the jurisdiction of the State Water Control Board.

The Virginia Stormwater Management Act (the “Stormwater Act”) and Virginia Stormwater Management Program Regulations (the “Stormwater Regulations”) require localities to adopt local stormwater management programs and ordinances that incorporate specific components of the Stormwater Act and Stormwater Regulations, including a stormwater management ordinance to become effective July 1, 2014.

Public Works Analysis:

The Department of Public Works (DPW) and County Attorney’s Office have drafted a proposed Stormwater Management Ordinance to be added to Chapter 10 of the Hanover County Code as Article V. The proposed ordinance is based upon the Stormwater Management Model Ordinance and fulfills statutory and regulatory requirements. The draft ordinance has been revised to reflect regulatory changes made by the State Water Control Board in December 2013. Attached is a black-lined draft ordinance showing revisions to the October 2013 draft ordinance. An overview is provided in the attached stormwater executive summary.

The Stormwater Act and Stormwater Regulations also require a locality’s erosion and sediment control program and Chesapeake Bay ordinance to be integrated with its Virginia Stormwater Management Program. To accomplish this, the DPW and County Attorney’s Office have proposed amendments to Chapter 10, Articles I and II in order to conform to these changes in statutory and regulatory requirements.

These ordinances were authorized for public hearing on October 9, 2013. At this time the DPW has received no comments concerning the proposed ordinances. Summaries of the ordinance amendments are included with the attached draft ordinances.

Recommendation:

Approve Ordinance Numbers 13-09, 13-10, and 13-12, Amendment of Erosion and Sediment Control and Chesapeake Bay Preservation Ordinances and Adoption of Stormwater Management Ordinance.

Mr. Davis asked if Board Members had any questions. Hearing none, he

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opened the public hearing and asked that anyone wishing to speak for or against the ordinance come forward. Seeing no one come forward, Mr. Davis closed the public hearing.

On motion of Mr. Peterson, seconded by Mr. Via, the members of the Board of Supervisors voted to approve Ordinance No. 13-09.

ORDINANCE 13-09

AN ORDINANCE AMENDING CHAPTER 10, ARTICLE I, OF THE HANOVER COUNTY CODE PURSUANT TO TITLE 62.1, CHAPTER 3.1, ARTICLE 2.4 (§ 62.1-44.15:51 ET SEQ.) OF THE CODE OF VIRGINIA TO CONFORM TO CHANGES IN STATE LAW AND NEW REGULATORY REQUIREMENTS

WHEREAS effective July 1, 2013, the State Water Control Law (Virginia Code § 62.1-44.2 et seq.) incorporated the Chesapeake Bay Preservation Act (Virginia Code § 62.1-44.15:67 et seq.), the Erosion and Sediment Control Law (Virginia Code § 62.1-44.15:51 et seq.), and the Virginia Stormwater Management Act (Virginia Code § 62.1-44.15:24 et seq.), and placed all of these under the jurisdiction of the State Water Control Board; and

WHEREAS the Virginia Stormwater Management Act (the “Stormwater Act”) and Virginia Stormwater Management Program Regulations (the “Stormwater Regulations”) require localities to adopt local ordinances that incorporate specific components of the Stormwater Act and Stormwater Regulations, including a stormwater management ordinance to become effective July 1, 2014; and

WHEREAS the Stormwater Act and Stormwater Regulations require a locality’s erosion and sediment control program to be integrated with its Virginia Stormwater Management Program; and

WHEREAS the Department of Public Works and County Attorney’s Office have recommended changes to Chapter 10, Article I, in order to conform to these changes in statutory and regulatory requirements; and

WHEREAS staff has recommended other minor changes to correct and clarify the language of Chapter 10, Article I; and

WHEREAS the Board of Supervisors has decided to implement these recommendations;

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NOW, THEREFORE, BE IT ORDAINED by the Board of Supervisors of Hanover County:

1. That the Hanover County Code, Chapter 10, Article I, Erosion and Sediment Control, shall be amended to read in its entirety as follows:

ARTICLE I. - EROSION AND SEDIMENT CONTROL

Sec. 10-1. - Purpose.

The purpose of this article is to conserve the land, water, air, natural resources and general environment of the county, and to promote the public health and welfare by establishing minimum standards and procedures for the enforcement and administration of an overall program regulating land-disturbing activities in order to minimize the harm that may be caused by erosion and sediment deposits resulting from such activities. The program established pursuant to this article may be referred to as the Hanover County Erosion and Sediment Control Program. This article is adopted pursuant to Article 2.4 (§ 62.1-44.15:51 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia and associated regulations ("erosion and sediment control law").

Sec. 10-2. - Definitions.

Unless otherwise clearly indicated, the following words, terms, and phrases when used in this article, shall have the following meanings:

Agreement in lieu of a plan: A contract between the plan-approving authority and the owner that specifies conservation measures that must be implemented in the construction of a single-family residence.

Applicant: Any person submitting an erosion and sediment control plan or an agreement in lieu of a plan for approval or requesting the issuance of a permit, when required, authorizing land-disturbing activities to commence.

Clearing: Any activity which removes the vegetative ground cover including, but not limited to, root mat removal or topsoil removal. *Development:* A tract or parcel of land developed or to be developed as a single unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain three (3) or more residential dwelling units. Land disturbance and the resulting landform associated with the construction of

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residential, commercial, industrial, institutional, recreation, transportation or utility facilities or structures or the clearing of land for non-agricultural or non-silvicultural purposes.

Development: A tract or parcel of land developed or to be developed as a single unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain three (3) or more residential dwelling units. Land disturbance and the resulting landform associated with the construction of residential, commercial, industrial, institutional, recreation, transportation or utility facilities or structures or the clearing of land for non-agricultural or non-silvicultural purposes.

Director: The county's director of public works or designee, who shall be certified or otherwise qualified pursuant to the Virginia Code as a certified program administrator, and who, as agent of the board of supervisors, shall be the plan-approving authority for purposes of this article. The director shall be the erosion and sediment control program administrator, and shall provide for administration and enforcement of the program by properly certified inspectors and plan reviewers and by issuance of regulations approved by the county administrator pertaining to details of administration and enforcement, including permit application requirements.

District or soil and water conservation district: A political subdivision of the commonwealth organized in accordance with the provisions of Title 10.1 of the Code of Virginia.

Erosion and sediment control plan: A document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory and management information with needed interpretations, and a record of decisions contributing to conservation treatment. The plan shall contain all major conservation decisions to ensure that the entire unit or units of land will be so treated to achieve the conservation objectives.

Erosion impact area: An area of land not associated with current land disturbing activity but subject to persistent soil erosion resulting in the delivery of sediment onto neighboring properties or into state waters. This definition shall not apply to any lot or parcel of land of ten thousand (10,000) square feet or less used for residential purposes.

Excavating: Any digging, scooping or other methods of removing earth materials.

Filling: Any depositing or stockpiling of earth materials.

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Grading: Any excavating or filling of earth materials or any combination thereof, including the land in its excavated or filled condition.

Land-disturbing activity: Any man-made change to the land surface that may result in soil erosion from water or wind and the movement of sediments into state waters or onto lands in the commonwealth, including, but not limited to, clearing, grading, excavating, transporting and filling of land, except that the term shall not include:

- (1) Minor land-disturbing activities, such as home gardens and individual home landscaping, repairs and maintenance work;
- (2) Individual service connections;
- (3) Installation, maintenance or repair of any underground public utility lines when such activity occurs on an existing hard-surfaced road, street or sidewalk, provided such land-disturbing activity is confined to the area of the road, street or sidewalk which is hard-surfaced;
- (4) Septic tank lines or drainage fields disturbing less than ten thousand (10,000) square feet (two thousand five hundred (2,500) square feet in a Chesapeake Bay Preservation Area), unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;
- (5) Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted pursuant to Title 45.1 of the Code of Virginia;
- (6) Tilling, planting, or harvesting of agricultural, horticultural, or forest crops, livestock feedlot operations, or as additionally set forth by the State Water Control Board in regulation, including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq.) of Title 10.1 of the Code of Virginia or is converted to bona fide agricultural or improved pasture use as described in subsection B of Section 10.1-1163 of the Code of Virginia.
- (7) Agricultural engineering operations, including but not limited to the construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the Dam Safety Act, Article 2 (§ 10.1-604 et seq.) of Chapter 6 of Title 10.1 of the Code

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of Virginia, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage and land irrigation;

(8) Repair or rebuilding of the tracks, right-of-way, bridges, communication facilities and other related structures and facilities of a railroad company;

(9) Disturbed land areas of less than ten thousand (10,000) square feet in size (or two thousand five hundred (2,500) square feet in size in all areas subject to Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to the Chesapeake Bay Preservation Act, Article 2.5 (§ 62.1-44.15:67 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia;

(10) Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;

(11) Shoreline erosion control projects on tidal waters when all of the land-disturbing activities are within the regulatory authority of and approved by the Marine Resources Commission or the United States Army Corps of Engineers; however, any associated land that is disturbed outside of this exempted area shall remain subject to this chapter;

(12) Emergency work to protect life, limb, or property, and emergency repairs; however, if the land-disturbing activity would have required an approved erosion and sediment control plan if the activity were not an emergency, then the land area disturbed shall be shaped and stabilized in accordance with the requirements of the director.

Land disturbance permit: Document issued by the county to permit a legal land-disturbing activity. Its issuance signifies that a plan-narrative statement has been approved, adequate bonding is in effect, a program administration fee has been paid, and proper implementation or maintenance of erosion and sediment control provisions have occurred where applicable.

Owner: The owner or owners of the freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee or other person, firm or corporation in control of a property.

Permittee: The person to whom the local permit authorizing land-disturbing activities is issued or the person who certifies that the approved erosion and sediment control plan will be followed.

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Person: Any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town, or other political subdivision of the commonwealth, governmental body, including a federal or state entity as applicable, any interstate body, or any other legal entity.

Plan-approving authority: The director of public works.

Post-development: The conditions that may be reasonably expected or anticipated to exist after completion of the land development activity on a specific site or tract of land.

Pre-development: The conditions existing at the time the erosion and sediment control plan is submitted to the director. Where phased development or plan approval occurs (preliminary grading, roads and utilities, etc.), the existing conditions at the time the erosion and sediment control plan for the initial phase is submitted for approval shall establish predevelopment conditions.

Program administrator: The director of public works, or designee, who is responsible for administering and enforcing the Hanover County Erosion and Sediment Control Program.

Responsible land disturber: An individual holding a certificate of competence issued by the Virginia State Water Control Board, who shall be in charge of and responsible for carrying out a land-disturbing activity.

Stabilized: Land that has been treated to withstand normal exposure to natural forces without incurring erosion damage.

State waters: All waters on the surface and under the ground wholly or partially within or bordering the commonwealth or within its jurisdiction.

Subdivision: The division of a parcel of land into three (3) or more lots or parcels of land any of which is less than ten (10) acres, for the purpose of transfer of ownership or building development, including any parcel previously separated by the owner or prior owner of such land for such purpose.

Transporting: Any moving of earth materials from one place to another, other than such movement incidental to grading, when such movement results in destroying the vegetative ground cover, either by tracking or the buildup of earth materials to the extent that erosion and sedimentation will result from the soil or earth materials over which such transporting occurs.

Sec. 10-3. - Erosion and sediment control plans, permits, when required.

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(a) Except as provided in this section, no person may engage in any land-disturbing activity, nor shall the owner of the land permit any land-disturbing activity thereon, until:

- (1) An erosion and sediment control plan ("plan") for such land-disturbing activity has been approved by the director;
- (2) Bond or other security is given as provided in this article; and
- (3) A land disturbance permit has been issued by the director, certifying plan approval.

No land disturbance permit shall be issued unless the applicant has submitted evidence satisfactory to the director that the applicant or owner has complied with the requirements of this article and all other applicable local, state and federal requirements.

(b) If the land-disturbing activity is for the construction of a single-family residence, the director may accept an agreement in lieu of a plan, and no permit shall be required. The person responsible for carrying out the agreement shall provide the name of an individual holding a certificate of competence prior to engaging in land-disturbing activities. Failure to provide the name of an individual holding a certificate of competence may result in termination of the agreement by the director, and the director may require a plan and pursue other enforcement action. The agreement, in a form prescribed by the director, shall include a requirement to comply with the conservation standards of this article and any reasonable requirements determined to be necessary by the director to provide adequate control of erosion and sedimentation resulting from the land-disturbing activity. The director or designee may, however, require a plan for such individual lots if the director determines that severe topography, erodible soils, resource protection areas or other environmentally sensitive features are present on the lot.

(c) If any area of land is determined by the director to be an erosion impact area, a certified letter, return receipt requested, shall be sent to the owner of the land advising him that he must submit a plan for such area or agreement in lieu of a plan, if applicable, for approval by the director, and security as provided in this article within thirty (30) days of receipt of the letter. The plan contents, review and approval, of any land-disturbing activity shall conform to the requirements of this article.

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(d) The requirements of this section shall not apply to state agencies, nor to electric, natural gas and telephone utility companies, interstate and intrastate natural gas pipeline companies and railroad companies.

Sec. 10-4. - Permit application and plan submission.

