

CHESAPEAKE BAY PRESERVATION

Be it ordained by the Board of Supervisors of the County of Lancaster, Virginia:

Statement of Intent

The Chesapeake Bay and its tributaries are one of the most important and productive estuarine systems in the world, providing economic and social benefits to the citizens of Lancaster County and the Commonwealth of Virginia. The health of the bay is vital to maintaining Lancaster County's economy and the welfare of its citizens.

The Chesapeake Bay waters have been degraded significantly by many sources of pollution, including non-point source pollution from land uses and development. Existing high-quality waters are worthy of protection from degradation to guard against further pollution. Certain lands that are proximate to shorelines have intrinsic water quality value due to the ecological and biological processes they perform. Other lands have severe development constraints from flooding, erosion, and soil limitations. With proper management, they offer significant ecological benefits by providing water quality maintenance and pollution control, as well as flood and shoreline erosion control. These lands together, designated by the board of supervisors as Chesapeake Bay Preservation Areas (CBPAs), need to be protected from destruction and damage in order to protect the quality of water in the bay and consequently the quality of life in Lancaster County and the Commonwealth of Virginia.

It is the intent and purpose of this article to support the goals and objective of the Chesapeake Bay Preservation Act and the Lancaster County comprehensive plan by protecting and improving the water quality of the Chesapeake Bay, its tributaries, buffer areas and other sensitive environmental lands by minimizing the potential adverse effects of human activity upon these areas. The intent of this article is to:

- Protect existing high-quality state waters;
- Restore all other state waters to a condition or quality that will permit all reasonable public uses and will support the propagation and growth of all aquatic life, including game fish, which might reasonably be expected to inhabit them;
- Safeguard the clean waters of the commonwealth from pollution;
- Prevent any increase in pollution;
- Reduce existing pollution;
- Promote water resource conservation in order to provide for the health, safety, and welfare of the present and future citizens of Lancaster County.

The requirements contained herein establish the means to minimize erosion and sedimentation potential, reduce land application of nutrients and toxics, and maximize rainwater infiltration within the Chesapeake Bay preservation areas. Natural ground cover, especially woody vegetation, is most effective in holding soil in place and preventing site erosion. Indigenous vegetation, with its adaptability to local conditions without the use of harmful fertilizers or pesticides, filters stormwater runoff. Minimizing impervious cover enhances rainwater infiltration and effectively reduces stormwater runoff potential.

Additionally, these regulations are intended to prevent a net increase in non-point source pollution from new development, achieve a ten percent reduction in non-point source pollution from redevelopment, and achieve a 40 percent reduction in non-point source pollution from agricultural uses.

This ordinance is enacted under the authority of §10.1-2100 et seq. (the Chesapeake Bay Preservation Act) and §15.2-2283 of the Code of Virginia.

Section 1: Definitions

For the purpose of this ordinance, certain words and terms are defined as follows. Words used in the present tense include the future. Words in the singular include plural, and the plural includes the singular.

Accessory use or structure.

A subordinate use or structure customarily incidental to and located upon the same or adjacent lot occupied by the main use or building, including private water and sewage facilities.

Best Management Practices. (BMP's)

A practice, or combination of practices, that is determined by a state or designated areawide planning agency to be the most effective, practical means of preventing or reducing the amount of pollution generated by non-point sources to a level compatible with water quality goals.

Buffer area.

An area of natural or established vegetation managed to protect other components of the resource protection area and state waters from significant degradation due to land disturbance.

Building.

Any combination of materials, whether portable or fixed, having a roof to form a structure for the use or occupancy by person, or property. The word building shall be construed as though followed by the words "or part thereof".

Building Accessory.

A subordinate structure customarily incidental to, and located upon, the same lot occupied by the main structure.

Caliper.

The diameter in inches of a tree trunk measured six inches above the ground level.

Chesapeake Bay preservation area (CBPA).

Any land designated by Lancaster County pursuant to part III of the Chesapeake Bay Preservation Area Designation and Management Regulations, 9 VAC 10-20, et seq., and the Code of Virginia, §10.1-2107. A Chesapeake Bay preservation area shall consist of a resource protection area (RPA) and a resource management area (RMA). All lands within Lancaster County outside of an RPA are within an RMA.

Construction footprint.

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

Development.

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

Diameter at breast height (DBH).

The diameter of a tree measured outside the bark at a point 4.5 feet above the ground.

Director of Planning.

The individual appointed by the Lancaster County Board of Supervisors charged with the enforcement of this ordinance. Director of Planning may designate a subordinate employee to act in his behalf in the enforcement of this ordinance.

Dripline.

A vertical projection to the ground surface from the furthest lateral extent of a tree's leaf canopy.

Governing Body.

The board of supervisors of Lancaster County, Virginia.

Health Official.

The legally designated health authority of the state board of health for Lancaster County or his authorized representative.

Highly erodible soils.

