

ORDINANCE NO. 02-35

**AN ORDINANCE TO AMEND THE HANOVER COUNTY
CODE, CHAPTER 10, ENVIRONMENTAL MANAGEMENT,
ARTICLE II, CHESAPEAKE BAY PRESERVATION,
INCLUDING CHANGES TO CONFORM TO CURRENT
REGULATORY REQUIREMENTS**

WHEREAS local authority pertaining to Chesapeake Bay Preservation is set out in the Virginia Code, Title 10.1, Subtitle II, Chapter 21, Chesapeake Bay Preservation Act, and

WHEREAS the Chesapeake Bay Local Assistance Board has adopted amended regulations (9 VAC 10-20) pursuant to those statutes, and various provisions of the Hanover County Code require amendment in order to conform to current provisions of the regulations, and

WHEREAS it is the intent of the Board of Supervisors to limit nonpoint source pollution as required by the Chesapeake Bay Preservation Area Designation and Management Regulations, by establishing performance standards to minimize erosion and sedimentation potential, reduce land application of nutrients and toxics, maximize rainwater infiltration, and ensure long-term performance of the measures employed;

WHEREAS it is the intent of the Board of Supervisors that development within Chesapeake Bay Preservation Areas of the County comply with the Virginia Stormwater Management Regulations (4 VAC 3-20), and

WHEREAS the Board of Supervisors has determined that amendment of the Hanover County Code to conform to current State regulatory provisions serves the public interest.

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

1. That the Hanover County Code, Chapter 10, Article II is amended to read in its entirety as follows:

ARTICLE II. CHESAPEAKE BAY PRESERVATION

DIVISION I. GENERAL PROVISIONS AND DEVELOPMENT CRITERIA

Sec. 10-32. Purpose.

This Article is enacted pursuant to and for the purpose of implementing the Chesapeake Bay Preservation Act and regulating the use of lands of significance for the protection of water quality.

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 the Virginia Code.

Agricultural lands. Those lands used for the planting and harvesting of crops or plant growth of any kind in the open; pasture; horticulture; dairying; 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, 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. A Chesapeake Bay Preservation Area shall consist of a Resource Protection Area and a Resource Management Area.

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 drainfield 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 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 from a drainage way as a result of a storm event of a 100-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 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 activity which may result in soil erosion or the movement of sediments including grubbing, grading, excavating, utility line installation, or any surface preparation for the support of development or redevelopment, but not including silvicultural or agricultural activities

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 Virginia Department 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 Virginia Department of Transportation exercises direct supervision over the design or construction activities, or both, and cases where secondary roads are constructed or maintained, or both, by 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 Title 54.1, Chapter 4 of the Virginia Code.

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

Regulations: Chesapeake Bay Preservation Area Designation and Management Regulations adopted by the Chesapeake Bay Local Assistance Board 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 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 Virginia Code Section 28.2-1300.

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 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.

- (a) 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 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;
 - (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 in accordance with the latest edition of guidance documents issued by the Chesapeake Bay Local Assistance Board 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:

- (a) No more land shall be disturbed than is necessary to provide for the proposed use or development.
 - (1) 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.
 - (2) 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.
- (b) Indigenous vegetation shall be preserved to the maximum extent practicable consistent with the use or development proposed.
 - (1) 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 construction footprint. Diseased trees or trees weakened by age, storm, fire or other injury may be removed.
 - (2) 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.
 - (3) 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.
- (c) Where the best management practices utilized require regular or periodic maintenance in order to continue their functions, such maintenance shall be ensured by the director through a

maintenance agreement with the owner or developer or some other mechanism approved by the director which achieves an equivalent objective.