(a) Except as provided in section 10-3(b), any person proposing to undertake any land-disturbing activity shall submit to the director a properly executed application for land disturbance permit with the plan attached. The plan must indicate the type, magnitude and location of the activity, anticipated conservation problems and proposed methods of insuring compliance with this article. Final plans should be drawn at a scale of not less than 1:50 on a topographical map with a contour interval of not greater than two (2) feet. Where land-disturbing activities involve lands under the jurisdiction of more than one local control program, the plan may, at the option of the applicant, be submitted to the state soil and water conservation board for review and approval rather than to each jurisdiction concerned.

When land disturbing activity will be required of a contractor performing construction work pursuant to a construction contract, the preparation, submission, and approval of an erosion and sediment control plan shall be the responsibility of the owner.

(b) The person responsible for carrying out the plan shall certify that he or she will properly perform the erosion and sediment control measures included in the plan and will comply with the provisions of erosion and sediment control law. In addition, as a prerequisite to engaging in the land-disturbing activities depicted on the approved plan, the person responsible for carrying out the plan shall provide the name of a responsible land-disturber.

(c) All plans and applications, as well as the land-disturbing activities and the performance of erosion and sediment control measures shall, at a minimum, meet the requirements of the erosion and sediment control law, the Virginia Erosion and Sediment Control Handbook, the Hanover County Drainage Design Handbook, and all applicable federal, state and local statutes, regulations and ordinances.

(d) In order to prevent further erosion, the Director may require approval of a plan for any land identified as an erosion impact area.

Sec. 10-5. - Plan contents.

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(a) The erosion and sediment control plan shall detail those methods and techniques to be used in controlling erosion and sedimentation. At a minimum, the plan shall comply with the standards prescribed by the Virginia Erosion and Sediment Control Regulations, The Virginia Erosion and Sediment Control Handbook, and The Hanover County Drainage Design Handbook, each as amended and in force at the time the plan is submitted.

(b) The erosion and sediment control plan shall include:

(1) A narrative report with plan details as may be necessary to describe the project and give the purposes, schedule of phasing of major construction activities and a schedule of application of control methods;

(2) A map or maps depicting the topography of the area, the existing trees, the limits for clearing and grading, other proposed alterations of the area; and

(3) A description of all control measures and facilities.

Sec. 10-6. - Review and inspection fee; validity of permits.

(a) The board of supervisors may establish plan review and inspection fees by ordinance. The applicant shall pay such fees at the time of submittal of a plan, at the time of building permit application, at the time of permit renewal, or as otherwise specified by the board of supervisors. A copy of the adopted fee schedule shall be maintained in the office of the director.

(b) Permits shall be valid only for the time periods prescribed in this article and only upon compliance with all requirements including payment of applicable fees. Land disturbing activity conducted without a valid permit or following expiration of a permit is prohibited and shall be subject to penalties and enforcement actions prescribed in this article.

Sec. 10-7. - Approval or disapproval of plans; revocation.

(a) The director shall review erosion and sediment control plans and agreements in lieu of plan and grant written approval within forty-five (45) days of the receipt of the plan or agreement if it determines that the plan or agreement meets state and local requirements.

(b) When a plan or agreement is determined to be inadequate, written notice of disapproval stating the specific reasons for disapproval shall be communicated to the applicant within forty-five (45) days of receipt of the plan or agreement. The notice shall specify the modifications, terms, and conditions required for approval of the plan or agreement. If no action is taken by

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the director within the time specified in Section 10-7(a), the plan or agreement shall be deemed approved and the person authorized to proceed with the proposed activity.

(c) Failure to provide the name of an individual holding a certificate of competence prior to engaging in land-disturbing activity may result in revocation of the approval of the plan and the person responsible for carrying out the plan shall be subject to the penalties provided in this chapter.

(d) Variances: Upon request, the director may approve a variance waiving or modifying standards or approving alternative standards, as long as the alternative standards achieve an equal or higher level of water quality protection, in the judgment of director, as existing standards. Variance requests must be in writing and must explain the reason(s) for the request. Variances approved by the director shall be documented in the erosion and sediment control plan for the property. A variance may be requested by either an applicant or a person responsible for implementing the approved plan. An applicant may request a variance at the time of plan submission. The person responsible for implementing the approved plan may request a variance during construction. The director shall respond in writing to each variance request within 10 days by either approving or denying the request or requesting additional information. If denied, the applicant may resubmit a variance request with additional documentation. If a variance request or resubmitted variance request is denied by the director, the work must comply with all applicable standards.

Sec. 10-8. - Permits by other officials.

Officials, departments, agencies or authorities authorized under any other law to issue grading, building, or other permits (with the exception of permits required for plan approval) for activities involving land-disturbing activities may not issue any such permit until a land disturbance permit has been issued and the applicant certifies that the plan or agreement will be implemented.

Sec. 10-9. - Bond or other security.

All applicants for permits shall provide to the county a performance bond, cash escrow, or an irrevocable letter of credit acceptable to the county attorney, to ensure that measures could be taken by the county at the applicant's expense should the applicant fail within the time specified to initiate or maintain appropriate conservation measures required as a result of his

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land-disturbing activity. Should it be necessary for the county to take such conservation action, the county may collect from the applicant any costs in excess of the amount of the surety held. Within sixty (60) days of the completion of the land-disturbing activity and adequate stabilization of the land, as determined by the director, such bond, cash escrow or letter of credit, or the unexpended or unobligated portion thereof shall be either refunded to the applicant or terminated, based on the percentage of stabilization accomplished in the project or project section.

No bond shall be required where an agreement in lieu of plan is permitted by this article or where the estimated value of the control measure does not exceed one hundred dollars (\$100.00).

Sec. 10-10. - Amendment of approved plan or agreement.

Any plan or agreement which has been previously approved may be changed by the director where:

- (1) Inspection has revealed that the plan or agreement is inadequate to satisfy applicable regulations; or
- (2) The person responsible for carrying out the approved plan or agreement finds that because of changed circumstances, or for other reasons the approved plan or agreement cannot be effectively carried out, and proposed amendments to the plan or agreement, consistent with the requirements of erosion and sediment control law, are agreed to by the director and the person responsible for carrying out the plan.

Sec. 10-11. - Notice required prior to beginning land-disturbing activity.

The permittee shall, in writing, notify the director when the land-disturbing activity will begin, how long the temporary erosion control measures will be in place, when the permanent erosion control measures will be installed, and when the land-disturbing activity will be terminated and ground surface stabilized by planting of vegetation, or other measures. If circumstances cause the commencement of the land-disturbing activity to take place more than five (5) days before or after the date indicated, the director shall be so notified in writing at least five (5) days in advance of the date when such work will begin.

Sec. 10-12. - Time limit for implementation; validity of permits.

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- (a) The permittee shall have six (6) months after plan or agreement approval to initiate work under the approved plan. Failure to do so shall make the approval null and void. The director may, upon written request from the permittee, grant an extension of this time limit.
- (b) Permits and agreements approved under this article shall be subject to fees and duration periods established by the Board.

Sec. 10-13. - Inspection and enforcement; notice to comply.

(a) The director shall be responsible for enforcement of this article. The director shall ensure that periodic inspections of the land-disturbing activity occur and the director may require monitoring and reports from the person responsible for carrying out the plan or agreement, to ensure compliance with the plan or agreement and to determine whether measures required in the plan or agreement are effective in controlling erosion and sediment. The owner, permittee or person responsible for carrying out the plan or agreement shall be given notice of the inspection.

If the director determines that there is a failure to comply with the plan or agreement, then the director shall serve a notice to comply upon the owner, permittee or person responsible for carrying out the plan or agreement by either:

- (1) Registered or certified mail to the address specified by the owner or permittee in his applications; or
- (2) Delivery at the site of the land-disturbing activity to the agent or owner or permittee supervising such activities.

A copy of each notice to comply shall also be sent to the chief building inspector when no land disturbance permit is issued, e.g., where an agreement in lieu of a plan is submitted for single-family residences. The notice shall specify the measures that must be taken to comply with the plan or agreement and shall specify the time within which such measures shall be completed. Upon failure to comply within the time specified, the permit may be revoked and the permittee or person responsible for carrying out the plan shall be deemed to be in violation of this article, and shall be subject to the penalties provided by section 10-15.

(b) If the measures required by the plan or agreement are determined by the director not to be effective or are not completely constructed or, if constructed, fail through overload or inadequate maintenance, then the county may, in the event the owner or permittee does not,

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install ground cover or other ground stabilizing devices or material to the extent necessary to achieve erosion and sediment control equal to that which would have been furnished by the permanent cover shown on the approved plans or agreement, or as directed by the director. Such action shall be taken only upon failure to comply with a notice to comply in the time specified or issuance of a stop work order in accordance with this section and section 10-14 respectively. The costs of any such measures taken by the county shall be borne by the owner or permittee and shall be a charge against the bond or other security of the owner or permittee. The remedies in this paragraph shall not preclude any other legal remedies.

Sec. 10-14. - Adherence to approved plans and specification; stop work order.

(a) Upon receipt of a sworn complaint of a violation of this article from the director, the county administrator or his designee may, in conjunction with or subsequent to a notice to comply described in section 10-13, issue a stop work order requiring that all or part of the land-disturbing activities permitted on the site be stopped until the specified corrective measures have been taken or, if land-disturbing activities have commenced without an approved plan or agreement in lieu of plan as provided in section 10-3, requiring that all land-disturbing activities be stopped until an approved plan or any required permits are obtained. Where the alleged noncompliance is causing harmful erosion of lands or depositing of sediment in waters within the watersheds of the commonwealth, or where land-disturbing activities have commenced without an approved plan, agreement in lieu of plan or any required permits or approval, such an order may be issued without regard to whether the owner, permittee or person responsible for carrying out the plan or agreement has been issued a notice to comply. Otherwise, a stop work order may be issued only after the owner, permittee or person responsible for carrying out the plan or agreement has failed to comply with a notice to comply. The stop work order shall be served in the same manner as a notice to comply.

(b) The order shall remain in effect for a period of seven (7) days from the date of service, pending application by the director, owner or permittee for appropriate relief to the circuit court of the jurisdiction wherein the violation was alleged to have occurred. If the alleged violator has not obtained an approved plan or agreement in lieu of plan or any required permits within seven (7) days from the date of service of the order, the county administrator or his designee may issue an order to the owner requiring that all construction and other work on the site, other than corrective measures, be stopped until an approved plan or agreement in lieu of plan and any

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required permits have been obtained. Such an order shall be served upon the owner by registered or certified mail to the address specified in the permit application or the land records of the locality in which the site is located. The owner may appeal the issuance of an order to the Hanover County Circuit Court. Any person violating or failing, neglecting or refusing to obey an order issued by the county administrator or his designee may be compelled in a proceeding instituted in the Hanover County Circuit Court to obey same and to comply therewith by injunction, mandamus or other appropriate remedy. Upon completion of the corrective action or obtaining an approved plan or any required permits or approvals, the stop work order shall immediately be lifted. Nothing in this section shall prevent the county administrator or his designee or the director from taking additional enforcement action permitted by this article and by state law.

Sec. 10-15. - Penalties, injunctions and other legal actions.

- (a) A civil penalty shall apply to any person who violates:
- (1) Any condition of a land disturbance permit; or
 - (2) Any provision of this article, any provision of erosion and sediment control law, any provision of the Hanover County Erosion and Sediment Control Program, or any stop work order issued pursuant to this article.

The civil penalty for any one violation shall be not less than one hundred dollars (\$100.00) per day nor more than one thousand dollars (\$1,000.00) per day.

- (b) Each day during which the violation is found to have existed shall constitute a separate offense.
- (c) In no event shall a series of specified violations arising from the same operative set of facts result in civil penalties which exceed a total of ten thousand dollars (\$10,000.00).
- (d) The director may issue a summons for collection of the civil penalty. The director may also bring a civil action for such violations or failure, and take all other enforcement actions authorized by the erosion and sediment control law.
- (e) In addition to any other available remedies, the county may apply to the circuit court to enjoin a violation or threatened violation of this article without the necessity of showing that an adequate remedy at law does not exist.

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- (f) In addition to any civil penalties provided under this article, any person who violates any provision of this section may be liable to the county in a civil action for damages.
- (g) Without limiting the remedies which may be obtained in this section, any person violating or failing, neglecting or refusing to obey any injunction or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to exceed two thousand dollars (\$2,000.00) for each violation. The county may bring a civil action for such violation or failure in the general district or circuit court of the county, as appropriate.
- (h) Any person who has violated or failed, neglected or refused to obey any condition of a permit or any provision of this article or any provision of erosion and sediment control law may enter into a consent order with the director providing for the payment of civil charges for violation in specific sums, not to exceed two thousand dollars (\$2,000). Such civil charges shall be instead of any civil penalty which could be imposed.
- (i) Compliance with the provisions of this article shall be prima facie evidence in any legal or equitable proceeding for damages caused by erosion, siltation or sedimentation that all requirements of law have been met, and the complaining party must show negligence in order to recover any damages.

Sec. 10-16. - Reserved.

Sec. 10-17. - Appeals.

