

**ARTICLE 8**  
**CHESAPEAKE BAY PRESERVATION AREA OVERLAY DISTRICT**

**Section 8.1. Title.**

This ordinance shall be known and referenced as the "Chesapeake Bay Preservation Area Overlay District" of King George County.

**Section 8.2. Findings of Fact.**

The Chesapeake Bay and its tributaries is one of the most important and productive estuarine systems in the world, providing economic and social benefits to the citizens of King George County and the Commonwealth of Virginia. The health of the Bay is vital to maintaining King George 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 (hereinafter "CBPAs"), need to be protected from destruction and damage in order to protect the quality of water in the Bay and consequently the quality of life in King George County and the Commonwealth of Virginia.

**Section 8.3. Purpose and Intent.**

- a. This ordinance is enacted to implement the requirements of §62.1-44.15:67, et seq. of the Code of Virginia (The Chesapeake Bay Preservation Act) and amends the King George County Zoning Ordinance. The intent of the Board of Supervisors and the purpose of the Overlay District is to: (1) protect existing high quality state waters; (2) restore all other state waters to a condition or quality that will permit all reasonable public uses and will support the propagation and growth of all aquatic life, including game fish, which might reasonably be expected to inhabit them; (3) safeguard the clean waters of the Commonwealth from pollution; (4) prevent any increase in pollution; (5) reduce existing pollution; and (6) promote water resource conservation in order to provide for the health, safety, and welfare of the present and future citizens of King George County.
- b. This district shall be in addition to and shall overlay all other zoning districts where they are applied so that any parcel of land lying in the Chesapeake Bay Preservation Area Overlay District shall also lie in one or more of the other zoning districts provided for by the Zoning Ordinance. Unless otherwise stated in the Overlay District, the review and approval procedures provided for in Article 7 and Chapters 4 and 6 of the County Code shall be followed in reviewing and approving development, redevelopment, and uses governed by this Article.
- c. This Article is enacted under the authority of §62.1-44.15:67, et seq. (The Chesapeake Bay Preservation Act) and §15.2-2283, of the Code of Virginia.

**Section 8.4. Definitions of terms**

The following words and terms used in the Overlay District have the following meanings, unless the context clearly indicates otherwise. Words and terms not defined in this Article but defined in the Zoning Ordinance shall be given the meanings set forth therein.

“Act” means the Chesapeake Bay Preservation Act, Article 2.5 (§62.1-44.15:67 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

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

“Board” means the State Water Control Board.

"Buffer area" means an area of natural or established vegetation managed to protect other components of a Resource Protection Area and state waters from significant degradation due to land disturbances.

"Chesapeake Bay Preservation Area" (CBPA) means any land designated by the Board of Supervisors pursuant to 9VAC25-830-70 of the Chesapeake Bay Preservation Area Designation Criteria, and §62.1-44.15:74 of the Code of Virginia. A Chesapeake Bay Preservation Area shall consist of a Resource Protection Area and a Resource Management Area.

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

“Department” means the Department of Environmental Quality.

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

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

“Director” means the Director of the Department of Environmental Quality.

“Erosion and Sediment Control Law” means Article 2.4 (§62.1-44.15:51 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

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

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

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

“Highly erodible soils” means soils (excluding vegetation) with an erodibility index(EI) from sheet and rill erosion equal to or greater than eight. The erodibility index for any soil is defined as a 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” means soils with a given potential to transmit water through the soil profile. Highly permeable soils are identified as any soil having a permeability equal to or greater than six inches of water movement per hour in any part of the soil profile to a depth of 72 inches (permeability groups “rapid” and “very rapid”) as found in the “National Soil Survey Handbook” of November 1996 in the “Field Office Technical Guide” of the U.S. Department of Agriculture Natural Resources Conservation Service.

"Impervious cover" means a surface composed of any material that significantly impedes or prevents natural infiltration of water into the soil. Impervious surfaces include, but are not limited to: roofs, buildings, streets, parking areas, and any concrete, asphalt, or compacted gravel surface.

“Infill” means utilization of vacant land in previously developed areas.

"Intensely Developed Areas" (IDAs) means a portion of a Resource Protection Area or a Resource Management Area designated by the Board of Supervisors where development is concentrated and little of the natural environment remains per 9VAC25-830-100.

“Local governments” means counties, cities, towns. This chapter applies to local governments in Tidewater Virginia as defined in §62.1-44.15:68 of the Act, but the provisions of this chapter may be used by other local governments.

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

“Local program adoption date” means the date a local government meets the requirements of subdivisions 1 and 2 of 9VAC25-830-60.

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

"Noxious weeds" means weeds that are difficult to control effectively, such as Johnson Grass, Kudzu, and multiflora rose.

"Plan of Development" means any process for site plan review in local zoning and land development regulation designed to ensure compliance with §62.1-44.15:74 of the Act and this chapter prior to issuance of a building permit.

“Public road” means a publicly owned road designed and constructed in accordance with water quality protection criteria at least as stringent as requirements applicable to the Virginia Department of Transportation, including regulations promulgated pursuant to (i) the Erosion and Sediment Control Law 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 a local government in accordance with the standards of that local government.

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

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

"Resource Protection Area" (RPA) means that component of the Chesapeake Bay Preservation Area comprised of lands adjacent to water bodies with perennial flow that have an intrinsic water quality value due to the ecological and biological processes they perform or are sensitive to impacts which may result in significant degradation to the quality of state waters.

"Silviculture activities" Means forest management activities, including but not limited to the harvesting of timber, the construction of roads and trails for forest management purposes, and the preparation of property for reforestation that are conducted in accordance with the silvicultural best management practices developed and enforced by the State Forester pursuant to Section 10.1-1105 of the Code of Virginia and are located on property defined as real estate devoted to forest use under Section 58.1-3230 of the Code of Virginia.

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

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

"Tidal wetlands" means vegetated and non-vegetated wetlands as defined in Section 28.2-1300 of the Code of Virginia.