Soils (excluding vegetation) with an erodibility index (EI) from sheet and rill erosion equal to or greater than eight. The erodibility index for any soil is defined as the product of the formula $RKLS/T$, where K is the soil susceptibility to water erosion in the surface layer, R is the rainfall and runoff, LS is the combined effect 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 inches of water movement per hour in any part of the soil profile to a depth of seventy-two inches (permeability groups "rapid" and "very rapid" as found in the "National Soil Survey Handbook" in the "Field Office Technical Guide" of the U. S. Department of Agriculture, Natural Resources Conservation Service (November 1966).

Hydric soils.

Soils that are saturated, flooded or ponded long enough during the growing seasons to develop anaerobic conditions in the upper part, which are saturated for usually one week or more in the growing period and have the capacity to support hydrophytic vegetation.

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/land disturbing activity.

Any activity as described in section 3-11 of the Lancaster County Erosion and Sediment Control Ordinance.

Lot.

A parcel of land occupied or to be occupied by a main structure or group of main structures and accessory structures, together with such yards, open space, lot width, and lot areas as are

required by this ordinance, either shown on a plat of record or considered as a unit of property and described by metes and bounds.

Non-point 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.

Perennial flow (Water Body with).

A body of water that flows in a natural or manmade channel year-round during a year of normal precipitation. This includes but is not limited to streams, estuaries, and tidal embayments and may include drainage ditches or channels constructed in wetlands or from former natural drainageways that convey perennial flow. Lakes and ponds through which a perennial stream flows are part of the perennial stream. Generally, the water table is located above the streambed for most of the year and groundwater is the primary source for stream flow.

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

Redevelopment.

The process of further developing land that has been previously developed.

Resource Management Area (RMA).

That component of the Chesapeake Bay preservation area that is not classified as the resource protection area. RMA's include land types that, if improperly used or developed, have the potential for causing significant water quality degradation or for diminishing the functional value of the resource protection area.

Resource Protection Area (RPA).

That component of the Chesapeake Bay preservation area comprised of lands adjacent to water bodies with perennial flow that have intrinsic water quality value due to the ecological and biological processes they perform or are sensitive to impacts which may result in degradation of the quality of state waters.

Resource protection area buffer.

An area of existing or established vegetation within the RPA that protects other components of the RPA and state waters from significant degradation associated with land disturbance.

Resource protection area delineator.

A person trained in wetland ecology, botany, agronomy, hydrology and/or other related fields with experience delineating tidal and nontidal wetlands.

Setback, waterside.

The minimum distance by which any building or structure must be separated from any tidal shore, tidal wetlands, or nontidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow. This does not apply to any boat docks, launch ramp or shoreline erosion control devices.

Silvicultural activities.

Forest management activities, including but not limited to the harvesting of timber, the construction of roads and trails for forest management practices, 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 §10.1-1105 of the Code of Virginia and are located on property defined as real estate devoted to forest use under §58.1-3230 of the Code of Virginia.

Site Plan.

A plan delineating the overall scheme of development or a tract of land, including but not limited to, grading, engineering design, improvement details, erosion and sediment control measures and survey data.

Structure.

Anything constructed or erected, the use of which requires permanent location on the ground, or attachment to something having a permanent location on the ground, except utility poles.

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 or shore.

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

Water-dependent facility.

A development of land that cannot exist outside of the RPA and must be located on the shoreline by reason of the intrinsic nature of its operation. These facilities include, but are not limited to ports; intake and outfall structures of power plants, water treatment plants, sewage treatment plants, storm sewers; marina and other boat docking structures, beaches and other public water-oriented recreation areas; and fisheries or other marine resources facilities.

Wetlands.

Non-tidal wetlands. Those wetlands other than tidal wetlands that are inundated or saturated by surface or ground water as a frequency and duration sufficient to support and, that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions as defined by the U.S. Environmental Protection Agency pursuant to Section 404 of the federal Clean Water Act in 33 C.F.R. 328.3b.

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

Section 2: Areas of Applicability

2-1. The requirements of this article shall apply to all lands identified as RPA's and RMA's on maps adopted by the board of supervisors on file in the office of the director of planning.

2-2. The RPA includes:

- (a) Tidal wetlands;
- (b) Non-tidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow;
- (c) Tidal shores;
- (d) A 100-foot vegetated buffer area located adjacent to and landward of the components listed above, and along both sides of any water body with perennial flow.

2-3. The RMA includes all remaining areas of Lancaster County.

ADD FIGURE "RPA COMPONENTS"

Note: Items in lower case letters indicate the feature that the symbol depicts.

Items in upper case letters indicate the feature must be mapped as an RPA feature.

Section 3: The Resource Protection Area (RPA)

3-1. *Interpretation of RPA boundaries.* The site specific boundaries of the RPA shall be determined by the applicant through the performance of an environmental site assessment or water quality impact assessment conducted by an RPA delineator in accordance with Section 5-1 (Plan Development) or Section 5-7 (Water Quality Impact Assessment) of this ordinance. The RPA delineator may use the adopted map as a guide to the general location of an RPA.