- (a) Final decisions of the director shall be subject to review by the county administrator, who shall act on behalf of the board of supervisors, upon the filing of an appeal, by an aggrieved person within fourteen (14) calendar days of the date of the decision being appealed. The appeal shall be filed in a form and with information prescribed by the director. In reviewing the director's decision, the county administrator shall consider evidence and opinion presented by the aggrieved person and the director. After considering such evidence and opinion, the county administrator may affirm, reverse or modify the decision. Final decisions of the county administrator shall be provided in writing to the aggrieved person.
- (b) Final decisions of the county board of supervisors shall be subject to review by the Hanover County Circuit Court, provided an appeal is filed within thirty (30) days from the date of any written decision adversely affecting the rights, duties or privileges of the person engaging in or proposing to engage in land-disturbing activities.

Secs. 10-18—10-31. - Reserved.

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2. That this Ordinance shall be effective on July 1, 2014.

	Vote:
Sean M. Davis	Aye
Wayne T. Hazzard	Aye
Angela Kelly-Wiecek	Aye
W. Canova Peterson	Aye
Aubrey M. Stanley	Aye
G. E. Via, III	Aye
Elton J. Wade, Sr.	Aye

Motion Approved.

On motion of Mr. Peterson, seconded by Mr. Via, the members of the Board of Supervisors voted to approve Ordinance No. 13-10.

ORDINANCE 13-10

AN ORDINANCE AMENDING CHAPTER 10, ARTICLE II, OF THE HANOVER COUNTY CODE PURSUANT TO TITLE 62.1, CHAPTER 3.1, ARTICLE 2.5 (§ 62.1-44.15:67 ET SEQ.) OF THE CODE OF VIRGINIA TO CONFORM TO CHANGES IN STATE LAW AND NEW REGULATORY REQUIREMENTS

WHEREAS effective July 1, 2013, the State Water Control Law (Virginia Code § 62.1-44.2 et seq.) incorporated the Chesapeake Bay Preservation Act (Virginia Code § 62.1-44.15:67 et seq.), the Erosion and Sediment Control Law (Virginia Code § 62.1-44.15:51 et seq.), and the Virginia Stormwater Management Act (Virginia Code § 62.1-44.15:24 et seq.), and placed all of these under the jurisdiction of the State Water Control Board; and

WHEREAS the Virginia Stormwater Management Act (the “Stormwater Act”) and Virginia Stormwater Management Program Regulations (the “Stormwater Regulations”) require localities to adopt local ordinances that incorporate specific components of the Stormwater Act and Stormwater Regulations, including a stormwater management ordinance to become effective July 1, 2014; and

WHEREAS the Stormwater Act and Stormwater Regulations require a locality’s Chesapeake Bay ordinance to be integrated with its Virginia Stormwater Management Program;

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and

WHEREAS the Department of Public Works and County Attorney's Office have recommended changes to Chapter 10, Article II, in order to conform to these changes in statutory and regulatory requirements; and

WHEREAS staff has recommended other minor changes to correct and clarify the language of Chapter 10, Article II; and

WHEREAS the Board of Supervisors has decided to implement these recommendations;

NOW, THEREFORE, BE IT ORDAINED by the Board of Supervisors of Hanover County:

1. **That the Hanover County Code, Chapter 10, Article II, Chesapeake Bay Preservation, shall be amended to read in its entirety as follows:**

ARTICLE II. - CHESAPEAKE BAY PRESERVATION

DIVISION 1. - GENERAL PROVISIONS AND DEVELOPMENT CRITERIA

Sec. 10-32. - Purpose.

The purpose of this article 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. This article is adopted pursuant to Article 2.5 (§62.1-44.15:67 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia (the Chesapeake Bay Preservation Act) and associated regulations. The Chesapeake Bay Preservation Act 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. This article establishes the criteria used by Hanover County in granting, denying or modifying requests to use and develop land in Chesapeake Bay Preservation areas within Hanover County.

Sec. 10-33. - Definitions.

For the purposes of this article, the following words and phrases shall have the following meanings:

Act. The Chesapeake Bay Preservation Act found in Chapter 3.1 (§ 62.1-44.15:67 et seq.) of Title 62.1 of the Code of Virginia. .

Agricultural activities. Activities including crop production, pasture, and dairy and feedlot operations, horticulture, floriculture, or raising of poultry and/or livestock.

Applicant. Any individual, one (1) or more individuals, corporation, partnership, association, or any governmental agency or unit desiring to engage in land disturbance activities,

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develop, or redevelop any land.

Best management practices or BMPs. A practice, or combination of practices, determined by the director 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.

Buffer area. 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 or CBPA. Any land designated by the county in accordance with criteria established pursuant to Section 62.1-44.15:72 of the Code of Virginia. A Chesapeake Bay Preservation Area shall consist of a Resource Protection Area (RPA) and a Resource Management Area (RMA).

Construction footprint. The area of all impervious surface, including but not limited to, buildings, roads and drives, parking areas, and sidewalks, the area necessary for construction of such improvements, and septic tank and primary drain field locations.

Development. The construction or substantial alteration of residential, commercial, industrial, institutional, recreation, transportation or utility facilities or structures, or initiation of any change in land use requiring a building permit, site plan or subdivision approval.

Director. The Hanover County Director of Public Works, who shall administer, interpret and enforce the provisions of this article.

Dripline. The imaginary perpendicular line extending downward from the outermost tips of the tree branches to the ground.

Floodplain. Any land that would be inundated by floodwater as a result of a storm event of a one hundred-year return interval.

Highly erodible soils. Soils (excluding vegetation) with an erodibility index (EI) from sheet and rill erosion equal to or greater than eight (8). The erodibility index for any soil 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 soils. 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 (6) inches of water movement per hour in any part of the soil profile to a depth of seventy-two (72) inches (permeability groups "rapid" and "very rapid") as found in the latest

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edition of the "National Soil Survey Handbook" of November, 1996 in the "Field Office Technical Guide" of the U.S. Department of Agriculture, Natural Resources Soil Conservation Service.

Impervious cover. 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.

Land disturbance or land disturbing activity. Any man-made change to the land surface that may result in soil erosion from water or wind and the movement of sediments into state waters or onto lands in the Commonwealth, including, but not limited to, clearing, grading, excavating, transporting and filling of land, except that the term shall not include:

- (1) Minor land-disturbing activities, such as home gardens and individual home landscaping, repairs and maintenance work;
- (2) Individual service connections;
- (3) Installation, maintenance or repair of any underground public utility lines when such activity occurs on an existing hard-surfaced road, street or sidewalk, provided such land-disturbing activity is confined to the area of the road, street or sidewalk which is hard-surfaced;
- (4) Septic tank lines or drainage fields disturbing less than two thousand five hundred (2,500) square feet unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;
- (5) Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted pursuant to Title 45.1 of the Code of Virginia;
- (6) Tilling, planting, or harvesting of agricultural, horticultural, or forest crops, livestock feedlot operations, or as additionally set forth by the Virginia State Water Control Board in regulation, including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq.) of Title 10.1 of the Code of Virginia or is converted to bona fide agricultural or improved pasture use as described in subsection B of Section 10.1-1163 of the Code of Virginia.
- (7) Agricultural engineering operations, including but not limited to the construction of

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terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the Dam Safety Act, Article 2 (§ 10.1-604 et seq.) of Chapter 6 of Title 10.1 of the Code of Virginia, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage and land irrigation;

(8) Repair or rebuilding of the tracks, right-of-way, bridges, communication facilities and other related structures and facilities of a railroad company;

(9) Disturbed land areas of less than two thousand five hundred (2,500) square feet in size in all areas subject to Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to the Chesapeake Bay Preservation Act, Article 2.5 (§ 62.1-44.15:67 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia;

(10) Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;

(11) Shoreline erosion control projects on tidal waters when all of the land-disturbing activities are within the regulatory authority of and approved by the Marine Resources Commission or the United States Army Corps of Engineers; however, any associated land that is disturbed outside of this exempted area shall remain subject to this chapter;

(12) Emergency work to protect life, limb, or property, and emergency repairs; however, if the land-disturbing activity would have required an approved erosion and sediment control plan if the activity were not an emergency, then the land area disturbed shall be shaped and stabilized in accordance with the requirements of the director.

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

Nontidal wetlands. 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 Section 404 of the Clean Water Act.

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

Public road. 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

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of transportation, including regulations promulgated pursuant to (i) the Virginia Erosion and Sediment Control Law and (ii) the Virginia Stormwater Management Act. 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 secondary roads are constructed or maintained, or both, by the county.

Qualified professional. A person practicing within the appropriate area of competence and licensed to engage in the practice of architecture, engineering, land surveying, geology, soil science or landscape architecture pursuant to Chapter 4 of Title 54.1 of the Code of Virginia.

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

Regulations. Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to the Chesapeake Bay Preservation Act.

Resource management area or RMA. 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 or RPA. 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. 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 the Virginia Code and are located on property defined as real estate devoted to forest use under the land use taxation provisions of the Virginia Code.

Substantial alteration. Expansion or modification of a building or development that would result in a disturbance of land exceeding an area of two thousand five hundred (2,500) square feet in the resource management area only.

Tidal shore. Land contiguous to a tidal body of water between the mean low water level and the mean high water level.

Tidal wetlands. Vegetated and nonvegetated wetlands as defined in Section 28.2-1300 of the Code of Virginia.

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Water-dependent facility. A development of land that cannot exist outside of a 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:

- (1) Ports;
- (2) The intake and outfall structures of power plants, water treatment plants, sewage treatment plants, and storm sewers;
- (3) Marinas and other boat docking structures;
- (4) Beaches and other public water-oriented recreation areas; and
- (5) Fisheries or other marine resources facilities.

Wetlands. Tidal and nontidal wetlands.

Sec. 10-34. - Applicability.

The requirements of this article shall apply to development and redevelopment involving land disturbance, the creation of a construction footprint or a change in an existing construction footprint. Agricultural activities and silvicultural activities are subject to the specific provisions applicable to those activities, set out below.

Sec. 10-35. - Chesapeake Bay Resource Protection Area (RPA) boundaries.

RPAs shall consist of:

- (1) Tidal wetlands;
- (2) Nontidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow;
- (3) Tidal shores;
- (4) A vegetated buffer area not less than one hundred (100) feet in width located adjacent to and landward of the components listed above, and along both sides of any water body with perennial flow. The full buffer area shall be designated as the landward component of the RPA notwithstanding the presence of permitted uses, encroachments, and permitted vegetation clearing in compliance with this article.

Sec. 10-36. - Chesapeake Bay Resource Management Area (RMA) boundaries.

(a) The RMA shall be provided contiguous to the entire inland boundary of the RPA and shall include the features listed below, when such features are directly contiguous to the RPA as indicated by mapping resources, or site-specific determinations:

- (1) Floodplains;
- (2) Highly erodible soils, including steep slopes;

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- (3) Highly permeable soils;
- (4) Nontidal wetlands not included in RPAs.

(b) If none of the features listed above are contiguous to the RPA, or if the features are less than a total of one hundred fifty (150) feet in width, the RMA shall consist of an area one hundred fifty (150) feet in width located contiguous to and landward of the RPA.

Sec. 10-37. - Chesapeake Bay Preservation Area maps to be maintained; site-specific delineation.

The director shall maintain maps generally locating identified CBPAs. Those maps are not conclusive evidence of inclusion or exclusion. Each applicant shall provide either the certification referred to below, or a reliable, site-specific evaluation and delineation prepared by a qualified professional and acceptable to the director, including all information requested by the director, with the application for approval of construction plans, land disturbance permit, building permit, site plan or subdivision plat, or with the water quality assessment. The evaluation shall include a determination as to whether water bodies on or adjacent to the development site have perennial flow and shall, at a minimum, determine the location of all CBPA features on the site.

Sec. 10-38. - General performance criteria for Chesapeake Bay Preservation Areas.

Any use, development or redevelopment of land within the Chesapeake Bay Preservation Area (CBPA) shall meet the following performance criteria:

- (1) No more land shall be disturbed than is necessary to provide for the proposed use or development.
 - a. The limits of land disturbance, development or redevelopment, including clearing or grading, shall be strictly defined by the construction footprint shown on the building permit, site plan, subdivision plat or water quality impact assessment. These limits and all CBPAs shall be clearly shown on all plans and physically marked on the development site prior to any clearing or grading on the site.
 - b. Ingress and egress to any site within the CBPA during construction shall be limited to one (1) access point, unless otherwise approved by the director.
- (2) Indigenous vegetation shall be preserved to the maximum extent practicable consistent with the use or development proposed.
 - a. Existing trees over six (6) inches in diameter measured outside the bark at a point four and one-half (4.5) feet above the ground shall be preserved outside the

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construction footprint. Diseased trees or trees weakened by age, storm, fire or other injury may be removed.

b. Clearing shall be allowed only to provide necessary access, construction of improvements, positive site drainage, water quality best management practices, and the installation of utilities, as approved by the director.

c. Prior to clearing or grading, suitable protective barriers, such as safety fencing, shall be erected five (5) feet outside of the dripline of any tree or stand of trees to be preserved. These 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 use or development proposed.

(4) Notwithstanding any other provisions of this article or exceptions or exemptions, any land disturbing activity within a CBPA exceeding two thousand five hundred (2,500) square feet, including construction of all single-family houses, septic tanks and drain fields, shall comply with the erosion and sediment control requirements of state law and with this chapter. Any such proposed development shall be the subject of a land disturbance permit, certification, building permit, site plan, subdivision plat or water quality impact assessment found by the director to be consistent with this article.