“Tidewater Virginia” means those jurisdictions named in §62.1-44.15: 68 of the Act.

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

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

“Water-dependent facility” means a development of land that cannot exist outside of the Resource Protection Area and must be located on the shoreline by reason of the intrinsic nature of its operation. These facilities include, but are not limited to (i) ports; (ii) the intake and outfall structures of power plants, water treatment plants, sewage treatment plants, and storm sewers; (iii) marinas and other boat docking structures; (iv) beaches and other public water-oriented recreation areas; and (v) fisheries or other marine resources facilities.

**Section 8.5. Areas of applicability.**

The Chesapeake Bay Preservation Area Overlay District shall apply to all lands identified as CBPAs as designated by the Board of Supervisors and as shown on the Chesapeake Bay Map. The Chesapeake Bay Map, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this Article. Components of the CBPA include the following:

- a. The Resource Protection Area includes:
  - 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 100-foot vegetated buffer area located adjacent to and landward of the components listed in subsections 1. through 3., above, and along both sides of any water bodies with perennial flow.
- b. The Resource Management Area shall be:
  - 1. That area of the county not identified as being within the Resource Protection Area.
  - 2. The Chesapeake Bay Map shows the general location of CBPAs and should be consulted by persons contemplating activities within King George County prior to engaging in a regulated activity.
  - 3. Portions of RPAs and RMAs designated by the Board of Supervisors as Intensely Developed Areas shall serve as redevelopment areas. Areas so designated shall comply with all erosion and sediment control requirements and the performance standards for redevelopment in Section 8.11 (Performance Standards.)

**Section 8.6. Use regulations.**

Permitted uses, special exception uses, accessory uses, and special requirements shall be as established by the underlying zoning district, unless specifically modified by the requirements set forth herein.

**Section 8.7. Lot size.**

Lot size shall be subject to the requirements of the underlying zoning district(s), provided that any lot shall have sufficient area outside the RPA to accommodate an intended development, in accordance with the performance standards in Section 8.11, when such development is not otherwise allowed in the RPA.

**Section 8.8. Required conditions.**

The following conditions apply to uses, land disturbing, development and redevelopment with the CBPA.

- a. All development and redevelopment exceeding 2500 square feet of land disturbance shall be subject to a plan of development process, including the approval per Article 13, Stormwater Management, King George County Zoning Ordinance, a site plan in accordance with the provisions of Article 7, Site Plan Regulations, King George County Zoning Ordinance, or a subdivision plat in accordance with the King George County Subdivision Ordinance.

- b. Development in RPAs may be allowed only if it: (i) is water-dependent; or (ii) constitutes redevelopment meeting the criteria provided below:
  1. A new or expanded water dependent facility may be allowed provided that the following criteria are met:
    - a. It does not conflict with the Comprehensive Plan;
    - b. It complies with the performance criteria set forth in Section 8.11 of this Article
    - c. Any nonwater-dependent component is located outside of the RPA; and
    - d. Access to the water-dependent facility will be provided with the minimum disturbance necessary. Where practicable, a single point of access will be provided.
  2. Redevelopment on isolated redevelopment sites outside of an area designated by King George County to be an Intensely Developed Area shall be permitted only if there is no increase in the amount of impervious cover and no further encroachment within the RPA and it shall conform to the stormwater management requirements outlined under Section 8.11.2.7. of this Article.
  3. Roads and Driveways not exempted under Section 8.15.1.a, may be constructed in or across RPAs if each of the following conditions is met:
    - a. The Zoning Administrator makes a finding that there are no reasonable alternatives to aligning the road or driveway in or across the Resource Protection Area;
    - b. The alignment and design of the road or driveway are optimized, consistent with other applicable requirements, to minimize (i) encroachment of the RPA and (ii) adverse effects of on water quality;
    - c. The design and construction of the road or driveway satisfy all applicable criteria of this Ordinance, including submission of a water quality impact assessment; and
    - d. The Zoning Administrator reviews the plan for the road or driveway proposed in or across the RPA in coordination with other local government, state, federal requirements and development approvals.
  4. The plan for the road or driveway proposed in or across the Resource Protection Area in coordination with either a Site Plan review per Article 7, Site Plan Regulations, King George County Zoning Ordinance or in accordance with a subdivision submittal per the Subdivision Ordinance, King George County.
  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 Resource Protection Areas provided such facilities are allowed and constructed in accordance with the Virginia Stormwater Management Act and its attendant regulations, and provided that (i) the local government has conclusively established that location of the facility within the Resource Protection Area 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 must be consistent with a comprehensive stormwater management plan developed and approved in accordance with Section 13.14.9, Article 13, Stormwater Management, King George County Zoning Ordinance (9VAC25-870-92) of the Virginia Stormwater Management Program (VSMP) regulations; (iv) all applicable permits for construction in state or federal waters must be obtained from the appropriate state and federal agencies, such as the U.S. Army Corps of Engineers, the department, and the Virginia Marine Resources Commission; (v) approval must be received from the local government prior to construction; and (vi) routine maintenance is allowed to be performed 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 a Resource Protection Area.
- c. A water quality impact assessment shall be required for any proposed use, land disturbance, development, or redevelopment within RPAs and for any development within RMAs when required by the Director of Community Development because of the unique characteristics of the site or intensity of development, in Accordance with the provisions of Section 8.12, of this Article.

Section 8.9. Conflict with other Regulations.

In any case where the requirements of this Article conflict with any other provision of the King George County Code or existing state or federal regulations, whichever imposes the more stringent restrictions shall apply.

Section 8.10. Interpretation of Resource Protection Area Boundaries.