3-2. *Where conflicts arise over delineation.* When the applicant has provided a site-specific delineation of the RPA, the director of planning will verify the accuracy of the boundary delineation. In determining the site-specific RPA boundary, the director of planning may render adjustments to the applicant's boundary delineation, in accordance with Lancaster Zoning Ordinance article 22, Site Plans, and the Lancaster County subdivision ordinance.

3-3. *Use and lot size provisions for lands within the RPA.*

(a) Development within the RPA is limited to new water-dependent facilities, expansion of existing water-dependent facilities and redevelopment. Redevelopment outside locally designated Intensely Developed Areas shall be permitted in the Resource Protection Area only if there is no increase in the amount of impervious cover and no further encroachment within the Resource Protection Area, and it shall conform to applicable erosion and sediment control and stormwater management criteria as set forth in the Lancaster County Erosion and Sediment Control Ordinance and state law.

(b) The above-mentioned uses within the RPA must be in compliance with the intent and purpose of the comprehensive plan and comply with the performance standards of this article of the zoning ordinance.

(c) All newly created lots intended for human activity and use shall have sufficient area landward of the RPA to accommodate intended non-water-dependent land uses.

(d) All non-water-dependent components of water-dependent facilities shall be located outside of the RPA.

(e) Access, utilities or other land disturbance necessary to serve water-dependent facilities shall be kept to a minimum with a single point of access where possible.

3-4. *RPA buffer area requirements.*

(a) To minimize the adverse effects of human activities on the other components of resource protection areas, state waters, and aquatic life, a 100-foot buffer area of vegetation that

is effective in retarding runoff, preventing erosion, and filtering non-point source pollution from runoff shall be retained if present and established where it does not exist.

Add Figure - "BUFFER AREA CROSS SECTION"

(b) The RPA buffer shall be located adjacent to and landward of other RPA components and along both sides of any water body with perennial flow. The full 100-foot wide buffer shall be designated as the landward component of the RPA. Notwithstanding permitted uses, encroachments, and vegetation clearing, as set forth in this section, the 100-foot wide buffer area is not reduced in width.

(c) 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 intended function of the buffer.

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

(e) The RPA buffer shall be maintained in accordance with the following performance standards:

(1) In order to maintain the functional value of the buffer area, indigenous vegetation may be removed to provide for reasonable sight lines, access paths, general woodlot management, and best management practices, if authorized by the director of planning, on a case-by-case basis, upon presentation of documentation that the RPA buffer will still function in a manner that protects water quality. Such vegetation shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion, and filtering non-point source pollution from runoff. The following guidelines shall be observed:

Add Figure - "BUFFER AREA LAYOUT COMPARISON "

(2) Trees may be pruned only as necessary to provide for sight lines and vistas.

(3) Any path shall be constructed and surfaced so as to effectively control erosion.

Add Figure - "ACCESS PATH CONSTRUCTION"

(4) 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, pursuant to sound horticultural practice incorporated into locally-adopted standards.

(5) 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 subject to the issuance of all required permits.

(f) When the application of the RPA buffer would result in the loss of a buildable area on a lot or parcel recorded prior to May 12, 1988, encroachments into the buffer area may be allowed through an administrative process 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) The encroachment may not extend into the seaward 50-foot portion of the buffer.

(g) When the application of a buffer area would result in the loss of a buildable area on a lot or parcel recorded between May 12, 1988 and August 31, 1990, encroachments into the buffer area may be allowed through an administrative process 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 Lancaster County 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 criteria in subdivision 6 of this subsection shall be met.

(h) No encroachment into the 100-ft wide resource protection area buffer shall be allowed on lots or parcels recorded after September 1, 1990.

(i) Delineation of RPAs for single-family homes. The director of planning, when requested by an applicant wishing to construct a single-family residence requiring the preparation of an environmental site assessment, will for a fee perform the RPA delineation. The director of planning may use remote sensing, hydrology, soils, plant species, and other data, and consult other appropriate resources as needed to perform the delineation.

(j) On agricultural lands the buffer shall be managed to prevent concentrated flows of surface water from breaching the buffer area. Appropriate measures may be taken to prevent noxious weeds from invading the buffer area. Agricultural activities may encroach into the buffer area as follows:

(1) Agricultural activities may encroach into the landward 50 feet of the 100-foot wide buffer area when at least one agricultural best management practice, which, in the opinion of the Northern Neck Soil and Water Conservation District Board, addresses the more predominant water quality issue on the adjacent land—erosion control or nutrient management—is being implemented on the adjacent land, provided that the combination of the undisturbed buffer area and the best management practice achieves water quality protection, pollutant removal, and water resource conservation at least the equivalent of the 100-foot wide buffer area. If nutrient management is identified as the predominant water quality issue, a nutrient management plan including soil test, must be developed consistent with the “Virginia Nutrient Management Training and Certification Regulations (4 VAC 5-15 et seq.) administered by the 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 that 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 test, must be developed consistent with the “Virginia Nutrient Management Training and Certification Regulations (4 VAC 5-15 et seq.) 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 the adjacent agricultural land has in place at least one best management practice as considered by the Northern Neck Soil and Water Conservation District Board to address the more predominant water quality issue on the adjacent land—either erosion control or nutrient management.