(5) On-site sewage treatment systems in a CBPA not requiring a Virginia Pollutant 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, certified by a sewage handler permitted by the state department of health, 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

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capacity to accommodate a reserve sewage 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 public sewer or an on-site sewage treatment system which operates under a permit issued by the state water control board.

Sec. 10-39. - Agricultural activities, silvicultural activities, and wetlands permits.

(a) Land upon which agricultural activities are being conducted, including but not limited to crop production, pasture, and dairy and feedlot operations, shall have a soil and water quality conservation assessment conducted that evaluates 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 being accomplished consistent with the Chesapeake Bay Preservation Act and associated regulations.

(1). 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 1999 in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resource Conservation Service or the June 2000 edition of the "Virginia Agricultural 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:

a. 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.

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b. 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.

c. 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.

(2) 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 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.

(3) The findings and recommendations of such assessments and any resulting soil and water quality conservation plans will be submitted to the Hanover-Caroline Soil and Water Conservation District Board.

(b) Silvicultural activities in Chesapeake Bay Preservation Areas are exempt from this article 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 for Water Quality in Virginia Technical Guide." The Virginia Department of Forestry will oversee and document installation of best management practices and will monitor in-stream impacts of forestry operations in Chesapeake Bay Preservation Areas.

(c) Applicants shall provide evidence of all wetlands permits required by law prior to the commencement of grading or other on-site activities.

Sec. 10-40. - Development criteria for resource protection areas (RPAs).

(a) *Restriction.* Land development within an RPA may be allowed only if the proposed development conforms with the general performance criteria set out above, with the provisions of this chapter and with all other applicable federal, state and local laws and regulations and is water-dependent, constitutes redevelopment, is a new use established pursuant to a permitted encroachment, or is a road or driveway crossing, or a flood control or stormwater management facility satisfying the conditions set forth below.

(1) A water quality impact assessment demonstrating compliance with applicable

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requirements shall be required for any proposed land disturbance within an RPA.

- (2) A new or expanded water-dependent facility may be allowed within an RPA only if:
 - a. The development of the facility does not conflict with the county comprehensive plan;
 - b. The development complies with the performance criteria of this article;
 - c. Any non-water-dependent component is located outside of RPAs; and
 - d. Access to the water-dependent facility will be provided with minimum disturbance necessary. Where practicable, a single point of access will be provided.
- (3) Redevelopment shall be permitted in the RPA only if there is no increase in the amount of impervious cover and no further encroachment within the RPA, and shall conform to all applicable federal, state and county erosion and sediment control and stormwater management laws and regulations.
- (4) Roads and driveways not exempt under the regulations and this article and which, therefore, must comply with the provisions of this article, may be constructed in or across RPAs if each of the following conditions is met:
 - a. The director finds that there are no reasonable alternatives to aligning the road or driveway in or across the RPA;
 - b. The proposed alignment, design and construction of the road or driveway are optimized, consistent with other applicable requirements, to minimize:
 1. Encroachment in the RPA; and
 2. Adverse effects on water quality;
 - c. The design and construction of the road or driveway conform to all applicable criteria of this article, including submission of a water quality impact assessment; and
 - d. The director reviews the plan for the road or driveway proposed in or across the RPA in coordination with construction plan, land disturbance, site plan, subdivision or building permit approvals, and finds that the plan is consistent with this article and the regulations.
- (5) Flood control and stormwater management facilities that drain or treat water from multiple development projects or from a significant portion of a watershed may be allowed in RPAs provided such facilities are allowed and constructed in accordance with the Stormwater Management Act (§62.1-44.15:24 et seq. of the Code of Virginia) and its associated regulations, and provided that:

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- a. The director has conclusively established that location of the facility within the RPA is the optimum location;
- b. The size of the facility is the minimum necessary to provide necessary flood control or stormwater treatment, or both;
- c. The facility is consistent with a comprehensive stormwater management plan developed and approved in accordance with the Virginia Stormwater Management Program (VSMP) Permit regulations;
- d. 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 state department of environmental quality, and the state marine resources commission;
- e. Approval has been received from the director prior to construction; and
- f. Maintenance agreements in a form and with content acceptable to the director have been executed, to allow the county to perform routine maintenance on such facilities to assure that they continue to function as designed.

It is not the intent of this subdivision to allow a best management practice that collects and treats runoff from only an individual lot or some portion of the lot to be located within an RPA.

(b) *Buffer area requirements.*

(1) The one hundred-foot wide buffer area shall be the landward component of the RPA. Notwithstanding permitted uses, encroachments, and vegetation clearing, as set forth in this article, the one hundred-foot wide buffer area shall not be reduced in width. To minimize the adverse effects of human activities on the other components of the RPA, state waters, and aquatic life, a one hundred-foot wide buffer area of vegetation that is effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution shall be retained if present and established where it does not exist.

- a. The one hundred-foot wide buffer area shall be deemed to achieve a seventy-five (75) percent reduction of sediments and a forty (40) percent reduction of nutrients.
- b. Where land uses such as agriculture or silviculture within the area of the buffer cease and the lands are proposed to be converted to other uses, the full one hundred-foot wide buffer shall be reestablished. In reestablishing the buffer, management measures shall be undertaken to provide woody vegetation that assures the required

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buffer functions.

- (2) Permitted encroachments into the buffer area:
 - a. 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, encroachments into the buffer area may be allowed by the director in accordance with the following criteria:
 1. Encroachments into the buffer area shall be the minimum 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;
 3. In no case shall the encroachment extend beyond the landward fifty (50) feet of the buffer.
 - 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 December 31, 2003, encroachments into the buffer area may be allowed by the director in accordance with the following criteria:
 1. The lot or parcel was created as a result of a legal process conducted in conformity with the subdivision ordinance;
 2. Conditions or mitigation measures imposed through a previously approved exception shall be met;
 3. If the use of a best management practice (BMP) was previously required, the BMP shall be evaluated to determine if it continues to function effectively and, if necessary, the BMP shall be reestablished or repaired and maintained as required; and
 4. The three (3) criteria set out in subsection (2) (a) above for other permitted encroachments shall also be met.
- (3) Permitted modifications of the buffer area:
 - a. In order to maintain the functional value of the buffer area, indigenous vegetation may be removed if approved by the director pursuant to an application and a plan submitted to the director, including all information required by the director, only to

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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 may be allowed by the director pursuant to sound horticultural practices approved by the director.
 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.
- b. For agricultural activities, the agricultural buffer area shall be managed in a manner approved by the staff of the soil and water conservation district board to prevent concentrated flows of surface water from breaching the buffer area and noxious weeds (such as Johnson grass, kudzu, and multiflora rose) from invading the buffer area. Agricultural activities may encroach into the buffer area as follows:
1. Agricultural activities may encroach into the landward fifty (50) feet of the one hundred-foot wide buffer area when at least one (1) 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 one hundred-foot wide buffer area. If nutrient management is identified as the predominant water quality issue, a nutrient management plan,

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including soil tests, must be developed consistent with the Virginia Nutrient Management Training and Certification Regulations.

2. Agricultural activities may encroach within the landward seventy-five (75) feet of the one hundred-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 Virginia Nutrient Management Training and Certification Regulations. 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 one hundred-foot wide buffer area.

3. The buffer area is not required to be designated adjacent to agricultural drainage ditches if at least one (1) 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.

DIVISION 2. - REVIEW PROCEDURES AND COMPLIANCE

Sec. 10-41. - Certification by director.

(a) Any applicant proposing to construct a single-family dwelling or accessory building or structure may request that the director make a determination that the construction as represented in a plan submitted with the building permit application is in conformance with the requirements of this chapter, if the proposed construction meets the following criteria:

- (1) The development of the lot as represented in the building permit does not require subdivision approval; and
- (2) The area of any land disturbance is located at least one hundred (100) feet from any water body with perennial flow, drainage feature or area of concentrated surface water flow, wetlands, and floodplain; and
- (3) All land disturbances within an RMA in excess of two thousand five hundred (2,500)

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square feet meets all requirements of this chapter relating to erosion and sediment control and any other requirements relating to development within an RMA.

(b) Any applicant proposing development resulting in land disturbance of less than two thousand five hundred (2,500) square feet may request a site-specific determination by the director, of compliance with this article.

(c) Application for a determination by the director shall be made in a form and with information required by the director. If the director is unable to determine the boundaries of CBPAs from consulting available maps and resources, or if the director determines that the proposed construction does not conform to the criteria set out in this section, the director shall require that the applicant provide a certification, a water quality impact assessment, or otherwise comply with the requirements of this article.

Sec. 10-42. - Certification submitted by applicant.

Any applicant desiring to develop or redevelop any land within the county so that the proposed development will not result in land disturbance of any nature within an RPA or exceeding two thousand five hundred (2,500) square feet within any RMA shall submit a statement of a qualified professional so certifying. The certification shall also state that no drainage structure will be placed within a CBPA and that there will be no concentrated flows into a CBPA from a disturbed area of more than two thousand five hundred (2,500) square feet to be located anywhere on the property. The statement shall be made in a form acceptable to the director and shall be submitted at the time of application for land disturbance permit, building permit, site plan, preliminary or final subdivision approval. If multiple applications for approval are required for a development, the certification shall be submitted with the first application filed. The director shall review the certification and approve or disapprove the certification. If any applicant does not submit such a certification or if the certification is not approved by the director, the applicant shall submit a water quality impact assessment (WQIA).

Sec. 10-43. - Water quality impact assessment (WQIA).

(a) A water quality impact assessment (WQIA) prepared by a qualified professional shall be submitted to, and approved by, the director for:

- (1) Any proposed development or redevelopment within an RPA;
- (2) Any proposed development or redevelopment which will result in land disturbance within an RMA in excess of two thousand five hundred (2,500) square feet;
- (3) Any development within a CBPA not approved by the director pursuant to a

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certification; and

(4) The placement of a drainage structure within a CBPA or discharge of concentrated flows into a CBPA resulting from land disturbance in excess of two thousand five hundred (2,500) square feet anywhere on the property included in the construction plans, site plan, subdivision plat, building permit application or land disturbance permit application.

Such water quality impact assessment shall identify the impact of the proposed development or buffer area modification or encroachment on water quality and on lands in RPAs and demonstrate compliance with the requirements of this article.

(b) If the director determines that potential impacts created by the proposal are not mitigated as required by this article, the director may require additional mitigation measures as a condition of approval. If the proposed development or redevelopment does not comply with the requirements of this article, in the opinion of the director, the director shall disapprove the proposal as inconsistent with the purpose and intent of this article. Any person aggrieved by a decision of the director concerning a water quality impact assessment may appeal such decision in accordance with the procedures provided in this article.

(c) There shall be two (2) levels of water quality impact assessments: A minor assessment and a major assessment. The information required shall in each case be supplemented by the applicant if the director finds that additional information is necessary for evaluation of the impact of the development on water quality. All WQIAs shall include a site-specific evaluation performed in accordance with standards approved by the director, identifying the location of CPBA features. Designations shall be based on that site-specific information.

(1) *Minor water quality impact assessment.*

a. A minor water quality impact assessment is required for proposed development or redevelopment under the following circumstances:

1. Where land disturbance within an RMA will exceed two thousand five hundred (2,500) square feet but not fifty thousand (50,000) square feet in area. In this case, the WQIA must demonstrate that the rate and pollutant loading of post development runoff will meet general performance criteria for CBPAs set out above.

2. Where the placement of a drainage structure within a CBPA is proposed or where concentrated flows into a CBPA from a disturbed area greater than two thousand five hundred (2,500) square feet anywhere on the property will result.

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In this case, the WQIA must demonstrate that the proposed development meets the general performance criteria for CBPAs set out above.

b. A minor assessment shall include a site drawing to scale which shows the following:

1. Delineation of all components of the CBPA, based on a site-specific evaluation;
2. The construction footprint;
3. Wetlands delineations, which shall be performed in accordance with the procedures specified in the current regulations of the federal government pursuant to section 404 of the Clean Water Act;
4. Location and nature of the proposed encroachment into the CBPA 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 drain field sites;
5. Type and location of proposed best management practices to mitigate the effect of the proposed development or redevelopment within the CBPA.

(2) *Major water quality impact assessment.* A major water quality impact assessment shall be required for any proposed development or redevelopment within a CBPA which (i) exceeds fifty thousand (50,000) square feet of land disturbance; or (ii) disturbs any portion of the RPA.