- (d) Land development shall minimize impervious cover consistent with the use or development proposed. Unless otherwise approved by the director, grid and modular pavements which promote infiltration shall be used for any required parking area, alley, or other low traffic driveway.
- (e) 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 drainfields, 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.
- (f) All sewage disposal systems in a CBPA not requiring a Virginia Pollutant Discharge Elimination System permit shall comply with the following:
 - (1) 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 Virginia 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.
 - (2) A reserve sewage disposal site with a capacity at least equal to that of the primary sewage disposal site shall be provided on each lot or parcel proposed for new construction. This reserve sewage disposal site requirement shall not apply to any lot or parcel recorded prior to October 1, 1989, if the lot or parcel is not sufficient in capacity to accommodate a reserve sewage disposal site, as determined by the local health department.
 - (3) 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.

- (g) Any development or redevelopment shall comply with all stormwater management criteria of the Virginia Stormwater Management Handbook or an equivalent standard approved by the director. The following stormwater management options shall be considered to comply with the requirements of this section:
- (1) Incorporation on the site of best management practices that achieve the required control.
 - (2) Participation in a county operated regional stormwater management program that results in achievement of equivalent water quality protection.
 - (3) Compliance with a site-specific Virginia Pollution Discharge Elimination System permit issued by the Virginia Department of Environmental Quality, provided that the director determines that the permit requires measures that collectively achieve water quality protection equivalent to that required by this subsection.
 - (4) Any maintenance, alteration, use of, or improvement to an existing structure which does not degrade the quality of surface water discharge, as determined by the director after consideration of a water quality impact assessment submitted by the applicant, may be exempted by the director from the requirements of this subsection.

Sec. 10-39. Agricultural activities.

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 Act and Regulations, approved by the soil and water conservation district board.

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 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 Hanover 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 with the 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 (i) encroachment in the RPA and (ii) 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 that (i) the director has conclusively established that location of the facility within the RPA is the optimum location; (ii) the size of the facility is the minimum necessary to provide necessary flood control or stormwater treatment, or both; (iii) the facility is consistent with a stormwater management program that has been approved by the Chesapeake Bay Local Assistance Board as a Phase I modification to the county's program; (iv) all applicable permits for construction in state or federal waters have been obtained from the appropriate state and federal agencies, such as the U.S. Army Corps of Engineers, the Virginia Department of Environmental Quality, and the Virginia Marine Resources Commission; (v) approval has been received from the director prior to construction; and (vi) 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 100-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 100-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 100-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 100-foot wide buffer area shall be deemed to achieve a 75% reduction of sediments and a 40% 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 100-foot wide buffer shall be reestablished. In reestablishing the buffer, management measures shall be undertaken to provide woody vegetation that assures the required 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 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 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 criteria set out 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 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. On agricultural lands 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 50 feet of the 100-foot wide buffer area when at least one agricultural best management practice which, in the opinion of the local soil and water conservation district board, addresses the more predominant water quality issue on the adjacent land--erosion control or nutrient management--is being implemented on the adjacent land, provided that the combination of the undisturbed buffer area and the best management practice achieves water quality protection, pollutant removal, and water resource conservation at least the equivalent of the 100-foot wide buffer area. If nutrient management is identified as the predominant water quality issue, a nutrient management plan, including soil tests, must be developed consistent with the Virginia Nutrient Management Training and Certification Regulations (4VAC5-15) administered by the Virginia Department of Conservation and Recreation.
 2. Agricultural activities may encroach within the landward 75 feet of the 100-foot wide buffer area when agricultural best management practices which address erosion control, nutrient management, and pest chemical control, are being implemented on the adjacent land.

The erosion control practices must prevent erosion from exceeding the soil loss tolerance level, referred to as "T," as defined in the "National Soil Survey Handbook" of November 1996 in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resource Conservation Service. A nutrient management plan, including soil tests, must be developed, consistent with the Virginia Nutrient Management Training and Certification Regulations (4VAC5-15) administered by the Virginia Department of Conservation and Recreation. In conjunction with the remaining buffer area, this collection of best management practices shall be presumed to achieve water quality protection at least the equivalent of that provided by the 100-foot wide buffer area.