(k) RPA signs. When development occurs adjacent to an RPA boundary, the applicant shall install or mount signs indicating the location of the RPA limits. Signs, which are available from the director of planning, shall be positioned within 300 feet of each other and/or where an RPA boundary line crosses a property line.

Section 4: Performance Standards for All Development and Redevelopment.

4-1. All development and redevelopment shall be subject to applicable provisions of the Lancaster County subdivision ordinance, the erosion and sediment control ordinance of Lancaster County, the Lancaster County zoning ordinance and the Lancaster County wetlands ordinance.

4-2. No more land shall be disturbed than is necessary to provide for the proposed use or development. The construction footprint shall not exceed 60 percent of the site.

4-3. All land development shall minimize impervious cover to the maximum extent practicable consistent with the use or development proposed.

4-4. Indigenous vegetation shall be preserved to the maximum extent practicable consistent with the use or development proposed.

4-5. On-site sewage treatment systems.

(a) All on-site sewage disposal systems not requiring a NPDES permit shall be pumped out at least once every five years, in accordance with the requirements of the Virginia Department of Health. Alternatives for pump-out are also permitted including the installation of a plastic filter in the outflow pipe from the septic tank as long as the filter satisfies the standards established in the Sewage Handling and disposal Regulations under the 12 VAC 5-6-10 et seq. as administered by the Virginia Department of Health. As a second alternative, owners of on-site sewage treatment systems may submit, every five years, documentation certified by a sewage handler permitted by the Virginia Department of Health that the septic system has been inspected and is functioning properly and does not need to be pumped out.

(b) *For new construction*, A reserve sewage disposal site with a capacity at least equal to that of the primary sewage disposal site shall be provided. This requirement shall not apply to any lot or parcel recorded prior to October 1, 1989, if such lot or parcel is not sufficient in capacity to accommodate a reserve sewage disposal site, as determined by the local health department. Building or construction of any impervious surface shall be prohibited on the area of all sewage disposal sites or on an onsite sewage treatment system *that* operates under a permit issued by the State Water Control Board, until the structure is served by public sewer.

4-6. For any development or redevelopment, stormwater runoff shall be controlled by the use of best management practices that are consistent with the water quality protection provisions (4 VAC 3-20-71 et seq.) of the Virginia Stormwater Management Regulations (4 VAC 3-20).

(a) For development, the post-development non-point source pollution runoff load shall not exceed the pre-development load, based on the calculated average land cover for Virginia's Chesapeake Bay watershed.

(b) For isolated redevelopment sites, the non-point source pollution load shall be reduced by at least ten percent. The director of planning may waive or modify this requirement for redevelopment sites that originally incorporated best management practices for stormwater runoff quality control, provided the following provisions are satisfied:

(1) In no case may the post-development non-point source pollution runoff load exceed the pre-development load;

(2) Runoff pollution loads must have been calculated and the BMP's selected for the expressed purpose of controlling non-point source pollution;

(3) If best management practices are structural, evidence shall be provided that facilities are currently in good working order and performing at the design levels of service. The director of planning may require a review of both the original structural design and maintenance plans to verify this provision. A new maintenance agreement may be required to ensure compliance with this article.

(c) For single-family dwellings on lots of one acre or greater in size, stormwater runoff calculations are not required provided the post-development impervious coverage for all structures, building and other impervious surfaces does not exceed 16 percent. For redevelopment, both the pre- and post-development loadings shall be calculated by the same procedures. However, where the design data is available, the original post-development non-point source pollution loadings can be substituted for the existing development loadings.

4-7. Prior to initiating grading or other onsite activities on any portion of a lot or parcel, all wetlands permits required by federal, state, and local laws and regulations shall be obtained and evidence of such submitted to the director of planning, in accordance with Article 22 of the Lancaster County Zoning Ordinance, Site Plans.

4-8. Land upon which agricultural activities are being conducted 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 Bay Act.

Section 5. Submission requirements.

5-1. Plan of development. Any development or redevelopment exceeding 2,500 square feet of land disturbance in the CBPA shall be accomplished through a plan of development process prior to any clearing or grading of the site or the issuance of any building permit, unless the director of planning determines that due to the scope and nature of the proposed development certain of the required information is unnecessary. The submittal requirements of section 5, as required, shall constitute a complete site plan submittal for land disturbance activities associated with single-family dwellings. Administration of the plan of development process shall be in accordance with article 22 of the Lancaster County Zoning Ordinance for site plans and the Lancaster County subdivision ordinance for subdivision plans. The following plans or studies shall be submitted, unless otherwise provided for to accompany a site plan or subdivision plan:

5-2. Environmental site assessment. An environmental assessment shall be submitted in conjunction with a site plan or preliminary subdivision plan approval application.