Interpretation of Resource Protection Area Boundaries shall be made as follows:

- a. The site-specific boundaries of the Resource Protection Area shall be determined by the applicant through the performance of an environmental site assessment as part of the Plan of Development Process or Water Quality Impact Assessment, subject to approval by the Director of Community Development and in accordance with Section 8.13, Plan of Development, and Section 8.12, Water Quality Impact Assessment, of this Article. The Chesapeake Bay Preservation Area Map shall be used as a guide to the general location of Resource Protection Areas.
- b. Where the applicant has provided a site-specific delineation of the RPA, the Director of Community Development will verify the accuracy of the boundary delineation. In determining the site-specific RPA boundary, the Director of Community Development may render adjustments to the applicant's boundary delineation, in accordance with Section 8.13, (Plan of Development) of this Article. In the event the adjusted boundary delineation is contested by the applicant, the applicant may seek relief, in accordance with the provisions of Section 8.13.9, (Denial/Appeal of Plan)

Section 8.11. Performance Standards.

Section 8.11.1. Purpose and intent. The performance standards establish the means to minimize erosion and sedimentation potential, reduce land application of nutrients and toxins, and maximize rainwater infiltration. Natural ground cover, especially woody vegetation, is most effective in holding soil in place and preventing site erosion. Indigenous vegetation, with its adaptability to local conditions without the use of harmful fertilizers or pesticides, filters stormwater runoff. Minimizing impervious cover enhances rainwater infiltration and effectively reduces stormwater runoff potential.

The purpose and intent of these requirements are also to implement the following objectives: prevent a net increase in non-point source pollution from new development; achieve a 10% reduction in non-point source pollution from redevelopment; and achieve a 40% reduction in non-point source pollution from agricultural uses.

Section 8.11.2. General performance standards for development and redevelopment.

1. Land disturbance shall be limited to the area necessary to provide for the proposed use or development.
  - a. In accordance with an approved site plan, the limits of land disturbance, including clearing or grading shall be strictly defined by the construction footprint. These limits shall be clearly shown on submitted plans and physically marked on the development site.
  - b. Ingress and egress during construction shall be limited to one access point, unless otherwise approved by the Director of Community Development.
2. Indigenous vegetation shall be preserved to the maximum extent practicable consistent with the use or development proposed and in accordance with the Virginia Erosion and Sediment Control Handbook.
  - a. Site clearing for construction shall be allowed only to provide necessary access, positive site drainage, water quality BMPs, and the installation of utilities, as approved by the Director of Community Development through the plan of development process. Existing trees over 2 inches diameter breast height (DBH) located outside of the construction footprint shall be preserved. Diseased trees or trees weakened by age, storm, or other injury may be removed, when approved by the Director of Community Development. Other woody vegetation on site shall also be preserved outside the approved construction footprint.

- b. Prior to clearing or grading, suitable protective barriers, such as safety fencing, shall be erected 5 feet outside of the dripline of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
3. Land development shall minimize impervious cover to promote infiltration of stormwater into the ground consistent with the proposed use or development.
    - a. Grid and modular pavements may be used for any required alley, or other low traffic driveway, unless otherwise approved by the Director of Community Development.
    - b. Parking space size shall be 162 square feet. Parking space width shall be nine (9) feet; parking space length shall be 18 feet. Two-way drives shall be a maximum of 22 feet in width.
  4. Notwithstanding any other provisions of this Article and Chapter 6, Erosion and Sediment Control, of the Code of King George County or exceptions or exemptions thereto, any land disturbing activity exceeding 2,500 square feet, including construction of all single-family houses, septic tanks, and drainfields, shall comply with the requirements of Chapter 6, Erosion and Sediment Control, of the Code of King George County.
  5. All on-site sewage disposal systems not requiring a Virginia Pollutant Discharge Elimination System (VPDES) permit shall:
    - a. Have pump-out accomplished for all such systems and provide written proof to the King George County Zoning Administrator that the system has been pumped by a licensed septic hauler on a form and in the manner set forth by the Zoning Administrator at least once every five years;
      1. In lieu of being required to pump-out the effluent from the system, if approved by the Virginia Department of Health at the time of installation the owner may install and maintain a plastic filter in the outflow pipe from the septic tank to filter solid material from the effluent while sustaining adequate flow to the drainfield. The filter must meet the standards in the Sewage Handling and Disposal Regulations (12VAC5-610) administered by the Virginia Department of Health.
      2. In lieu of being required to provide proof of septic tank pump-out every five years, the property owner may submit documentation every five years, certified by an operator or on-site soil evaluator (OSE) licensed or certified under Chapter 23 (§ 54.1-2300 et seq.) of Title 54.1 as being qualified to operate, maintain, or design on-site sewage systems that the septic system has been inspected and is functioning properly, and that the tank does not need to have the effluent pumped out of it.
  6. A reserve sewage disposal site with a capacity at least equal to that of the primary sewage disposal site shall be provided, in accordance with the King George County On-Site Sewage Disposal Ordinance. 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 on-site sewage treatment system which operates under a permit issued by the State Water Control Board, until the structure is served by public sewer.
  7.
    - a. Chesapeake Bay Preservation Act Land Disturbing Activities, as defined in Section 13.8, Article 13, King George County Zoning ordinance, shall comply with the requirements of 9VAC25-870-51 and 9VAC25-870-103 of the Virginia Stormwater Management Program (VSMP) regulations.
    - b. Any Chesapeake Bay Preservation Act Land Disturbing Activity that is determined by the County to be grandfathered in accordance with Section 13.5 a., Article 13, King George County Zoning ordinance shall comply with performance based or technology based technical criteria set forth below:
      1. Performance-based criteria. For land-disturbing activities, the calculated postdevelopment nonpoint source pollutant runoff load shall be compared to the calculated predevelopment load based upon the average land cover condition or the existing site condition. A BMP shall be located, designed, and maintained to achieve the target pollutant removal efficiencies specified in 9VAC25-870-96 C of the Virginia Stormwater Management Program (VSMP) regulations.