The following elements shall be included in the major water quality assessment:

- a. All of the information required in a minor water quality impact assessment;
- b. A hydrogeological element that:
 1. Describes the existing topography, soils, hydrology of the site and adjacent lands.
 2. Describes the impacts of the proposed development on topography, soils, hydrology on the site and adjacent lands.
 3. Indicates the following:
 - i. Any disturbance or destruction of wetlands and justification for such action;
 - ii. Any disruptions or reductions in the supply of water to wetlands, streams, lakes, rivers or other water bodies;

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- iii. Any disruptions to existing hydrology including wetland and stream circulation patterns;
 - iv. Source location and description of proposed fill material;
 - v. Location of dredge material and location of dumping area for such material;
 - vi. Estimation of pre- and post-development pollutant loads in runoff;
 - vii. Calculation of impervious surface on site and type(s) of surfacing materials used;
 - viii. Limits of disturbance;
 - ix. Anticipated duration and phasing schedule of construction project; and
 - x. Listing of all requisite permits from all applicable agencies necessary to develop project.
4. Describes the proposed mitigation measures for the potential hydrogeological impacts. Potential mitigation measures include:
- i. Proposed erosion and sediment control plan;
 - ii. Proposed stormwater management consistent with Article V. STORMWATER MANAGEMENT of Chapter 10 of the Hanover County Code;
 - iii. Creation of wetlands to replace those lost;
 - iv. Minimizing cut and fill.
- c. A landscape element that:
1. Identifies and delineates the location of all existing and proposed significant plant material, including all trees in CBPAs six (6) inches or greater in diameter measured outside the bark at a point four and one-half (4.5) feet above the ground. Where there are groups of trees, stands may be outlined.
 2. Describes the impacts the development or use will have on the existing vegetation. Information shall include:
 - i. General limits of clearing, based on all anticipated improvements, including buildings, drives, and utilities;
 - ii. Clear delineation of all trees or stands of trees which will be removed, including a description of the horticultural practice being followed in any removal;

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building permit, or with the application for site plan, or preliminary or final subdivision approval. If multiple applications for approval are required for a development, the WQIA for the property shall be submitted with the first application filed.

d. As part of any WQIA submittal, the director may require review by the Department of Environmental Quality (DEQ). Upon receipt of a WQIA, the director will determine if such review is warranted and may request DEQ to review the assessment and respond with written comments. Any comments by DEQ will be incorporated into the final review by the director provided that such comments are provided by DEQ within the period required by statute or ordinance for application review and approval by the county.

(4) *Evaluation procedure.*

a. Upon the completed review of a WQIA, the director will determine if the proposed development is consistent with the regulations and with the purpose and intent of this article and make a finding based upon the following criteria:

1. Within any RPA, the proposed development is water-dependent, redevelopment or otherwise conforms to the requirements of this article;
2. The disturbance of wetlands will be minimized;
3. The development will not result in significant disruption of the hydrology of the site;
4. The development will not result in significant degradation to aquatic vegetation or life;
5. The development will not result in unnecessary destruction of plant materials on site;
6. Proposed erosion and sediment control concepts are adequate to achieve the required reductions in runoff and prevent off-site sedimentation;
7. Proposed stormwater management is consistent with Article V. STORMWATER MANAGEMENT of Chapter 10 of the Hanover County Code;
8. Proposed revegetation of disturbed areas will provide optimum erosion and sediment control benefits;
9. The design and location of any proposed drain field will be in accordance with the requirements of this chapter;

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10. The development, as proposed, is consistent with the purpose and intent of this article;

11. 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.

b. The director shall require additional mitigation where potential impacts have not been adequately addressed. Evaluation of mitigation measures will be made by the director based on the criteria listed above.

c. The director 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 director based on the criteria listed above.

Sec. 10-44. - Development to be in accordance with approved certification or water quality impact assessment; prerequisite to issuance of building permit and certificate of occupancy.

(a) It shall be unlawful for any person to violate any of the requirements of this article, or to develop, redevelop, change or improve any land or construct, erect or structurally alter any building or structure for which a certification or WQIA is required or to fail to maintain the land or improvements except in accordance with an approved certification or WQIA.

(b) No construction plans, land disturbance permit, building permit, site plan, preliminary or final subdivision plat, or certificate of occupancy shall be approved or issued for any development or redevelopment subject to the provisions of this article until the applicant has submitted required documents and otherwise has complied with this article. The installation and completion of all features represented in the WQIA shall be required for issuance of a certificate of occupancy except that, in lieu of installation of landscaping by the applicant prior to occupancy, the director may accept a performance agreement requiring installation within one (1) year with adequate security. All other required measures, including stormwater management facilities, shall be completed prior to issuance of any occupancy permit, or, in the case of subdivision, shall be secured and completed in accordance with requirements of the subdivision ordinance.

(c) The director shall require evidence of all wetlands and other permits required by law prior to authorizing grading or other on-site activities to begin.

(d) The director shall require that applicants include notations as to the requirements for

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maintenance of the RPA buffer area, restrictions on development in the RPA, and requirements for provision of reserve sewage disposal sites, on all construction plans, land disturbance permits, building permits, site plans, and subdivision plats, when applicable. The director shall also require that those plans, permits and plats include delineation of buildable areas allowed on each lot, based on the requirements of this article, zoning requirements and any other relevant easements or limitations regarding lot coverage.

Sec. 10-45. - Exemptions.

(a) 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 Virginia Erosion and Sediment Control Law and the Virginia Stormwater Management Act, (ii) an erosion and sediment control plan and a stormwater management plan approved by the state department of conservation and Recreation, or (iii) local water quality protection criteria at least as stringent as the above state requirements will be deemed to constitute compliance with this article. The exemption of public roads is further conditioned on the optimization of the road alignment and design, consistent with other applicable requirements, to prevent or otherwise minimize (i) encroachment in the resource protection area and (ii) adverse effects on water quality. Appurtenant structures include but are not limited to bridges, culverts, guard rails, drainage facilities, lighting, traffic control devices, fences and berms.

(b) Construction, installation, and maintenance of water, sewer, natural gas, fiber-optic and underground telecommunications and cable television lines owned, permitted or both, by the county, shall be exempt from the requirements of this article provided that the director determines, after review of construction plans or other information required by the director, that:

- (1) To the degree possible, the location of such utilities and facilities is outside the RPA;
- (2) No more land will be disturbed than is necessary to provide for the proposed utility installation;
- (3) All such construction, installation, and maintenance of such utilities and facilities are in compliance with all other applicable federal, state and local requirements and permits and designed and conducted in a manner that protects water quality; and,
- (4) Any land disturbance within a CBPA exceeding an area of two thousand five hundred (2,500) square feet complies with all erosion and sediment control requirements of this chapter.

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(c) Silvicultural activities are exempt from the requirements of this article provided that such activities adhere to water quality protection procedures prescribed by the department of forestry in its "Forestry Best Management Practices for Water Quality in Virginia."

(d) The following land disturbances in RPAs shall be exempted by the director from the requirements of this article; provided, that any land disturbance exceeding two thousand five hundred (2,500) square feet shall comply with the erosion and sediment control requirements of this chapter:

(1) Water wells and passive recreation facilities such as boardwalks, trails, and pathways, provided that the applicant submits a WQIA or other information deemed necessary by the director demonstrating that the intended use will not significantly deteriorate water quality; and

(2) Historic preservation and archaeological activities, provided that the applicant submits a WQIA or other information deemed necessary by the director demonstrating that:

a. Any required permits, except those to which this exemption specifically applies, shall have been issued; and

b. The intended activity will not significantly degrade water quality.

Sec. 10-46. - Exceptions.

(a) An application may be made to the director for an exception to the requirements of the general performance criteria applicable to CBPAs or to the development criteria applicable to RPAs for intended uses which are essential to the reasonable use of a property.

(b) Applications for exceptions to the development criteria applicable to RPAs, except those exceptions for which the director has approval authority, shall be forwarded to the planning commission. Prior to approval by the planning commission there shall be a public hearing following notice in conformance with Va. Code § 15.2-2204. The planning commission shall review the request for an exception and the water quality impact assessment, and may grant the exception only if the planning commission makes the required findings applicable to exceptions set out in subsection 10-46(c) and imposes reasonable and appropriate conditions that will prevent the allowed activity from causing a degradation of water quality.

The decision of the planning commission shall be final and shall not be appealable.

(c) An exception to requirements other than the development criteria applicable to RPAs may be granted by the director with such conditions as are deemed necessary to further the purpose and intent of this article and to prevent the degradation of water quality, if:

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- (1) The requested exception is the minimum necessary to afford relief;
- (2) Granting the request will not confer upon the applicant special privileges that are denied to other property owners who are subject to the performance criteria applicable to CBPAs and who are similarly situated;
- (3) The exception is in harmony with the purpose and intent of this article and is not of substantial detriment to water quality;
- (4) The exception request is not based on conditions or circumstances that are self-created or self-imposed;
- (5) The exception is essential to allow reasonable use of the property;
- (6) There is compliance with all requirements of this chapter other than those for which an exception is granted; and
- (7) Water quality shall be preserved to the maximum extent practicable.

Sec. 10-47. - Nonconforming uses and vested rights.

(a) The lawful use of a building or structure which existed or which was under construction on December 31, 2003, or in which rights had vested as of that date and which is not in conformity with the provisions of this article may be continued. This article shall not prevent the reconstruction of structures existing prior to December 31, 2003, in the event of casualty loss, subject to the requirements of other provisions of the Hanover County Code and Appendix and of this section, provided that the director finds that the application conforms to the requirements of subsection 10-46(c) above.

(b) Change, expansion, or reconstruction of a legally nonconforming use or structure shall not be allowed without a waiver. A waiver allowing change, expansion or reconstruction of a principal structure, but not an accessory structure, may be granted by the director in accordance with the following provisions:

- (1) The director may grant a nonconforming use and development waiver of requirements of this article, for the expansion, modification or reconstruction of legally nonconforming principal structure or buildings, provided that:
 - a. There will be no increase in nonpoint source runoff pollution loadings, as demonstrated by a WQIA, submitted by the applicant in accordance with this article;
 - b. Any development or land disturbance exceeding an area of two thousand five hundred (2,500) square feet complies with all erosion and sediment control requirements of this chapter;

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- c. Additions shall be built outside RPAs where possible; and
- d. No waiver shall be granted by the director unless the director makes the findings required for an exception, set out in subsection 10-46(c) above.

(2) A nonconforming use and development waiver shall be null and void twelve (12) months from the date issued if no substantial work has commenced.

(c) The provisions of this chapter shall not affect vested rights of any landowner under existing law. The director shall require that any applicant determined by the director to have a vested right in a development shall conform to all requirements of this chapter, to the extent that the requirements do not impair the vested development rights. The director shall make a determination as to the vested status of any development or redevelopment when requested to do so by an applicant. The request shall be made on forms supplied by the director and the applicant shall provide the information deemed necessary by the director.

Sec. 10-48. - Applications for exceptions and waivers.

An application for a nonconforming use and development waiver or an exception shall be made to the director, on forms prescribed by the director, and shall include a WQIA, all information required by the director, and the following:

- (1) Name and address of applicant and property owner;
- (2) Legal description of the property and type of proposed use and development;
- (3) 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 RPA and RMA, if applicable;
- (4) Location and description of any existing private water supply or sewage system; and
- (5) Date of initiation of the use or completion of the structure, with documentation evidencing conformance with all requirements applicable at the time of completion.

Sec. 10-49. - Appeal procedures.

An applicant aggrieved by a decision of the director may appeal the decision to the county administrator, within fifteen (15) calendar days of the date of the decision. The appeal shall be filed on forms provided by the director. In considering an appeal to the administrative decision, the county administrator shall consider whether the applicant's plan is in accordance with all applicable ordinances and includes necessary elements to mitigate any detrimental impact on water quality and whether such plan meets the performance standards of this article. If the county administrator finds that the applicant's submittal to the director does not meet those requirements, the county administrator shall affirm the administrative decision. If the county

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administrator finds that the submittal does meet the requirements, the county administrator may reverse or modify the decision. The decision of the county administrator shall be final and shall not be appealable.

Sec. 10-50. - Administration; penalty and enforcement.

(a) The provisions of this article shall be administered and enforced by the director.

(b) 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 authorized under this article shall, upon, such finding by the 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, be directed to be paid into the treasury of the county for the purpose of abating environmental damage to or restoring Chesapeake Bay Preservation Areas within the county.

(c) With the consent of any person who (i) violates any provision of this article or (ii) violates or fails, neglects, or refuses to obey any notice, order, rule, regulation, or variance or permit condition authorized under this article, the director may provide for the issuance of an order 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 the county for the purpose of abating environmental damage to or restoring Chesapeake Bay Preservation Areas within the county. Civil charges shall be in lieu of any appropriate civil penalty that could be imposed under subsection (c). Civil charges may be in addition to the cost of any restoration required or ordered by the director.

Sec. 10-51. - Fees.

Fees may be charged for review of any submittals required by this article, in accordance with a fee schedule adopted by the board of supervisors by resolution.

Sec. 10-52. - Supplemental regulations; more restrictive apply.

The regulations of this article shall serve as a supplement to applicable federal, state and local laws and regulations, including the zoning and subdivision ordinances. In the event there is a conflict, the more restrictive requirements shall apply.

Secs. 10-53 – 10-59. - Reserved.

2. **That this Ordinance shall be effective on July 1, 2014.**

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	Vote:
Sean M. Davis	Aye
Wayne T. Hazzard	Aye
Angela Kelly-Wiecek	Aye
W. Canova Peterson	Aye
Aubrey M. Stanley	Aye
G. E. Via, III	Aye
Elton J. Wade, Sr.	Aye

Motion Approved.

On motion of Mr. Peterson, seconded by Mr. Via, the members of the Board of Supervisors voted to approve Ordinance No. 13-12.