(a) The environmental site assessment shall be drawn to scale clearly delineating the following components:

- (1) Tidal wetlands;

- (2) Tidal shores;
- (3) Nontidal wetlands in RPA;
- (4) A 100-foot buffer area located adjacent to and landward of the components listed in subsections (1) through (3) above, and along both sides of any water body with perennial flow;
- (5) Nontidal wetlands in RMA;
- (6) Hydric soils.

(b) Wetlands delineations shall be performed consistent with the procedures specified in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, 1987.

(c) The environmental site assessment shall be drawn at the same scale as the site plan or subdivision plan, and shall be certified as complete and accurate by a RPA delineator competent to make the inventory. The requirement that the assessment be at the same scale may be waived by the director of planning when the proposed use or development would result in less than 5,000 square feet of disturbed area.

5-3. Clearing plan. A clearing plan shall be submitted in conjunction with a site plan or preliminary subdivision plan approval application. No clearing or grading of any lot or parcel shall be permitted without an approved clearing plan. Clearing plans shall be prepared and/or certified by design professionals practicing within their areas of competence as prescribed by the Code of Virginia.

(a) Contents of the plan.

(1) The clearing plan shall be drawn to scale and clearly delineate the location, size, and description of existing and proposed plant material. All existing trees on the site six inches or greater in diameter at breast height (DBH) shall be shown on the clearing plan, or where there are groups of trees, the wood lines of the group may be outlined instead. The specific number of trees six inches or greater DBH to be preserved outside of the impervious cover and outside the groups shall be indicated on the plan. Trees to be removed and wood lines to be changed to create desired and necessary impervious cover shall be clearly delineated on the clearing plan.

(2) Any required buffer area shall be clearly delineated and any plant material to be added to establish or supplement the buffer area, as required by this ordinance, shall be shown on the clearing plan.

(3) Within the buffer area, trees to be removed for sight lines, vistas, access paths, and BMP's, as provided for in this ordinance, shall be shown on the plan. Vegetation required by this ordinance to replace any existing trees within the buffer area shall also be shown on the clearing plan.

(b) Plant specifications.

(1) All plant materials necessary to supplement the buffer area or vegetated areas outside the impervious cover shall be installed according to standard planting practices and procedures.

(2) All supplementary or replacement plant materials shall be living and in healthy condition. Plant materials shall conform to the standards of the most recent edition of the American Standard for Nursery Stock, published by the American Association of Nurserymen.

(3) Where areas to be preserved, as designated on an approved clearing plan, are encroached, replacement of existing trees and other vegetation will be achieved at a ratio of two planted trees to one removed. Replacement trees shall be a minimum 2 1/2 inches caliper at the time of planting.

(c) Maintenance.

(1) The applicant shall be responsible for the maintenance, repair, and replacement of all vegetation as may be required by the provisions of this ordinance.

(2) In buffer areas and areas outside the impervious cover, plant material shall be tended and maintained in a healthy growing condition and free from refuse and debris. Unhealthy, dying, or dead plant materials shall be replaced during the next planting season, as required by the provisions of this ordinance.

5-4. Stormwater management plan. A stormwater management plan shall be submitted as part of the plan of development process required by this article and in conjunction with site plan or subdivision plan approval. When site impervious cover is 16 percent or less of total site area, no stormwater management plan is required.

(a) Contents of the plan. At a minimum, the stormwater management plan shall contain the following:

(1) Location and design of stormwater control devices and BMP's.

(2) Procedures for implementing nonstructural stormwater control practices.

(3) Pre- and post-development non-point source pollution loadings with documentation ***demonstrating that*** all utilized coefficients and calculations are in accordance with the Virginia Stormwater Management Handbook.

(4) For facilities, verification of structural soundness, including a professional engineer or class IIIB surveyor certification.

(b) The plan shall establish a longterm schedule for inspection and maintenance of stormwater management facilities that includes all maintenance requirements and persons responsible for performing maintenance. If the designated maintenance responsibility is with a party other than Lancaster County, then a maintenance agreement shall be executed between the responsible party and the county.

5-5. Erosion and sediment control plan. An erosion and sediment control plan prepared in accordance with the erosion and sediment control ordinance of Lancaster County shall be submitted. Any land disturbance within the RPA buffer, including those exempted in section 1-6-1(d), will require an erosion and sediment control plan.

5-6. Landscaping plan. A landscaping plan prepared in accordance with article 22 of this ordinance shall be submitted.

5-7. Water quality impact assessment.