2. Technology-based criteria. For land-disturbing activities, the postdeveloped stormwater runoff from the impervious cover shall be treated by an appropriate BMP as required by the postdeveloped condition percent impervious cover as specified in Table 1 of 9VAC25-870-96 C. The selected BMP shall be located, designed, and maintained to perform at the target pollutant removal efficiency specified in 9VAC25-870-96 C of the Virginia Stormwater Management Program (VSMP) regulations or those found in 9VAC25-870-65 of the VSMP regulations.
8. Prior to initiating grading or other on-site activities on any portion of a lot or parcel, all wetlands permits required by federal, state, and local laws and regulations shall be obtained and evidence of such submitted to the Director of Community Development, in accordance with Section 8.13, of this Article.
9. 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 need to ensure that water quality protection is being accomplished consistent with the Act and this chapter.
10. Evidence of all state, federal or local permits required prior to authorizing grading or any other on-site activity to begin.

**Section 8.11.3. Buffer area requirements.** 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. The buffer area shall be located adjacent to and landward of other RPA components and along both sides of any water body with perennial flow. The full buffer area shall be designated as the landward component of the RPA, in accordance with Sections 8.5 (Areas of Applicability) and 8.13 (Plan of Development) of this Article.

- a. The 100-foot buffer area shall be deemed to achieve a 75 percent reduction of sediments and a 40 percent reduction of nutrients.
- b. Where land uses such as agricultural 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 buffer functions set forth herein.
- c. The buffer area shall be maintained to meet the following additional performance standards:
  1. In order to maintain the functional value of the buffer area, indigenous vegetation may be removed subject to approval by the Director of Community Development 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 storm water, as follows:
    - a. Trees may be pruned or removed as necessary to provide for sight lines and vistas provided that where removed, they shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion, and filtering non-point source pollution from runoff
    - b. Any path shall be constructed so as to effectively control erosion
    - c. Dead, diseased, or dying trees or shrubbery and noxious weeds (such as Johnson grass, kudzu and multi-flora rose) may be removed and thinning of trees may be allowed, pursuant to sound horticultural practice incorporated into locally adopted standards.
    - d. For shoreline erosion control projects, trees and woody vegetation may be removed, necessary control techniques employed, and appropriate vegetation established to protect or stabilize the shoreline in accordance with the best available technical advice and applicable permit conditions or requirements.



2. When the application of the buffer areas would result in the loss of a buildable area on a lot or parcel recorded prior to October 1, 1989, the Director of Community Development may authorize encroachments into the buffer area in accordance with Section 8.13 (Plan of Development) and the following criteria:
  - a. Encroachments into the buffer areas shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities;
  - b. Where practicable, a vegetated area that will maximize water quality protection, mitigate the effects of the buffer encroachment, and is at a minimum equal to the area of encroachment into the buffer area shall be established elsewhere on the lot or parcel; and
  - c. The encroachment may not extend into the seaward fifty (50) feet of the buffer area.
3. On agricultural lands the agricultural buffer area shall be managed to prevent concentrated flows of surface water from breaching the buffer area and appropriate measures may be taken to prevent noxious weeds (such as Johnson grass, kudzu, and multiflora rose) from invading the buffer area. Agricultural activities may encroach into the buffer area as follows:
  - a. Agricultural activities may encroach into the landward 50 feet of the 100-foot wide buffer area when at least one agricultural best management practice which, in the opinion of the 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 Training and Certification Regulations (4 VAC 5-15) administered by the Virginia Department of Conservation and Recreation.
  - b. Agricultural activities may encroach within the landward 75 feet of the 100-foot wide buffer area when Agricultural Best Management Practices, which address erosion control, nutrient management, and pest chemical control, are being implemented on the adjacent land. The erosion control practices must prevent erosion from exceeding the soil loss tolerance level, referred to as "T," as defined in the "National Soil Survey Handbook" of November 1996 in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resource Conservation Service. A nutrient management plan, including soil tests, must be developed, consistent with the Virginia Nutrient Management Training and Certification Regulations (4 VAC 5-15) 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.
  - c. 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.
  - d. If specific problems are identified pertaining to agricultural activities which are causing pollution of the nearby water body with perennial flow or violate performance standards pertaining to the vegetated buffer area, the local government, in cooperation with Soil and Water Conservation District, shall recommend a compliance schedule to the landowner and require the problems to be corrected consistent with that schedule. This schedule shall expedite environmental protection while taking into account the seasons and other temporal considerations so that the probability for successfully implementing the corrective measures is greatest.

- e. In cases where the landowner or his agent or operator has refused assistance from the Soil and Water Conservation District in complying with or documenting compliance with the agricultural requirements of this chapter, the District shall report the noncompliance to the Director of the King George County, Department of Community Development. The Director shall require the landowner to correct the problems within a specified period of time not to exceed 18 months from their initial notification of the deficiencies to the landowner. King George County, in cooperation with the District, shall recommend a compliance schedule to the landowner. This schedule shall expedite environmental protection while taking into account the seasons and other temporal considerations so that the probability for successfully implementing the corrective measures is greatest.

## Section 8.12. Water Quality Impact Assessment.

Section 8.12.1. Purpose and intent. The purpose of the water quality impact assessment is to: (i) identify the impacts of proposed land disturbance, development or redevelopment on water quality and lands within RPAs (ii) ensure that, where land disturbance, development or redevelopment does take place within RPAs 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 RPAs and other sensitive lands; (iii) to protect individuals from investing funds for improvements proposed for location on lands unsuited for such development because of high ground water, erosion, or vulnerability to flood and storm damage; (iv) provide for administrative relief from the terms of this Article when warranted and in accordance with the requirements contained herein; and (v) specify mitigation which will address water quality protection.

Section 8.12.2. Water quality impact assessment required. A water quality impact assessment is required for (i) any proposed land disturbance, development or redevelopment within an RPA, including any buffer area modification or encroachment as provided for in Section 8.11.3.2; (ii) any development in a RMA as deemed necessary by the Director of Community Development due to the unique characteristics of the site or intensity of the proposed development. There shall be two levels of water quality impact assessments: a minor assessment and a major assessment.