ORDINANCE 13-12

AN ORDINANCE ADOPTING ARTICLE V OF CHAPTER 10 OF THE HANOVER COUNTY CODE PURSUANT TO TITLE 62.1, CHAPTER 3.1, ARTICLE 2.3 (§ 62.1-44.15:24 ET SEQ.) OF THE CODE OF VIRGINIA TO CONFORM TO CHANGES IN STATE LAW AND NEW REGULATORY REQUIREMENTS

WHEREAS effective July 1, 2013, the State Water Control Law (Virginia Code § 62.1-44.2 et seq.) incorporated the Chesapeake Bay Preservation Act (Virginia Code § 62.1-44.15:67 et seq.), the Erosion and Sediment Control Law (Virginia Code § 62.1-44.15:51 et seq.), and the Virginia Stormwater Management Act (Virginia Code § 62.1-44.15:24 et seq.), and placed all of these under the jurisdiction of the State Water Control Board; and

WHEREAS the Virginia Stormwater Management Act (the “Stormwater Act”) and Virginia Stormwater Management Program Regulations (the “Stormwater Regulations”) require localities to adopt local ordinances that incorporate specific components of the Stormwater Act and Stormwater Regulations, including a stormwater management ordinance to become effective July 1, 2014; and

WHEREAS the Department of Conservation and Recreation developed a guidance document containing a Stormwater Management Model Ordinance consistent with the Stormwater Act and Stormwater Regulations; and

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WHEREAS the Department of Public Works and County Attorney's Office have drafted a Stormwater Management Ordinance to be added to Chapter 10 as Article V, based upon the Stormwater Management Model Ordinance, in order to conform to statutory and regulatory requirements; and

WHEREAS the Board of Supervisors has decided to adopt the proposed ordinance;

NOW, THEREFORE, BE IT ORDAINED by the Board of Supervisors of Hanover County:

1. That Chapter 10 of the Hanover County Code shall be amended by adding Article V, Stormwater Management, as follows:

ARTICLE V. STORMWATER MANAGEMENT

Pursuant to § 62.1-44.15:27 of the Code of Virginia, this article is adopted as part of an initiative to integrate the county's stormwater management requirements with its erosion and sediment control (Hanover County Code Sec. 10-1 et seq.), floodplain management (Hanover County Code, Chapter 12), and Chesapeake Bay Preservation Act (Hanover County Code Sec. 10-32 et seq.) requirements into a unified stormwater program. The unified stormwater program is intended to facilitate the submission and approval of plans, issuance of permits, payment of fees, and coordination of inspection and enforcement activities into a more convenient and efficient manner for both the county and those responsible for compliance with these programs.

10-77. PURPOSE AND AUTHORITY.

- (a) The purpose of this article is to promote the public health, safety, and welfare, and to protect property, stream channels, other natural resources, and the quality and quantity of state waters from the potential harm of unmanaged stormwater.
- (b) This article is adopted pursuant to Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia; Chapter 870 of Title 9 of the Virginia Administrative Code (Section 25-870-10 et seq.); and Chapter 880 of Title 9 of the Virginia Administrative Code (Section 25-880-1 et seq.).

10-78. DEFINITIONS.

In addition to the definitions set forth in the Virginia Stormwater Management Program Regulations, Section 25-870-10 of Title 9 of the Virginia Administrative Code, as amended, which are expressly adopted and incorporated herein by reference, the following words and terms used in this article have the following meanings unless otherwise specified herein. Where definitions differ, those incorporated herein shall have precedence.

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"*Applicant*" means any person submitting an application for a permit or requesting issuance of a permit under this article.

"*Best management practice*" or "BMP" means schedules of activities, prohibitions of practices, including both structural and nonstructural practices, maintenance procedures, and other management practices to prevent or reduce the pollution of surface waters and groundwater systems from the impacts of land-disturbing activities.

"*Chesapeake Bay Preservation Act land-disturbing activity*" means a land-disturbing activity including clearing, grading, or excavation that results in a land disturbance equal or greater than 2,500 square feet and less than one acre in all areas of Hanover County designated as subject to the regulations adopted pursuant to the Chesapeake Bay Preservation Act, § 62.1-44.15:67 et seq. of the Code of Virginia.

"*Common plan of development or sale*" means a contiguous area where separate and distinct construction activities may be taking place at different times on different schedules.

"*Control measure*" means any best management practice or stormwater facility, or other method used to minimize the discharge of pollutants to state waters.

"*Clean Water Act*" or "*CWA*" means the federal Clean Water Act (33 U.S.C §1251 et seq.), formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483, and Public Law 97-117, or any subsequent revisions thereto.

"*Department*" means the Department of Environmental Quality.

"*Development*" means land disturbance and the resulting landform associated with the construction of residential, commercial, industrial, institutional, recreation, transportation or utility

"*Director*" means the Director of the Department of Public Works, who is responsible for administering the VSMP on behalf of the county, or any authorized agent of the director.

"*General permit*" means the permit titled GENERAL PERMIT FOR DISCHARGES OF STORMWATER FROM CONSTRUCTION ACTIVITIES found in Chapter 880 of Title 9 of the Virginia Administrative Code (Section 25-880-1 et seq.) of the Regulations, as amended, authorizing a category of discharges under the CWA and the Act within a geographical area of the Commonwealth of Virginia.

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"Land disturbance" or "land-disturbing activity" means a man-made change to the land surface that potentially changes its runoff characteristics including clearing, grading, or excavation except that the term shall not include those exemptions specified in Section 10-79(c) of this article.

"Layout" means a conceptual drawing sufficient to provide for the specified stormwater management facilities required at the time of approval.

"Minor modification" means an amendment to an existing general permit before its expiration not requiring extensive review and evaluation including, but not limited to, changes in EPA promulgated test protocols, increasing monitoring frequency requirements, changes in sampling locations, and changes to compliance dates within the overall compliance schedules. A minor general permit modification or amendment does not substantially alter general permit conditions, substantially increase or decrease the amount of surface water impacts, increase the size of the operation, or reduce the capacity of the facility to protect human health or the environment.

"Owner" or "Operator" means the owner or operator of any facility or activity subject to regulation under this article.

"Permit" or "Land Disturbance Permit" means a permit to conduct a land-disturbing activity issued by the Director for the initiation of a land-disturbing activity, in accordance with this article, and which may only be issued after evidence of general permit coverage has been provided by the Department.

"Permittee" means the person to whom the land disturbance permit is issued.

"Person" means any individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, governmental body, including federal, state, or local entity as applicable, any interstate body or any other legal entity.

"Regulations" means the Virginia Stormwater Management Program (VSMP) Regulations, Section 25-870-10 et seq. of Title 9 of the Virginia Administrative Code, as amended.

"Site" means the land or water area where any facility or land-disturbing activity is physically located or conducted, including adjacent land used or preserved in connection with the facility or land-disturbing activity. Areas channelward of mean low water in tidal Virginia shall not be considered part of a site.

"State" means the Commonwealth of Virginia.

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"State Board" means the Virginia State Water Control Board.

"State Water Control Law" means Chapter 3.1 (§62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia.

"State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands.

"Stormwater" means precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff, and surface runoff and drainage.

"Stormwater management plan" means a document containing material describing methods for complying with the requirements of Section 10-82 of this article.

"Stormwater Pollution Prevention Plan" or *"SWPPP"* means a document that is prepared in accordance with good engineering practices and that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges from the construction site, and otherwise meets the requirements of this article. In addition the document shall identify and require the implementation of control measures, and shall include or incorporate by reference an approved erosion and sediment control plan, an approved stormwater management plan, and a pollution prevention plan.

"Subdivision" means the same as defined in Section 25-4 of Hanover County's Subdivision Ordinance.

"Total maximum daily load" or *"TMDL"* means the sum of the individual waste load allocations for point sources, load allocations for nonpoint sources, natural background loading and a margin of safety. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure. The TMDL process provides for point versus nonpoint source trade-offs.

"Virginia Stormwater Management Act" or *"Act"* means Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

"Virginia Stormwater BMP Clearinghouse website" means a website that contains detailed design standards and specifications for control measures that may be used in Virginia to comply with the requirements of the Virginia Stormwater Management Act and associated regulations.

"Virginia Stormwater Management Program" or *"VSMP"* means a program approved by the State Board after September 13, 2011, that has been established by a locality to manage

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the quality and quantity of runoff resulting from land-disturbing activities and shall include such items as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement, where authorized in this article, and evaluation consistent with the requirements of this article and associated regulations.

"Virginia Stormwater Management Program authority" or "VSMP authority" means an authority approved by the State Board after September 13, 2011, to operate a Virginia Stormwater Management Program.

Sec. 10-79. - STORMWATER PERMIT REQUIREMENT; EXEMPTIONS.

- (a) Except as provided herein, no person may engage in any land-disturbing activity until a land disturbance permit has been issued by the Director in accordance with the provisions of this article and Article I.
- (b) A Chesapeake Bay Preservation Act Land-Disturbing Activity shall be subject to an erosion and sediment control plan consistent with the requirements of the Erosion and Sediment Control Ordinance, Hanover County Code Sec. 10-1 et seq., a stormwater management plan pursuant to Section 10-82, the technical criteria and administrative requirements for land-disturbing activities pursuant to Section 10-85, and the requirements for long-term maintenance of control measures pursuant to Section 10-86.
- (c) No person may engage in any land-disturbing activity until a complete and accurate general permit registration has been submitted to the Director in accordance with Section 25-880-1 et seq. of Chapter 9 of the Virginia Administrative Code, if such registration is required pursuant to Section 25-880-50 of Title 9 of the Virginia Administrative Code.
 - (1) New construction activities. Any operator proposing a new stormwater discharge associated with the construction of a single-family residence separately built, disturbing less than one acre and part of a larger common plan of development or sale is authorized to discharge under the general permit and is not required to submit a registration statement, provided that the stormwater management plan for the larger common plan of development or sale provides permanent control measures (i.e. stormwater management facilities) encompassing the single family residence.
 - (2) Existing construction activities. Any operator with an existing stormwater discharge associated with the construction of a single-family residence separately built, disturbing less than one acre and part of a larger common plan of development or sale, and who

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intends to continue coverage under the general permit, is authorized to discharge under the general permit and is not required to submit a registration statement provided that:

- a. The stormwater management plan for the larger common plan of development or sale provides permanent control measures (i.e. stormwater management facilities) encompassing the single-family residence; and
 - b. The operator updates their stormwater pollution prevention plan to comply with the requirements of the general permit no later than 60 days after the date of coverage under the general permit.
- (d) Notwithstanding any other provisions of this article, the following activities are exempt, unless otherwise required by federal law:
- (1) Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted under the provisions of Title 45.1 of the Code of Virginia;
 - (2) Clearing of lands specifically for agricultural purposes and the management, tilling, planting, or harvesting of agricultural, horticultural, or forest crops, livestock feedlot operations, or as additionally set forth by the State Board in regulations, including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq.) of Title 10.1 of the Code of Virginia or is converted to bona fide agricultural or improved pasture use as described in Subsection B of § 10.1-1163 of Article 9 of Chapter 11 of Title 10.1 of the Code of Virginia;
 - (3) Single-family residences separately built and disturbing less than one acre of land outside of an area designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations and not part of a larger common plan of development or sale, including additions or modifications to existing single-family detached residential structures;
 - (4) Single-family residences separately built and disturbing less than 2,500 square feet of land in an area designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations and not part of a larger common plan of

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- development or sale, including additions or modifications to existing single-family detached residential structures;
- (5) Land disturbing activities that disturb less than one acre of land outside of an area designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations except for activities that are part of a larger common plan of development or sale that is one acre or greater of disturbance;
 - (6) Land disturbing activities that disturb less than 2,500 square feet inside of an area designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations except for activities that are part of a larger common plan of development or sale that is one acre or greater of disturbance;
 - (7) Discharges to a sanitary sewer or a combined sewer system;
 - (8) Activities under a State or federal reclamation program to return an abandoned property to an agricultural or open land use;
 - (9) Routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original construction of the project. The paving of an existing road with a compacted or impervious surface and reestablishment of existing associated ditches and shoulders shall be deemed routine maintenance if performed in accordance with this Subsection; and
 - (10) Conducting land-disturbing activities in response to a public emergency where the related work requires immediate authorization to avoid imminent endangerment to human health or the environment. In such situations, the Director shall be advised of the disturbance within seven days of commencing the land-disturbing activity and compliance with the administrative requirements of Subsection (a) is required within 30 days of commencing the land-disturbing activity.

Sec. 10-80. - STORMWATER MANAGEMENT PROGRAM ESTABLISHED; SUBMISSION AND APPROVAL OF PLANS; PROHIBITIONS.

- (a) Pursuant to § 62.1-44.15:27 of the Code of Virginia, Hanover County hereby establishes a Virginia stormwater management program for land-disturbing activities and adopts the applicable Regulations that specify standards and specifications for VSMPs promulgated by the State Board for the purposes set out in Section 10-77 of this article. The county hereby designates the director of the Department of Public Works as the person who is responsible for administering the county's Virginia stormwater management program.