(a) Purpose. The purpose of the water quality impact assessment is to identify the impacts of proposed development on water quality and lands within resource protection areas and other environmentally sensitive lands; to ensure that, where development does take place within resource protection areas and other sensitive lands, it will be located on those portions of a site and in a manner that will be least disruptive to the natural functions of resource protection areas and other sensitive lands; to protect individuals from investing funds for improvements proposed for a location on lands unsuited for such development because of high groundwater, erosion, or vulnerability to flood and storm damage; and to specify mitigation which will address water quality protection.

(b) When required. A water quality impact assessment is required for:

(1) Any proposed land disturbance, development, or redevelopment within a resource protection area, including any buffer area encroachment.

(2) Any proposed development or redevelopment within an RMA. The director of planning may waive this requirement after the issuance in writing of findings indicating that the unique characteristics of the site (such as the topography, soils, ground cover, location of wetlands and tidal shores) or the insignificance of the proposed development will not cause a degradation of water quality.

(c) Minor water quality impact assessment. A minor water quality impact assessment pertains only to land disturbance, development, or redevelopment within CBPA's which causes no more than 5,000 square feet of land disturbance and requires an encroachment into the landward 50 feet of the 100-foot buffer area. A minor assessment must demonstrate through acceptable calculations that the undisturbed buffer area, enhanced vegetative plantings and necessary best management practices will result in removal of no less than 75 percent of sediments and 40 percent of nutrients from post-development stormwater runoff and that will retard runoff, prevent erosion, and filter nonpoint source pollution the equivalent of the full undisturbed 100-foot buffer area. A minor assessment shall include a site drawing to scale which shows the following:

(1) Location of the components of the RPA on site or within 100 feet of the site, including the 100-foot buffer area;

(2) Location and nature of the proposed encroachment into the buffer area, including: type of paving material; areas of clearing or grading; location of any structures, drives, or other impervious cover; and sewage disposal systems or reserve drainfield sites;

(3) Type and location of proposed best management practices to mitigate the proposed encroachment.

(4) Location of existing vegetation onsite, including the number and type of trees and other vegetation to be removed in the buffer to accommodate the encroachment;

(5) Re-vegetation plan that supplements the existing buffer vegetation in a manner that provides for pollutant removal, erosion and runoff control.

(d) Major water quality impact assessment. A major water quality impact assessment shall be required for any development which exceeds 5,000 square feet of land disturbance within CBPA's and requires any encroachment into the landward 50 feet of the 100-foot buffer area; proposes to disturb any portion of any other component of an RPA or proposes to disturb any portion of the buffer area within 50 feet of any other component of an RPA; or is located in an RMA and is deemed necessary by the director of planning. The information required in this section shall be considered a minimum, unless the director of planning determines that some of the elements are unnecessary due to the scope and nature of the proposed use and development of land. The following elements shall be included in the preparation and submission of a major water quality assessment which accompanies a site plan or subdivision application:

(1) All information required as part of a minor water quality impact assessment;

(2) An environmental site assessment;

(3) A clearing plan and landscaping plan;

(4) A stormwater management plan;

(5) An erosion and sediment control plan;

(6) A wastewater plan;

(7) A hydrogeological study which includes an estimation of pre- and post-development pollutant loads in runoff.

(e) Evaluation procedure.

(1) Upon the completed review of a minor water quality impact assessment, the director of planning will determine if any proposed modification or encroachment into the buffer area is consistent with the provisions of this article and make a finding based upon the following criteria:

- a. The necessity of the proposed encroachment and the ability to place improvements elsewhere on the site to avoid disturbance of the buffer area;
- b. Impervious surface is minimized;
- c. Proposed best management practices, where required, achieve the requisite reductions in pollutant loadings;
- d. The development, as proposed, meets the purpose and intent of this article;
- e. The cumulative impact of the proposed development, when considered in relation to other development in the vicinity, both existing and proposed, will not result in a significant degradation of water quality.

(2) Upon the completed review of a major water quality impact assessment, the director of planning will determine if the proposed development is consistent with the purpose and intent of this article and make a finding based upon the following criteria:

- a. Within any RPA, the proposed development is water-dependent;
- b. The disturbance of wetlands will be minimized;
- c. The development will not result in significant disruption of the hydrology of the site;
- d. The development will not result in significant degradation to aquatic vegetation or life;
- e. The development will not result in unnecessary destruction of plant materials on site;
- f. Proposed erosion and sediment control concepts are adequate to achieve the reductions in runoff and prevent offsite sedimentation;
- g. Proposed stormwater management concepts are adequate to control the stormwater runoff to achieve the required standard for pollutant control;
- h. Proposed revegetation of disturbed areas will provide optimum erosion and sediment control benefits;

i. The design and location of any proposed drainfield will be in accordance with the requirements of section 3;

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

k. 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.

(3) The director of planning shall require additional mitigation where potential impacts have not been adequately addressed. Evaluation of mitigation measures will be made by the director of planning based on the criteria herein.

(4) The director of planning 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 of planning based on the criteria herein.