Section 8.12.3. Minor water quality impact assessment. A minor water quality impact assessment pertains only to land disturbance, development or redevelopment within CBPAs, which causes no more than 5,000 square feet of land disturbance within CBPA's and proposes any encroachment into the landward 50 feet of the 100 foot buffer area as permitted under Section 8.11.3.2. A minor assessment must demonstrate through acceptable calculations that the buffer area, enhanced vegetation, 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. A minor assessment shall include a site drawing to scale, which shows the following:

- a. Location of the components of the RPA, including the 100 foot buffer area;
- b. 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;
- c. Type and location of proposed best management practices to mitigate the proposed encroachment.

Section 8.12.4. Major water quality impact assessment. A major water quality impact assessment shall be required for any land disturbance, development or redevelopment which (i) exceeds 5,000 square feet of land disturbance within CBPA's and proposes to encroach into landward 50 feet of the 100 foot buffer area; (ii) disturbs any portion of the buffer area within fifty (50) feet of any other component of an RPA; or (iii) is located solely in an RMA and is deemed necessary by the Director of Community Development. The information required in this section shall be considered a minimum, unless the Director of Community Development 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:

- a. All of the information required in a minor water quality impact assessment, as specified in Section 8.12.3.;
- b. A hydrogeological element that:
  - 1 Describes the existing topography, soils, and hydrology of the site and adjacent lands.

- 2 Describes the impacts of the proposed development on topography, soils, hydrology and geology on the site and adjacent lands.
- 3 Indicates the following:
  - a. Disturbance or destruction of wetlands and justification for such action;
  - b. Disruptions or reductions in the supply of water to wetlands, streams, lakes, rivers or other water bodies;
  - c. Disruptions to existing hydrology including wetland and stream circulation patterns;
  - d. Source location and description of proposed fill material;
  - e. Location of dredge material and location of dumping area for such material;
  - f. Estimation of pre- and post-development pollutant loads in runoff;
  - g. Estimation of percent increase in impervious surface on site and type(s) of surfacing materials used;
  - h. Percent of site to be cleared for project;
  - i. Anticipated duration and phasing schedule of construction project;
  - j. Listing of all requisite permits from all applicable agencies necessary to develop project.
  - k. Describes the proposed mitigation measures for the potential water quality impacts. Potential mitigation measures include:
    1. Additional proposed erosion and sediment control concepts; beyond those normally required under Section 8.11.2.4, these concepts may include minimizing the extent of the cleared area, perimeter controls, reduction of runoff velocities, measures to stabilize disturbed areas, schedule and personnel for site inspection;
    2. Proposed stormwater management system for nonpoint source water quality and quantity control;
- c. A landscape element that:
  1. Identifies and delineates the location of all woody plant communities on site with their dominant species composition, including all trees two inches or greater diameter at breast height. 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 should include:
    - a. General limits of clearing, based on all anticipated improvements, including buildings, drives, and utilities;
    - b. Clear delineation of all trees and other woody vegetation, which will be removed;
    - c. Description of all plant species to be disturbed or removed.
  3. Describes the proposed measures for mitigation. Possible mitigation measures include:
    - a. Proposed design and replanting schedule for trees, woody vegetation and other significant vegetation removed for construction, including a list of proposed plants and trees to be used;

- b. Demonstration that the revegetation plan supplements existing buffer vegetation in a manner that provides for pollutant removal, erosion and runoff control.
- c. 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.
- d. Demonstration that indigenous plants are to be used to the greatest extent possible.

Section 8.12.5. Submission and review requirements.

- a. Five (5) copies of all site drawings and other applicable information as required by Sections 8.12.3 and 8.12.4 shall be submitted to the Director of Community Development for review.
- b. All information required in this section shall be certified as complete and accurate by a professional engineer for either major or minor water quality assessments or a certified land surveyor for minor water quality assessments only.
- c. A minor water quality impact assessment shall be prepared and submitted to and reviewed by the Director of Community Development in conjunction with Section 8.13, (Plan of Development).
- d. A major water quality impact assessment shall be prepared and submitted to and reviewed by the Director of Community Development in conjunction with a request for rezoning, special use permit, or in conjunction with Section 8.13, as deemed necessary by the Director of Community Development.
- e. As part of any major water quality impact assessment submittal, the Director of Community Development may require review by the Chesapeake Bay Local Assistance Department (CBLAD). Upon receipt of a major water quality impact assessment, the Director of Community Development 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 of Community Development, provided that such comments are provided by CBLAD within 90 days of the request.

Section 8.12.6. Evaluation Procedure.

Upon the completed review of a minor water quality impact assessment, the Director of Community Development will determine if any proposed modification or encroachment into to 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 mitigation measures, including the revegetation plan and site design, result in minimal disturbance to all components of the RPA, including the 100-foot buffer are;
- d. Proposed mitigation will work to retain all buffer area functions: pollutant removal, erosion and runoff control;
- e. Proposed best management practices, where required, achieve the requisite reductions in pollutant loadings;
- f. The development, as proposed, meets the purpose and intent of this Article;
- g. The cumulative impact of the proposed development, when considered in relation to other development in the vicinity, both existing and proposed, will not result in a significant degradation of water quality.

2. Upon the completed review of a major water quality impact assessment, the Director of Community Development 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 or is redevelopment;
  - b. The disturbance of any 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 unnecessary destruction of plant materials on site;
  - e. Proposed erosion and sediment control concepts are adequate to achieve the reductions in runoff and prevent off-site sedimentation;
  - f. Proposed stormwater management concepts are adequate to control the stormwater runoff to achieve the required performance standard for pollutant control;
  - g. Proposed revegetation of disturbed areas will provide runoff control and pollutant removal equivalent of the full 100-foot undisturbed buffer area and provide optimum erosion and sediment control benefits;
  - h. The design and location of any proposed drainfield will be in accordance with the requirements of Section 8.11.
  - i. The development, as proposed, is consistent with the purpose and intent of the Overlay District;
3. The Director of Community Development shall require additional mitigation where potential impacts have not been adequately addressed. Evaluation of mitigation measures will be made by the Director of Community Development based on the criteria listed in 8.12.6.1 and 8.12.6.2.
4. The Director of Community Development 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 Community Development based on the criteria listed in 8.12.6.1 and 8.12.6.2.