3. The buffer area is not required to be designated adjacent to agricultural drainage ditches if at least one best management practice which, in the opinion of the local soil and water conservation district board, addresses the more predominant water quality issue on the adjacent land--either erosion control or nutrient management--is being implemented on the adjacent land.

DIVISION II. 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 disturbance within an RMA in excess of two thousand five hundred (2,500) 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 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 reduction 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. 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 then 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 drainfield 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;
 - 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 system;
 - 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;
 - iii. If additional vegetation is required in the buffer, a landscape plan showing location, type and size of landscaping, ground cover and trees to be used.
 3. Describes the potential measures for mitigation. Possible mitigation measures include:

- i. Replanting schedule for trees and other significant vegetation removed for construction, including a list of possible plants and trees to be used.
 - ii. Demonstration that the design of the plan will preserve to the greatest extent possible any significant trees and vegetation on the site and will provide maximum erosion control and overland flow benefits from such vegetation.
 - iii. Demonstration that indigenous plants are to be used to the greatest extent possible.
 - iv. Demonstration that landscaping, ground cover and trees to be used in the buffer or areas of development are of the appropriate species and are to be planted in a manner so as to maintain water quality.
 - d. A wastewater element, where applicable, that:
 1. Includes calculations and locations of anticipated drainfield or wastewater irrigation areas;
 2. Provides justification for sewer line locations in environmentally-sensitive areas, where applicable, and describes construction techniques and standards;
 3. Describes any proposed on-site collection and treatment systems, treatment levels, and impacts on receiving watercourses, including proposed mitigative measures.
- (3) WQIA submission and review requirements.
 - a. Copies of all drawings, plats, and other applicable information shall be submitted to the director for review, in accordance with procedures established by the director, fees shall be paid, and application for review shall be made on forms approved by the director.
 - b. All information required by the WQIA shall be certified as complete and

accurate by a qualified professional.

- c. The WQIA shall be submitted with the application for a land disturbance permit, 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 Chesapeake Bay Local Assistance Department (CBLAD). Upon receipt of a WQIA, the director will determine if such review is warranted and may request CBLAD to review the assessment and respond with written comments. Any comments by CBLAD will be incorporated into the final review by the director provided that such comments are provided by CBLAD 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 concepts are adequate to control the stormwater runoff to achieve the required standard for pollutant control;
 8. Proposed revegetation of disturbed areas will provide optimum erosion and sediment control benefits;
 9. The design and location of any proposed drainfield will be in accordance with the requirements of this chapter;
 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 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 Virginia 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.
- (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 Sec. 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:

- (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 Section 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;
 - 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 Section 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:

- (a) Name and address of applicant and property owner;

- (b) Legal description of the property and type of proposed use and development;
- (c) A sketch of the dimensions of the lot or parcel, location of buildings and proposed additions relative to the lot lines, and boundary of the RPA and RMA, if applicable;
- (d) Location and description of any existing private water supply or sewage system; and
- (e) Date of initiation of the use or completion of the structure, with documentation evidencing conformance with all requirements applicable at the time of completion.

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 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) A violation of this chapter shall be an offense punishable as a Class 1 misdemeanor. Each day during which the violation continues shall constitute a separate violation. In addition, the director may institute civil proceedings to enjoin violations.

Sec. 10-51. Fees.

Fees shall 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.

2. That this Ordinance is effective on December 31, 2003.

On motion of Mr. McGhee, seconded by Mr. Ward, the members of the Board of Supervisors voted to approve Ordinance No. 02-35, as follows:

	Vote:
Aubrey M. Stanley, Jr.	Aye
Timothy E. Ernst	Aye
Thomas F. Giles, Jr.	Aye
John E. Gordon, Jr.	Aye
Charles D. McGhee	Aye
Elton J. Wade, Sr.	Aye
Jackson. T. Ward	Aye

Public Hearing: December 17, 2003

Adopted: December 17, 2003

/s/
Richard R. Johnson, Clerk
Hanover County Board of Supervisors