Section 6. Installation and Bonding Requirements

6-1. When the occupancy of a structure is desired prior to the completion of the required landscaping, stormwater management facilities, or other specifications of an approved plan, a certificate of occupancy may be issued only if the applicant provides to Lancaster County a form of surety satisfactory to the director of planning in amount of the remaining plant materials, and installation costs for any of the required landscaping or facilities and/or maintenance costs for any required stormwater management facilities during the construction period.

6-2. All required landscaping shall be installed and approved by the first planting season following issuance of a certificate of occupancy or the surety may be forfeited to the county.

6-3. All required stormwater management facilities or other specifications shall be installed and approved within 18 months of project commencement. Should the applicant fail, after proper notice, to initiate, complete or maintain appropriate actions required by the approved plan, the surety may be forfeited to the county. The county may collect from the applicant the amount by which the reasonable cost of required actions exceeds the amount of the surety held.

6-4. After all required actions of the approved site plan have been completed, the applicant must submit a written request for a final inspection. If the requirements of the approved plan have been completed to the satisfaction of the director of planning, such unexpended or unobligated portion of the surety held shall be refunded to the applicant or terminated within 60 days following the receipt of the applicant's request for final inspection. The director of planning may require a certificate of substantial completion from a professional engineer or class IIIB surveyor before making a final inspection.

Section 7: Exemptions

7-1. Public utilities, railroads, public roads, and facilities.

(a) Construction, installation, operation, and maintenance of transmission lines (electric, natural gas, telephone, and fiber-optic), railroads, and public roads and their appurtenant structures in compliance with the Erosion and Sediment Control Law Code of Virginia, § 10.1-560 et seq. and the Stormwater Management Act, Code of Virginia, §10.1-603.1 et seq. or an erosion and sediment control plan and a stormwater management plan approved by the Virginia Department of Conservation and Recreation will be deemed to comply with this ordinance. The exemption of public roads is further conditioned that the road alignment and design has been optimized, consistent with all applicable requirements, to prevent or to otherwise minimize the encroachment in the Resource Protection Area and to minimize the adverse effects on water quality.

(b) Construction, installation, and maintenance of water, sewer, natural gas, underground telecommunications, and cable television lines owned, permitted or both by Lancaster County or a regional authority, shall be exempt from this ordinance provided that:

(1) To the degree possible the location of such utilities and facilities should be outside RPA's;

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

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

(4) Any land disturbance exceeding an area of 2,500 square feet complies with the erosion and sediment control ordinance of Lancaster County.

(c) Exemptions for silvicultural activities. Silvicultural activities are exempt from the requirements of this ordinance provided that silvicultural operations adhere to water quality protection procedures prescribed by the “Virginia’s Forestry Best Management Practices for Water Quality” (Technical Guide).

(d) Exemptions for water wells, passive recreation facilities and historic preservation and archaeological activities. Exemptions from these requirements may be granted for the following land disturbances in RPA's: (i) water wells; (ii) passive recreation facilities such as boardwalks, trails, and pathways; and (iii) historic preservation and archaeological activities, provided that it is demonstrated to the satisfaction of the director of planning that:

(1) Any required permits, except those to which this exemption specifically applies, shall have been issued;

- (2) Any land disturbance exceeding an area of 2500 square feet shall comply with the Lancaster County Erosion and Sediment Control Ordinance;
- (3) Sufficient and reasonable proof is submitted that the intended use will not deteriorate water quality; and
- (4) The intended use does not conflict with nearby planned or approved uses.

Section 8. Administration and Interpretation.

- 10-1. This ordinance shall be enforced by the director of planning who shall be appointed by the board of supervisors. The director of planning shall serve at the pleasure of that board.
- 10-1. *Severability.* Should any section or provision of this ordinance be decided by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole or any part thereof other than the part so held to be unconstitutional or invalid.
- 10-1. *Conflicting ordinances.* All conflicting ordinances or parts thereof which are inconsistent with the provisions of this ordinance are hereby repealed.
- 10-1. *Effective date.* This ordinance shall be effective on the day following its date of adoption.

Section 9. Enforcement.

- 10-1. All departments, officials and public employees of Lancaster County which are vested with the duty or authority to issue permits or licenses shall conform to the provisions of this ordinance. They shall issue permits for uses, buildings or purposes only when they are in harmony with the provisions of this ordinance. Any such permit, if issued in conflict with the provisions of this ordinance, shall be null and void.
- 10-1. The director of planning is granted all necessary authority on behalf of the board of supervisors to administer and enforce this ordinance, including the authority of remedying any condition found in violation of this ordinance and the bringing of legal action to secure compliance with this ordinance, including injunctive, abatement or other appropriate action or proceeding.
- 10-1. Penalties. Whenever in any provision of this Ordinance any act is prohibited or is made or declared to be unlawful or an offense or misdemeanor, or the doing of any act is required, or the failure to do any act is declared to be unlawful or an offense or a misdemeanor, such violation shall constitute a class 1 misdemeanor and be punished as prescribed in Lancaster County Code of Ordinances, Section 1-10(a)(1).