Section 8.13. Plan of development process.
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Any development or redevelopment exceeding 2500 square feet of land disturbance shall be accomplished through a plan of development process prior to any development preparation activities on site such as, clearing or grading of the site or the issuance of any building permit, to assure compliance with all applicable requirements of this Article.

- a. Chesapeake Bay Land Preservation Act Land Disturbing Activities shall comply with Article 13, Stormwater Management, King George County Zoning Ordinance and shall be subject to the following technical criteria and program and administrative requirements:
  1. An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during land disturbing activities. Prior to land disturbance, this plan must be approved by either the VESCP authority or the department in accordance with the Virginia Erosion and Sediment Control Law and attendant regulations.
  2. A stormwater management plan consistent with the requirements of Article 13, Stormwater Management King George County Zoning Ordinance, must be designed and implemented during the land-disturbing activity. The stormwater management plan shall be developed and submitted in accordance with Section 13.11, Stormwater Management Plan, Article 13, Stormwater Management Requirements, King George County Zoning Ordinance (9VAC25-870-55). Prior to land disturbance, this plan must be approved by the VSMP authority.

3. Exceptions may be requested in accordance with Section 13.7, Article 13, Stormwater Management Requirements, King George County Zoning Ordinance (9VAC25-870-57).
4. Long-term maintenance of stormwater management facilities shall be provided for and conducted in accordance with Section 13.15, Article 13, Stormwater Management, King George County Zoning Ordinance (9VAC25-870-58).
5. Water quality design criteria shall be in accordance with Section 13.14.1, Article 13, Stormwater Management, King George County Zoning Ordinance (9VAC25-870-63) shall be applied to the site.
6. Water quality compliance shall be achieved in accordance with Section 13.14.2, Article 13, Stormwater Management, King George County Zoning Ordinance (9VAC25-870-65).
7. Channel protection and flood protection shall be achieved in accordance with Section 13.14.3, Article 13, Stormwater Management, King George County Zoning Ordinance (9VAC25-870-66).
8. Offsite compliance options in accordance with Section 13.14.4, Article 13, King George County Zoning Ordinance (9VAC25-870-69) shall be available to Chesapeake Bay Preservation Act land-disturbing activities.
9. Such land-disturbing activities shall be subject to the design storm and hydrologic methods set out in Section 13.14.5, Article 13, Stormwater Management, King George County Zoning Ordinance (9VAC25-870-72), linear development controls in Section 13.14.7, Article 13, Stormwater Management, King George County Zoning Ordinance (9VAC25-870-76), and criteria associated with stormwater impoundment structures or facilities in Section 13.14.8, Article 13, King George County Zoning Ordinance (9VAC25-870-85).

Section 8.13.1. Required Information. In addition to the requirements of Article 7 of the King George County Zoning Ordinance and Subdivision Ordinance, the plan of development process shall consist of the plans and studies identified below. These required plans and studies may be coordinated or combined. The Director of Community Development may determine that some of the following information is unnecessary due to the scope and nature of the proposed development. The following plans or studies shall be submitted, unless otherwise provided for:

- a. A site plan, preliminary and/or final, in accordance with the provisions of Article 7 of the Zoning Ordinance; or a subdivision plat in accordance with the provisions of the King George County Subdivision Ordinance; however, for single-family dwellings with no RPA encroachment a plot plan may be submitted in lieu of a site plan.
- b. An environmental site assessment, except where a plot plan is accepted under a. above;
- c. A landscaping plan, except where a plot plan is accepted under a. above;
- d. A stormwater management plan, consistent with provisions of Section 13.10, Article 13, Stormwater Management, King George County Zoning Ordinance, except where a plot plan is accepted under a. above;
- e. An erosion and sediment control plan in accordance with the provisions of Erosion and Sediment Control Ordinance of King George County, Virginia. However, for single-family dwellings with no RPA encroachment an agreement in lieu of a plan may be entered into with the County.

Section 8.13.2. Plot plan requirements for single family homes. A plot plan for individual single family homes, additions to such dwellings and accessory buildings shall be submitted to the Zoning Administrator. At a minimum, the plot plan shall be drawn to scale and contain the following:

- a. A boundary survey of the site (if available) or site drawing showing the north arrow and property line measurements.
- b. Area of the lot/parcel.
- c. Location, dimensions and use of proposed and existing structures including marine and temporary structures. In the case of temporary structures, the date when the structures will be removed must be indicated.

- d. Location of all building restriction lines, setbacks, easements, covenant restrictions and rights-of-way.
- e. Dimensions and location of all driveways, parking areas or any other impervious surfaces.
- f. Location of all existing and proposed septic tanks and drainfield areas including reserve areas and the location of all existing and proposed wells.
- g. Limits of all clearing and grading.
- h. Location of the limits of the RPA, including any water bodies with perennial flow, and any additional required buffer areas.
- i. Location of all erosion and sediment control devices.
- j. If the total percentage of the proposed post development impervious surfaces exceeds 16 percent of the total site area, a storm water management plan as required in Section 8.13.5 must be submitted.
- k. Any encroachment into the RPA shall require the applicant to comply with all aspects of the plan of development process, as applicable, and submit a water quality impact assessment.

Section 8.13.3. Environmental site assessment. An environmental site assessment, when required, shall be submitted in conjunction with preliminary site plan or preliminary subdivision plan approval.