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- (b) No land disturbance permit shall be issued by the Director, until the following items have been submitted to and approved by the Director as prescribed herein:
 - (1) A permit application that includes a general permit registration statement, unless such registration statement is not required pursuant to Section 25-880-50 of Title 9 of the Virginia Administrative Code;
 - (2) An erosion and sediment control plan approved in accordance with the Hanover County Erosion and Sediment Control Ordinance (Hanover County Code, Section 10-1 et seq.); and
 - (3) A stormwater management plan that meets the requirements of Section 10-82 of this article, except that the construction record drawing required by Section 10-82(d) shall be required prior to closure of the land disturbance permit.
- (c) No land disturbance permit shall be issued until evidence of state fee payment in accordance with the Regulations and general permit coverage is obtained, if general permit coverage is required.
- (d) No land disturbance permit shall be issued until the fees required to be paid to the Director are received, and a reasonable performance bond required pursuant to Section 10-92 of this article has been submitted.
- (e) No land disturbance permit shall be issued unless and until the permit application and attendant materials and supporting documentation demonstrate that all land clearing, construction, disturbance, land development and drainage will be done according to the approved permit.
- (f) No grading, building or other local permit shall be issued for a property with land disturbing activity subject to the requirements of this article unless a land disturbance permit has been issued by the Director.

Sec. 10-81. - STORMWATER POLLUTION PREVENTION PLAN; CONTENTS OF PLANS.

- (a) The Stormwater Pollution Prevention Plan (SWPPP) shall include the content specified by Section 25-870-54 of Title 9 of the Virginia Administrative Code and must also comply with the requirements and general information of the general permit, set forth in Section 25-880-70 of Title 9 of the Virginia Administrative Code, Part II.

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- (b) The SWPPP shall be amended by the operator whenever there is a change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to state waters which is not addressed by the existing SWPPP.
- (c) The SWPPP must be maintained by the operator at a central location onsite. If an onsite location is unavailable, notice of the SWPPP's location must be posted near the main entrance at the construction site. Operators shall make the SWPPP available for public review in accordance with the general permit, either electronically or in hard copy.

Sec. 10-82. - STORMWATER MANAGEMENT PLAN; CONTENTS OF PLAN.

- (a) The Stormwater Management Plan, required by Section 25-870-55 of Title 9 of the Virginia Administrative Code and Section 10-80 of this article, must apply the stormwater management technical criteria set forth in Section 10-85 of this article to the entire land-disturbing activity and consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to subsurface runoff. Individual lots in new residential, commercial, or industrial developments shall not be considered separate land disturbing activities. A complete Stormwater Management Plan shall include the following elements:
 - (1) Information on the type and location of stormwater discharges; information on the features to which stormwater is being discharged including surface waters and the predevelopment and post development drainage areas;
 - (2) Contact information including the name, address, and telephone number of the owner/operator and the parcel number of the property or properties affected;
 - (3) A narrative that includes a description of current site conditions and final site conditions;
 - (4) A general description of the proposed stormwater management facilities and the mechanism through which the facilities will be operated and maintained after construction is complete;
 - (5) Information on the proposed stormwater management facilities, including:
 - (i) The type of facilities;
 - (ii) Location, including geographic coordinates;
 - (iii) Acres treated; and
 - (iv) The surface waters into which the facility will discharge.
 - (6) Hydrologic and hydraulic computations, including runoff characteristics;

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- (7) Documentation and calculations verifying compliance with the water quality and quantity requirements of Section 10-85 of this article; and
- (8) A map or maps of the site that depicts the topography of the site and includes:
 - (i) All contributing drainage areas;
 - (ii) Existing streams, ponds, culverts, ditches, wetlands, other water bodies, and floodplains;
 - (iii) Soil types, forest cover, and other vegetative areas;
 - (iv) Current land use including existing structures, roads, and locations of known utilities and easements;
 - (v) Sufficient information on adjoining parcels to assess the impacts of stormwater from the site on these parcels;
 - (vi) The limits of clearing and grading, and the proposed drainage patterns on the site;
 - (vii) Proposed buildings, roads, parking areas, utilities, and stormwater management facilities; and
 - (viii) Proposed land use with tabulation of the percentage of surface area to be adapted to various uses, including but not limited to planned locations of utilities, roads, and easements.
- (b) If an operator intends to meet the water quality and/or quantity requirements set forth in Section 10-85 of this article through the use of off-site compliance options, where applicable, then a letter of availability from the off-site provider must be included. Approved off-site options must achieve the necessary nutrient reductions prior to the commencement of the applicant's land-disturbing activity except as otherwise allowed by § 62.1-44.15:35 of the Code of Virginia.
- (c) Elements of the stormwater management plans that include activities regulated under Chapter 4 (§54.1-400 et seq.) of Title 54.1 of the Code of Virginia shall be appropriately sealed and signed by a professional registered in the Commonwealth of Virginia pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia.
- (d) A construction record drawing for permanent stormwater management facilities shall be submitted to the Director. The construction record drawing shall be appropriately sealed and signed by a professional registered in the Commonwealth of Virginia, certifying that the stormwater management facilities have been constructed in accordance with the approved plan.

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Sec. 10-83. – POLLUTION PREVENTION PLAN; CONTENTS OF PLANS.

- (a) A Pollution Prevention Plan, required by Section 25-870-56 of Title 9 of the Virginia Administrative Code, shall be developed, implemented, and updated as necessary and must detail the design, installation, implementation, and maintenance of effective pollution prevention measures to minimize the discharge of pollutants. At a minimum, such measures must be designed, installed, implemented, and maintained to:
- (1) Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge;
 - (2) Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste, and other materials present on the site to precipitation and to stormwater; and
 - (3) Minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures.
- (b) The pollution prevention plan shall include effective best management practices to prohibit the following discharges:
- (1) Wastewater from washout of concrete, unless managed by an appropriate control;
 - (2) Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction materials;
 - (3) Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; and
 - (4) Soaps or solvents used in vehicle and equipment washing.
- (c) Discharges from dewatering activities, including discharges from dewatering of trenches and excavations, are prohibited unless managed by appropriate controls.

Sec. 10-84. - REVIEW OF STORMWATER MANAGEMENT PLAN.

- (a) The Director shall review stormwater management plans and shall approve or deny approval of a stormwater management plan according to the following:
- (1) The Director shall determine the completeness of a plan in accordance with Section 10-82 of this article, and shall notify the applicant, in writing, of such determination, within 15 calendar days of receipt. If the plan is deemed to be incomplete, the above written notification shall contain the reasons the plan is deemed incomplete.

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- (2) The Director shall have an additional 60 calendar days from the date of the communication of completeness to review the plan, except that if a determination of completeness is not made within the time prescribed in subdivision (1), then the plan shall be deemed complete and the Director shall have 60 calendar days from the date of submission to review the plan.
 - (3) The Director shall review any plan that has been previously denied approval, within 45 calendar days of the date of resubmission.
 - (4) During the review period, the approval decision shall be communicated in writing to the person responsible for the land-disturbing activity or his designated agent. If the plan is not approved, the reasons shall be provided in writing. Approval shall be based on the plan's compliance with the requirements of this article.
 - (5) If a plan meeting all requirements of this article is submitted and no action is taken within the time provided above in subdivision (2) for review, the plan shall be deemed approved.
- (b) Approved stormwater plans may be modified as follows:
- (1) Modifications to an approved stormwater management plan shall be allowed only after review and written approval by the Director. The Director shall have 60 calendar days to respond in writing either approving or disapproving such request.
 - (2) The Director may require that an approved stormwater management plan be amended, within a time prescribed by the Director, to address any deficiencies noted during inspection.
- (c) The Director shall require the submission of a construction record drawing for permanent stormwater management facilities. The Director may elect not to require construction record drawings for stormwater management facilities for which recorded maintenance agreements are not required pursuant to Section 10-86(b).

Sec. 10-85 - TECHNICAL CRITERIA FOR REGULATED LAND DISTURBING ACTIVITIES.

- (a) To protect the quality and quantity of state water from the potential harm of unmanaged stormwater runoff resulting from land-disturbing activities, the county hereby adopts the technical criteria for regulated land-disturbing activities set forth in Part II B of the Regulations, Section 25-870-62 of Title 9 of the Virginia Administrative Code, as

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- amended, which shall apply to all land-disturbing activities regulated pursuant to this article, except as expressly set forth in Subsection (b) of this Section.
- (b) Until June 30, 2019, the grandfathering provisions of Section 25-870-48 of Title 9 of the Virginia Administrative Code may apply, along with technical criteria set forth in Part II C of the Regulations.
 - (c) The Director may grant exceptions to the technical requirements of Part II B or Part II C of the Regulations, provided that (i) the exception is the minimum necessary to afford relief, (ii) reasonable and appropriate conditions are imposed so that the intent of the Act, the Regulations, and this article are preserved, (iii) granting the exception will not confer any special privileges that are denied in other similar circumstances, and (iv) exception requests are not based upon conditions or circumstances that are self-imposed or self-created. Economic hardship alone is not sufficient reason to grant an exception from the requirements of this article.
 - (1) The Director shall not grant exceptions to the land disturbance permit requirement, nor shall the Director approve the use of a BMP not found on the Virginia Stormwater BMP Clearinghouse website or any other control measure not duly approved by the Director of the Department of Environmental Quality.
 - (2) Exceptions to requirements for phosphorus reductions shall not be allowed unless offsite options otherwise permitted pursuant to Section 25-870-69 of Title 9 of the Virginia Administrative Code have been considered and found not available.
 - (d) Nothing in this Section shall preclude an operator from constructing to a more stringent standard at their discretion.

Sec. 10-86 - LONG-TERM MAINTENANCE OF PERMANENT STORMWATER FACILITIES

- (a) The Director shall require the provision of long-term responsibility for and maintenance of stormwater management facilities and other techniques specified to manage the quality and quantity of runoff. Such requirements shall be set forth in an instrument recorded in the local land records prior to general permit termination or earlier as required by the Director and shall at a minimum:
 - (1) Be submitted to the Director for review and approval prior to the approval of the stormwater management plan;
 - (2) Be stated to run with the land;

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- (3) Provide for all necessary access to the property for purposes of maintenance and regulatory inspections;
 - (4) Provide for inspections and maintenance and the submission of inspection and maintenance reports to the Director; and
 - (5) Be enforceable by all appropriate governmental parties.
- (b) At the discretion of the Director, such recorded instruments need not be required for stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot on which they are located, provided it is demonstrated to the satisfaction of the Director that future maintenance of such facilities will be addressed through an enforceable mechanism at the discretion of the Director.
- (c) If a recorded instrument is not required pursuant to Subsection 10-86(b), the Director may develop a strategy for addressing maintenance of stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot on which they are located. Such a strategy may include periodic inspections, homeowner outreach and education, or other method targeted at promoting the long-term maintenance of such facilities. Such facilities shall not be subject to the requirement for an inspection to be conducted by the Director.

Sec. 10-87. - MONITORING AND INSPECTIONS.

- (a) The Director shall inspect the land-disturbing activity during construction for:
 - (1) Compliance with the approved erosion and sediment control plan;
 - (2) Compliance with the approved stormwater management plan;
 - (3) Compliance with conditions of the general permit, if general permit required;
 - (4) Development, updating, and implementation of a pollution prevention plan; and
 - (5) Development and implementation of any additional control measures necessary to address a TMDL.
- (b) The Director may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this article.
- (c) In accordance with a performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement or instrument, the Director may also enter any establishment or upon any property, public or private, for the purpose of

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initiating or maintaining appropriate actions which are required by the permit conditions associated with a land-disturbing activity when a permittee, after proper notice, has failed to take acceptable action within the time specified.

- (d) Pursuant to § 62.1-44.15:40 of the Code of Virginia, the Director may require every land disturbance permit applicant or permittee, or any such person subject to land disturbance permit requirements under this article, to furnish when requested such application materials, plans, specifications, and other pertinent information as may be necessary to determine the effect of his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of this article.
- (e) Post-construction inspections of stormwater management facilities required by the provisions of this article shall be conducted by the Director pursuant to the county's adopted and State Board approved inspection program, and shall occur, at minimum, at least once every five (5) years except as may otherwise be provided for in Section 10-86.

Sec. 10-88. – HEARINGS

- (a) Any permit applicant or permittee, or person subject to article requirements, aggrieved by any action of the county taken without a formal hearing, or by inaction of the county, may demand in writing a formal hearing before the Hanover County Administrator or his designee concerning such grievance, provided a petition requesting such hearing is filed with the Director within 30 days after notice of such action is given by the Director.
- (b) The hearings held under this Section shall be conducted by the Hanover County Administrator or his designee.
- (c) A verbatim record of the proceedings of such hearings shall be taken and filed with the County Administrator. Depositions may be taken and read as in actions at law.
- (d) The Hanover County Administrator shall have power to issue subpoenas and subpoenas duces tecum, and at the request of any party shall issue such subpoenas. The failure of a witness without legal excuse to appear or to testify or to produce documents shall be acted upon by the County Administrator, whose action may include the procurement of an order of enforcement from the circuit court. Witnesses who are subpoenaed shall receive the same fees and reimbursement for mileage as in civil actions.

Sec. 10-89. - APPEALS.

Any permittee or party aggrieved by a land disturbance permit or enforcement decision of the Director is entitled to judicial review thereof by the Hanover County Circuit Court.