Section 10. Waivers, Exceptions and Appeals.

10-1. *Nonconforming use and development waivers.* It is not the intent of this ordinance to prevent beneficial use or minor modification or alteration of structures legally existing prior to the adoption of this ordinance on September 1, 1990.

(a) The Director of Planning and Land Use may grant a nonconforming use and/or waiver for structures on legal nonconforming lots or parcels to provide for remodeling and alterations to such nonconforming structures provided that:

(1) There will be no net increase in nonpoint source pollutant load;
(2) Land disturbances in excess of 2,500 square feet shall comply with Lancaster County Erosion and Sediment Control Ordinance.

(b) An application for a nonconforming use and/or waiver shall be made to and upon forms furnished by the Director of Planning and Land Use and shall include, for the purpose of proper enforcement, a Bay Act site plan performed by a licensed surveyor/engineer and prepared in accordance with the requirements for site plans set forth in Article 22-6 of the Lancaster County Zoning Ordinance .

(c) A nonconforming use and development waiver shall become null and void twelve months form the date issue if no substantial work has commenced.

(d) An application for the expansion of a nonconforming principal structure may be approved by the Director of Planning and Land Use through an administrative review process provided that the following findings are made;

(1) The request for the waiver is the minimum necessary to afford relief;
(2) Granting the waiver will not confer upon the applicant any specific privileges that are denied by this Article to other property owners in similar situations;

(3) The waiver is in harmony with the purpose and intent of this Ordinance and does not result in water quality degradation;

(4) The waiver is not based on conditions or circumstances that are self-created or self-imposed;

(5) Reasonable and appropriate conditions are imposed, as warranted, that will prevent the waiver from causing a degradation of water quality;

(6) Other findings as appropriate and required by Lancaster County are met; and

(7) In no case shall this provision apply to accessory structures.

10-2. Exceptions.

(a) Exceptions to the requirements of this ordinance other than Section 3-3 and 3-4 may be granted by the Director of Planning and Land Use provided that:

(1) Exceptions to the requirements shall be the minimum necessary to afford relief;

(2) Reasonable and appropriate conditions upon any exception granted shall be imposed as necessary so that the purpose and intent of the act is preserved; and

(3) Exceptions to Section 4 (Performance Criteria) may be made provided that the findings noted in Subsection (d) below are made.

(b) A request for an exception to the requirements of Sections 3-3 and 3-4 of this Article shall be made in writing to the Board of Supervisors (Bay Act Exception Request)). It shall identify the impacts of the proposed exception on water quality and on lands within the Resource Protection Area through the performance of a water quality impact assessment that complies with the provision of Section 5-7.

(c) The Board of Supervisors shall notify the affected public of any such exception requests and shall consider these requests in a public hearing in accordance with 15.2-2204 of the Code of Virginia, except that only one hearing shall be required.

(d) The Board of Supervisors shall review the request for an exception and the water quality impact assessment and may grant the exception with such conditions and safeguards as deemed necessary to further the purpose and intent of this Ordinance if the Board finds:

(1) Granting the exception shall not confer upon the applicant any special privileges denied by this Ordinance to other property owners in Lancaster County;

(2) The exception request is not based on conditions or circumstances that are self-created or self-imposed, nor does the request arise from conditions or circumstances either permitted or non-conforming that are related to adjacent parcels;

(3) The exception request is the minimum necessary to afford relief;

(4) The exception request will be in harmony with the purpose and intent of this Ordinance, not injurious to the neighborhood or otherwise detrimental to the public welfare, and is not of substantial detriment to water quality; and

(5) Reasonable and appropriate conditions are imposed which will prevent the exception request from causing a degradation of water quality.

(e) If the Board of Supervisors cannot make the required findings or refuses to grant the exception, the Board shall return the request for an exception together with the

water quality impact assessment and the written findings and rationale for the decision to the applicant.

(f) Waivers or exceptions granted will become null and void if proposed development is not completed within twelve (12) months.

10-4. Appeals.

(a) An owner of property subject to an administrative decision, order, or requirement under this ordinance may appeal by submitting a written application for review to the Board of Supervisors no later than 30 days from the rendering of such decision, order, or requirement. The board shall hear the appeal as soon as practical after receipt of the application. The appellant, the board of supervisors, the planning director, and any person or agency expressing an interest in the matter shall be notified by the board not less than ten days prior to the date of the hearing.

(b) In rendering its decision, the board shall balance the hardship to the property owner with the purpose, intent, and objectives of this ordinance.

(c) Final decisions of the Lancaster County Board of Supervisors under this ordinance shall be subject to review by the Lancaster County Circuit Court, provided an appeal is filed within 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 CBPA activities.

10-5. Vesting of rights.

A building permit issued on or before September 20, 1990, vests rights to build in accordance with the requirements of that permit. Such building permit may be renewed one time if construction does not commence within the time limit of that permit.

Adopted: June 1, 2005