- a. The environmental site assessment shall be drawn to scale and clearly delineate the following environmental features:
  - 1. Tidal wetlands;
  - 2. Tidal shores;
  - 3. Nontidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow;
  - 4. A 100 foot buffer area located adjacent to and landward of the components listed in subsections a. through c. above, and along both sides of or water bodies with perennial flow;
- 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 delineate the site-specific geographic extent of the RPA on the specific site or parcel as required under Section 8.10.
- d. The environmental site assessment shall be drawn at the same scale as the preliminary site plan or subdivision plat, and shall be certified as complete and accurate by a professional engineer or a certified land surveyor. This requirement may be waived by the Director of Community Development when the proposed use or development would result in less than 5,000 square feet of disturbed area.

Section 8.13.4. Landscaping plan. A landscaping plan, when required, shall be submitted in conjunction with site plan approval or as part of subdivision plat approval. No clearing or grading of any lot or parcel shall be permitted without an approved landscaping plan.

Landscaping 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 landscaping 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 within the construction footprint of two inches or greater DBH shall be shown on the landscaping plan. Where there are groups of trees, outside of the construction footprint, stands may be outlined instead. The specific number of trees two inches or greater DBH to be preserved outside of the construction footprint shall be noted on the plan. Trees and other woody

vegetation proposed to be removed to create the desired construction footprint shall be clearly delineated on the landscaping plan.

2. Any required RPA buffer area shall be clearly delineated and any plant material to be added to establish or supplement the buffer area, as required by this Article, shall be shown on the landscaping plan.
3. Within the RPA buffer area, trees and other woody vegetation to be removed for sight lines, vistas, access paths, and best management practices, as provided for in this Article, shall be shown on the plan. Vegetation required by this Article to replace any existing trees within the buffer area shall also be shown on the landscaping plan.
4. Trees and other woody vegetation to be removed for shoreline stabilization projects and any replacement vegetation required by this Article shall be shown on the landscaping plan.
5. The plan shall depict grade changes or other work adjacent to trees and other woody vegetation, which would affect them adversely. Specifications shall be provided as to how grade, drainage, and aeration would be maintained around trees to be preserved.
6. The landscaping plan will include specifications for the protection of existing trees and other woody vegetation during clearing, grading, and all phases of construction.
7. If the proposed development is a change in use from agriculture or silviculture to any other land use, the plan must demonstrate the re-establishment of the vegetation in the buffer area.

b. Plant Specifications.

1. All plant materials necessary to supplement the buffer area or vegetated areas outside the construction footprint shall be installed according to standard planting practices and procedures. Indigenous plant species are required to be used in supplementing the buffer area.
2. All supplementary or replacement plant materials shall be living and in a healthy condition. Plant materials shall conform to the standards of the most recent edition of the American Standard for Nursery Stock, published by the American Association of Nurserymen.
3. Where areas to be preserved, as designated on an approved landscaping plan, are encroached, replacement of existing trees and other vegetation will be achieved at a ratio of three (3) planted trees to one (1) removed. Replacement trees shall be a minimum three and one-half (3.5) inches DBH at the time of planting.

c. Maintenance.

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

Section 8.13.5. Stormwater management plan. A stormwater Management plan shall be submitted per Section 13.10, Article 13, Stormwater Management, King George County Zoning Ordinance.

Section 8.13.7. Final plan. Final plans, when required, for property within CBPAs shall be final plats for land to be subdivided or site plans for land not to be subdivided as required in Article 7 of the King George County Zoning Ordinance.

a. Final plans for all lands within CBPAs shall include the following additional information:

1. The delineation of the Resource Protection Area boundary, including the 100 foot buffer area component;



2. Plat or plan note stating that no land disturbance is allowed in the buffer area without review and approval by the Director of Community Development;
3. All wetlands permits required by law;
4. A maintenance agreement as deemed necessary and appropriate by the Director of Community Development to ensure proper maintenance of best management practices in order to continue their functions.

b. Installation and Bonding Requirements.

1. Where buffer areas, landscaping, stormwater management facilities or other specifications of an approved plan are required, no certificate of occupancy shall be issued until the installation of required plant materials or facilities is completed, in accordance with the approved site plan.
2. When the occupancy of a structure is desired prior to the completion of the required landscaping, stormwater management facilities, or other specifications of an approved plan, a certificate of occupancy may be issued only if the applicant provides to King George County a form of surety satisfactory to the Director of Community Development in amount equal to the remaining plant materials, related materials, and installation costs of the required landscaping or other specifications and/or maintenance costs for any required stormwater management facilities, during the construction period.
3. All required landscaping shall be installed and approved by the first planting season following issuance of a certificate of occupancy or the surety may be forfeited to the King George County.
4. All required stormwater management facilities or other specifications shall be installed and approved within 18 months of project commencement. Should the applicant fail, after proper notice, to initiate, complete or maintain appropriate actions required by the approved plan, the surety may be forfeited to King George County. King George County may collect from the applicant the amount by which the reasonable cost of required actions exceeds the amount of the surety held.
5. After all required 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 Community Development, 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 Community Development may require a certificate of substantial completion from a Professional Engineer or Class III B Surveyor before making a final inspection.

Section 8.13.8. Administrative responsibility. Administration of the plan of development process shall be in accordance with Article 7 of the Zoning Ordinance or the King George County Subdivision Ordinance, as appropriate.

Section 8.13.9. Denial of plan, appeal of conditions or modifications. In the event the final plan or any component of the plan of development process is disapproved and recommended conditions or modifications are unacceptable to the applicant, the applicant may appeal such administrative decision to the Board of Zoning Appeals. In granting an appeal, the Board of Zoning Appeals must find such plan to be in accordance with all applicable ordinances and include necessary elements to mitigate any detrimental impact on water quality and upon adjacent property and the surrounding area, or such plan meets the purpose and intent of the performance standards in this Article. If the Board of Zoning Appeals finds that the applicant's plan does not meet the above stated criteria, they shall deny approval of the plan.