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Sec. 10-90. - ENFORCEMENT

- (a) If the Director determines that there is a failure to comply with the conditions of the land disturbance permit or general permit, if general permit coverage is required, or determines there is an unauthorized discharge, notice shall be delivered to the permittee or person responsible for carrying out the permit conditions by any of the following: verbal warnings, inspection reports, and notices to comply. Notices to comply shall be sent by certified mail to the address specified in the permit application or by delivery at the site of the development activities to the agent or employee supervising such activities.
- (1) The notice shall specify the measures needed to comply with the permit conditions and shall specify the time within which such measures shall be completed. Upon failure to comply within the time specified, a stop work order may be issued in accordance with Subsection (a)(2) or the permit may be revoked by the Director.
 - (2) If a permittee fails to comply with a notice issued in accordance with this Section within the time specified, the Director may issue an order requiring the owner, permittee, person responsible for carrying out an approved plan, or the person conducting the land-disturbing activities without an approved plan or required permit to cease all land-disturbing activities until the violation of the permit has ceased, or an approved plan and required permits are obtained, and specified corrective measures have been completed.

Such orders shall become effective upon service on the person by certified mail, return receipt requested, sent to his address specified in the land records of the locality, or by personal delivery by an agent of the Director. However, if the Director finds that any such violation is grossly affecting or presents an imminent and substantial danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth or otherwise substantially impacting water quality, it may issue, without advance notice or hearing, an emergency order directing such person to cease immediately all land-disturbing activities on the site and shall provide an opportunity for a hearing, after reasonable notice as to the time and place thereof, to such person, to affirm, modify, amend, or cancel such emergency order. If a person who has been issued an order is not complying with the terms thereof, the Director may institute a proceeding for an

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injunction, mandamus, or other appropriate remedy in accordance with Subsection 10-90(c).

- (b) In addition to any other remedy provided by this article, if the Director or his designee determines that there is a failure to comply with the provisions of this article, they may initiate informal and/or formal administrative enforcement procedures.
- (c) Any person violating or failing, neglecting, or refusing to obey any rule, regulation, ordinance, order, approved standard or specification, or any permit condition issued by the Director or general permit condition, if general permit coverage is required, may be compelled in a proceeding instituted in Hanover County Circuit Court by the County to obey same and to comply therewith by injunction, mandamus or other appropriate remedy.
- (d) Any person who violates any provision of this article or who fails, neglects, or refuses to comply with any order of the Director, shall be subject to a civil penalty not to exceed \$32,500 for each violation within the discretion of the court. Each day of violation of each requirement shall constitute a separate offense.
 - (1) Violations for which a penalty may be imposed under this Subsection shall include but not be limited to the following:
 - (i) No general permit registration statement, if general permit registration statement is required;
 - (ii) No SWPPP;
 - (iii) Incomplete SWPPP;
 - (iv) SWPPP not available for review;
 - (v) No approved erosion and sediment control plan;
 - (vi) Failure to install stormwater BMPs or erosion and sediment controls;
 - (vii) Stormwater BMPs or erosion and sediment controls improperly installed or maintained;
 - (viii) Operational deficiencies;
 - (ix) Failure to conduct required inspections;
 - (x) Incomplete, improper, or missed inspections; and
 - (xi) Failure to comply with the requirements of the general permit, Section 25-880-70 of Title 9 of the Virginia Administrative Code, if general permit coverage is.

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- (2) The Director may issue a summons for collection of the civil penalty and the action may be prosecuted in the Hanover County General District Court.
 - (3) In imposing a civil penalty pursuant to this Subsection, the court may consider the degree of harm caused by the violation and also the economic benefit to the violator from noncompliance.
 - (4) Any civil penalties assessed by a court as a result of a summons issued by the Director shall be paid into the treasury of Hanover County to be used for the purpose of minimizing, preventing, managing, or mitigating pollution of the waters of the locality and abating environmental pollution therein.
- (e) Notwithstanding any other civil or equitable remedy provided by this Section or by law, any person who willfully or negligently violates any provision of this article, any order of the Director, any condition of a land disturbance or general permit, if general permit coverage is required, or any order of a court shall be guilty of a misdemeanor punishable by confinement in jail for not more than 12 months or a fine of not less than \$2,500 nor more than \$32,500, or both.

10-91. Fees

Fees to cover costs associated with plan review, inspection, and implementation of Hanover County's VSMP shall be imposed by Hanover County pursuant to Hanover County Code section 10-6. State program fees are imposed by the state pursuant to the Regulations.

10-92. Performance Bond

Prior to issuance of any permit, the Applicant shall be required to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the county attorney, to ensure that measures could be taken by the county at the Applicant's expense should he fail, after proper notice, within the time specified to initiate or maintain appropriate actions which may be required of him by the permit conditions as a result of his land disturbing activity. If the county takes such action upon such failure by the Applicant, the county may collect from the Applicant for the difference should the amount of the reasonable cost of such action exceed the amount of the security held, if any. Following the completion of the requirements of the permit conditions, such bond, cash escrow, letter of credit or other

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legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the Applicant or terminated.

2. That this Ordinance shall be effective on July 1, 2014.

	Vote:
Sean M. Davis	Aye
Wayne T. Hazzard	Aye
Angela Kelly-Wiecek	Aye
W. Canova Peterson	Aye
Aubrey M. Stanley	Aye
G. E. Via, III	Aye
Elton J. Wade, Sr.	Aye

Motion Approved.

B. Public Hearing –Department of Public Works - Ordinance No. 13-16 – Hanover County Drainage Design Handbook A copy of the handbook is on file with the Board papers.

Mr. Flagg, Director of Public Works, came forward to present this ordinance.

Summary:

The Drainage Design Handbook was first adopted in 1988 and minor revisions were approved in 2008. In January 2011, the manual was revised significantly to adapt to changes in regulatory standards, design standards, County ordinances, and County policies concerning drainage improvements. The Handbook was originally drafted by a citizen committee and has served Hanover County well for over 25 years.

Virginia Stormwater Regulations require Virginia Stormwater Management Program authorities such as Hanover County to adopt either the methodology set forth in the regulations for stream channel protection (“Energy Balance”), or an alternative methodology that is demonstrated to achieve equivalent results to the Energy Balance methodology. The Department of Public Works (DPW) retained Williamsburg Environmental Group, Inc. to perform a study comparing the Energy Balance methodology with the County’s proposed alternative methodology (“Permissible Velocity”) (Study Attached). The study demonstrated that the Permissible Velocity approach achieves equivalent results to the Energy Balance methodology, and in some cases is even more protective of stream channels encountered in Hanover County. DPW proposes the revisions to the Drainage Design Handbook to establish the Permissible Velocity methodology as the stream protection criteria for Hanover County’s

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Stormwater Program. The criteria must be approved by the Virginia Water Control Board upon adoption. A black-lined edit of the changes to the Handbook is attached.

The development community has been informed that the DPW plans to update the Handbook through the County's Quarterly Development Community meetings. In addition the DPW has contacted a number of local firms to solicit their comment on the proposal. At this time, feedback has been favorable. Two added changes are noted in the black-line draft since the ordinance was advertised. This includes clarification on the extent of channel analysis (end of section IX. B.) and an edit to correct table references to Appendix B.

Recommendation:

Motion to adopt Ordinance 13-16 – Amendments to the Hanover County Drainage Design Handbook, effective July 1, 2014.

Mr. Davis asked if Board Members had any questions. Hearing none, he opened the public hearing and asked that anyone wishing to speak for or against the ordinance come forward. Seeing no one come forward, Mr. Davis closed the public hearing.

On motion of Mr. Via, seconded by Mrs. Kelly-Wiecek, the members of the Board of Supervisors voted to approve Ordinance No. 13-16.

ORDINANCE NO. 13-16

AN ORDINANCE AMENDING THE HANOVER COUNTY DRAINAGE DESIGN HANDBOOK DATED JANUARY 12, 2011 AND ADOPTING THE REVISED DRAINAGE DESIGN HANDBOOK INCLUDING CHANGES IN REQUIREMENTS FOR OPEN MANMADE AND NATURAL CHANNELS AND STORMWATER MANAGEMENT. THE HANDBOOK INCLUDES SPECIFICATIONS FOR CONSTRUCTION MATERIALS, MAINTENANCE AGREEMENT REQUIREMENTS AND DETAILS FOR DESIGN OF CURB AND GUTTER, STORM SEWER, OPEN CHANNELS, LOT GRADING, IMPOUNDMENTS AND EMBANKMENTS.

WHEREAS the Board of Supervisors finds that it is proper to amend the Hanover County Drainage Design Handbook first adopted in 1988 and last amended in 2011, and to adopt the revised Drainage Design Handbook to better provide for administration of matters related to stormwater management, floodplain, grading and drainage control facilities; and

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WHEREAS the Board finds that in order to properly provide for improvements associated with development in the County and protect the public health, safety and welfare it is necessary to adopt requirements and standards detailed in the Drainage Design Handbook.

NOW, THEREFORE, BE IT ORDAINED by the Board of Supervisors of Hanover County that the Drainage Design Handbook first adopted October 25, 1988 and last revised in 211 shall be amended and the revised Handbook shall be adopted as follows:

1. **The Hanover County DRAINAGE DESIGN HANDBOOK attached to this Ordinance shall be adopted. Copies of the Handbook shall be maintained in the offices of the Public Works and Planning departments for reference.**
2. That this ordinance shall be effective on the date of adoption.

	Vote:
Sean M. Davis	Aye
Wayne T. Hazzard	Aye
Angela Kelly-Wiecek	Aye
W. Canova Peterson	Aye
Aubrey M. Stanley	Aye
G. E. Via, III	Aye
Elton J. Wade, Sr.	Aye

Motion Approved.

XIII. Planning Public Hearings – Mr. Maloney

Special Exception Permit SE-15-11 (AM. 1-14) CANDY AND MARK EUBANK, Request an amendment to a Special Exception Permit in accordance with Sections 26-21.18 and 26-336 of the Hanover County Zoning Ordinance to allow a contractor's equipment yard to be screened with a fence taller than permitted on GPIN 7872-94-1422, consisting of approximately 13.9 acres, zoned A-1, Agricultural District and located on the east line of Breedens Road (State Route 694) approximately 400 feet north of its intersection with Old Ridge Road (State Route 738) in the BEAVERDAM MAGISTERIAL DISTRICT.

Mr. Maloney came forward to present this Special Exemption Permit.

Executive Summary:

The applicants obtained a Special Exception in 2011 to permit a contractor's equipment storage yard. The equipment storage yard was to be screened with landscaping. The applicant is

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now requesting to amend the conditions of approval to allow screening with a fence and to allow a fence that is taller than permitted in the front yard.

Staff Recommendation:

APPROVAL subject to the conditions as outlined in the staff report.

Mr. Davis asked if Board Members had any questions. Mr. Via asked about the height of the fence and was informed that it will be 6' tall. A copy of SE – 15, AM 1-14 is on file with the Board papers.

Hearing no other questions, he opened the public hearing and asked that anyone wishing to speak for or against the ordinance come forward. Seeing no one come forward, Mr. Davis closed the public hearing.

Mr. Stanley made a motion to approve SE-15-11 (AM. 1-14) Candy and Mark Eubank, subject to the conditions as outlined in the staff report, seconded by Mr. Hazzard.

RESOLUTION

WHEREAS the Board finds that, in its opinion, as a matter of fact, such exception will not substantially affect adversely the uses of adjacent and neighboring property.

NOW, THEREFORE, BE IT RESOLVED that Candy and Mark Eubank, are granted a Special Exception Permit in accordance with Sections 26-21.18 and 26-336 of the Hanover County Zoning Ordinance to allow a contractor's equipment yard to be screened with a fence taller than permitted on GPIN 7872-94-1422, consisting of 13.9 acres, zoned A-1, Agricultural District, subject to the following conditions, which incorporate all of the applicable conditions from previous amendments:

1. There shall be no storage of construction debris or trash on site.
2. All commercial vehicles and/or equipment must be stored within the limits of the designated equipment storage area as shown on the sketch plan.
3. The storage yard shall only be accessory to a business office for construction contractors and operated as a home occupation.
4. The property owner shall install a six (6) foot screening fence along Breedens Road within two (2) months of SE approval, as shown on the sketch plan, in accordance with Section 26-263.
5. The SE shall be valid for two (2) years following the date of approval, after which time the permit shall be reviewed by the Director of Planning for continued compliance with the conditions of approval. The permit may be extended

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indefinitely from two (2) years upon request of the applicants and approval by the Director of Planning. At the time of renewal, the County shall have the right to inspect the property to insure it is in compliance with zoning regulations.

6. All development and use of the property shall comply with all federal, state, and local statutes, ordinances, and regulations.

The Special Exception Permit shall lapse after the expiration of one (1) year if no substantial construction or change of use has taken place in accordance with the plans for which the Exception was approved.

	Vote:
Sean M. Davis	Aye
Wayne T. Hazzard	Aye
Angela Kelly-Wiecek	Aye
W. Canova Peterson	Aye
Aubrey M. Stanley	Aye
G. E. Via, III	Aye
Elton J. Wade, Sr.	Aye

Motion Approved.

XIV. Announcements

There were no announcements.

XV. Adjournment

At 7:16 p.m., the Chairman adjourned the meeting to February 26, 2014 - Hanover County Administration Building – 2:00 p.m.


Chairman