**Section 8.14. Nonconforming Use, Nonconforming Structures.**

The lawful use of a building or structure which existed on April 1, 1991, or which exists at the time of any amendment to this Article, and which is not in conformity with the provisions of the Overlay District may be continued in accordance with Section 1.10 of the King George County Zoning Ordinance provided that no change or expansion of use shall be allowed with the exception that:

- a. Where an existing legal nonconforming principal structure encroaches into an RPA feature, the Director of Community Development may allow the legal nonconforming principal structure to be enlarged provided that:

1. There will be no increase in non-point source pollution load;
  2. Any development or land disturbance exceeding an area of 2,500 square feet complies with all erosion and sediment control requirements of this Article.
- b. An application to enlarge a principal nonconforming structure as described above shall be made in writing to the Director of Community Development and shall include for the purpose of proper enforcement of this Article, the following information:
1. Name and address of applicant and property owner;
  2. Legal description of the property and type of proposed use and development;
  3. A plat showing the dimensions of the lot or parcel, location of buildings and proposed additions relative to the lot lines, boundary of the Resource Protection Area, and a proposed mitigation measure to off-set the loss of additional buffer area;
  4. Location and description of any existing private water supply or sewage system.
  5. A nonconforming use waiver shall become null and void twelve months from the date issued if no substantial work has commenced. A single one-year extension of a nonconforming use waiver may be given upon written request by the applicant to the Director of Community Development made within ninety (90) days before the expiration of the approved waiver.
- c. An Application for the expansion of a non-conforming principal structure may be approved by the Director of Community Development 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 Article 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 King George County are met; and
  7. In no case shall this provision apply to accessory structures.

Section 8.15. Exemptions.
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Section 8.15.1. Exemptions for Public Utilities, Railroads, and Public Roads, and Facilities. Exemptions for local utilities and other service lines owned, permitted or both by a local government, a local service authority or a regional service authority shall be exempt from the Overlay District provided that:

- 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 Erosion and Sediment Control Law (§62.1-44.15:51 et seq. of the Code of Virginia) and the Stormwater Management Act (§62.1-44.15:24 et seq. of the Code of Virginia), (ii) an erosion and sediment control plan and a stormwater management plan approved by the Virginia Department Conservation and Recreation, or (iii) local water quality protection criteria at least as stringent as the above stated requirements are deemed to comply with this Article. The exemption of public roads is further conditioned on the following:

1. The road alignment and design has been optimized consistent with all applicable requirements, to prevent or otherwise minimize the encroachment in the RPA and to minimize the adverse effects on water quality.
- b. Exemptions for local utilities and other service lines. Construction installation, and maintenance of water, sewer, natural gas lines, underground telecommunications and cable television lines owned permitted or both by a local government or regional service authority shall be exempt from the criteria in this part provided that:
  1. To the degree possible, the location of such utilities and facilities should be outside RPAs;
  2. No more land shall be disturbed than is necessary to provide for the proposed utility installation;
  3. All construction, installation, and maintenance of such utilities and facilities shall be in compliance with all applicable state and federal requirements and permits and designed and conducted in a manner that protects water quality; and
  4. Any land disturbance exceeding an area of 2,500 square feet complies with all King George County erosion and sediment control requirements.

Section 8.15.2. Exemptions for Silvicultural Activities. Silvicultural activities are exempt from the requirements of this Article provided that silvicultural operations adhere to water quality protection procedures prescribed by the Virginia Department of Forestry in its ", Virginia Forestry Best Management Practices for Water Quality."

Section 8.15.3. Exemptions in resource protection areas. The following land disturbances in Resource Protection Areas may be exempted from the Overlay District: (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 *the Department of* Community Development that:

- a. Any required permits, except those to which this exemption specifically applies, shall have been issued;
- b. Sufficient and reasonable proof is submitted that the intended use will not deteriorate water quality;
- c. The intended use does not conflict with nearby planned or approved uses; and
- d. Any land disturbance exceeding an area of 2500 square feet shall comply with all King George County erosion and sediment control requirements.

Section 8.16. Variance.
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- a. A request for a Variance to the requirements of Section 8.8 and/or Section 8.11.3 of this Overlay District may be made in accordance with Section 5.6, King George County Zoning Ordinance. The application for variance shall identify the impacts of the proposed variance on water quality and on lands within the RPA through the performance of a water quality impact assessment, which complies with the provisions of Section 8.12.
  1. The King George County Board of Zoning Appeals shall notify the public of any such variance requests and shall consider these requests in a public hearing in accordance with Section 15.2-2204 of the Code of Virginia, as amended, except that only one hearing shall be required.
- b. The Board of Zoning Appeals shall review the request for a variance and the water quality impact assessment and may grant the variance with such conditions and safeguards as deemed necessary to further the purpose and intent of this Article if the Board of Zoning Appeals finds:
  1. Granting the variance will not confer upon the applicant any special privileges that are denied by this Article to other property owners in the Overlay District;
  2. The variance request is not based upon 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 variance request is the minimum necessary to afford relief;
  4. The variance request will be in harmony with the purpose and intent of the Overlay District, and not injurious to the neighborhood or otherwise detrimental to the public welfare;
  5. The granting of the variance will not be of substantial detriment to water quality, and;
  6. Reasonable and appropriate conditions are imposed which will prevent the variance request from causing a degradation of water quality.
- c. The Board of Zoning Appeals shall consider the water quality impact assessment and the findings and rationale of the Director of Community Development in determining harmony with the intended spirit and purpose of this Article.
- d. A request for an exception to the requirements of provisions of this Article other than Sections 8.8 and 8.11.3 shall be made in writing to the Zoning Administrator, who may grant these exceptions provided that:
1. Exceptions to the requirements are the minimum necessary to afford relief; and
  2. Reasonable and appropriate conditions are placed upon any exception that is granted, as necessary, so that the purpose and intent of this Article is preserved.
  3. Variances to Section 8.11.2 may be granted, provided that the findings noted in Section 8.16.b.1-6 are made.