

ARTICLE 3 OVERLAY DISTRICT REGULATIONS

3-1 Chesapeake Bay Preservation Area Overlay District (CB-OD)

3-1.1 Title. This ordinance shall be known and referenced as the "Chesapeake Bay Preservation Area Overlay District" of Westmoreland County.

3-1.2 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 Westmoreland County and the Commonwealth of Virginia. The health of the Bay is vital to maintaining Westmoreland 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. The lands within Westmoreland County are lands of significance to the preservation of the Bay. Some display intrinsic water quality value due to the ecological and biological processes they perform; some display significant ecological benefits by providing water quality maintenance and pollution, flood, and erosion control; and all display development constraints as improper development and use activities of lands within Westmoreland County inevitably increase non-point source pollution. Only with proper management can development and use occur without damage to Chesapeake Bay waters.

The lands designated by the Board of Supervisors as Chesapeake Bay Preservation Areas (hereinafter "CBPA's) are those lands within Westmoreland County which, due to the material change of circumstances evidenced by the degradation of Bay waters and the passage of the Chesapeake Bay Preservation Act by the General Assembly of the Commonwealth of Virginia, need to be protected from destruction and damage through improper development and use practices in order to protect the quality of Bay waters and consequently the quality of life in Westmoreland County and the Commonwealth of Virginia.

3-1.3 Purpose and Intent.

- (A) This ordinance is enacted to implement the requirements of §10.1-2100 et seq. of the Code of Virginia (The Chesapeake Bay Preservation Act) and amends the Zoning Ordinance of Westmoreland County. The intent of Westmoreland County Board of Supervisors and the purpose of the Overlay District is to: (1) protect existing high quality state water; (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 water 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 Westmoreland County.
- (B) The 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 the Westmoreland County Building Fee Schedule, the Erosion and Sediment Control Ordinance of Westmoreland County, the Residential Subdivision Ordinance of Westmoreland County and various other Sections of the

Zoning Ordinance of Westmoreland County, shall be followed in reviewing and approving development, **redevelopment**, and uses governed by this Article.

- (C) This Article is enacted under the authority of §10.1-2100 et seq. (The Chesapeake Bay Preservation Act) and §15.1-489, of the Code of Virginia. Section 15.2-2283 states that zoning ordinances may "also include reasonable provisions, not inconsistent with applicable state water quality standards, to protect surface water and groundwater as defined in §62.1-44.85(8)."

3-1.4 Areas of Applicability.

- (A) The Chesapeake Bay Preservation Area Overlay District shall apply to all lands identified as CBPAs as designated by the Westmoreland County Board of Supervisors and as shown on the Chesapeake Bay Preservation Area Designation Maps. The Chesapeake Bay Preservation Area Designation Maps, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this Article.
- (1) The Resource Protection Area includes:
- (a) Tidal wetlands;
 - (b) Nontidal wetlands connected by surface flow and contiguous to tidal wetlands or *water bodies with perennial flow*;
 - (c) Tidal shores;
 - (d) Highly erodible soils;
 - (e) A 100-foot vegetated buffer area located adjacent to and landward of the components listed in items (1)(a) through (1)(d) above and along both sides of any *water body with perennial flow*. The 100-foot width shall be measured as in a horizontal plane.
- (2) The Resource Management Area is composed of concentrations of the following land categories: flood plains; highly permeable soils; nontidal wetlands not included in the RPA; and other lands, including hydric soils, necessary to protect the quality of state waters. The Resource Management Area of Westmoreland County consists of all the lands in Westmoreland County which are not in the Resource Protection Area.
- (B) The Chesapeake Bay Preservation Area Designation Maps show the general location of CBPAs and should be consulted by persons contemplating activities within Westmoreland County prior to engaging in a regulated activity. The specific location of RPAs on a lot or parcel shall be delineated on each site or parcel as required under Section 3-1.12 of this Article through the review and approval of the plan of development process or as required under Section 3-1.11 through the review and approval of a water quality impact assessment.

3-1.5 Use Regulations. Permitted uses, special exceptions, special uses, accessory uses, and special requirements shall be established by the underlying zoning district, unless specifically modified by the requirements set forth herein.

3-1.6 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 3-1.10, when such development is not otherwise allowed in the RPA.

3-1.7 Required Conditions.

- (A) All development and **redevelopment** exceeding 2,500 square feet of land disturbance, or resulting in 833 or more square feet of impervious cover, shall be subject to a plan of development process, including the approval of a site plan in accordance with the provisions of the Zoning Ordinance or a subdivision plat in accordance with the Subdivision Ordinance.
- (B) Development in RPAs **may** be allowed only if it: (i) is water-dependent; or (ii) constitutes **redevelopment**; (iii) constitutes development or **redevelopment** within a designated Intensely Developed Area; (iv) is a new use established pursuant to Section 3-1.10; (v) is a road or driveway crossing satisfying the conditions set forth in Section 3-1.7 (D) and Section 3-1.14; or (vi) is a flood control or stormwater management facility satisfying conditions set forth in 3-1.7 (E).
- (C) A water quality impact assessment shall be required for any proposed land disturbance or development or **redevelopment** within RPAs and for any development within RMAs when required by the Zoning Administrator because of the unique characteristics of the site or intensity of development, in accordance with the provisions of Section 3-1.11.
- (D) Roads and driveways not exempt under Section 3-1.14 and which, therefore must comply with the provisions of this Article, **may** be constructed in or across Resource Protection Areas if each of the following conditions are met:
 - (1) The Zoning Administrator or Planning Commission makes a finding that there is no reasonable alternatives to aligning the road or driveway in or across the Resource Protection Area;
 - (2) The alignment and design of the road or driveway are optimized, consistent with other applicable requirements, to minimize (i) encroachment in the Resource Protection Area and (ii) adverse effects on water quality;
 - (3) The design and construction of the road or driveway satisfy all applicable criteria of this Article, including submission of a water quality impact assessment; and
 - (4) The Zoning Administrator or Planning Commission reviews the plan for the road or driveway proposed in or across the Resource Protection Area in coordination with site plan, subdivision and plan of development approvals.
- (E) 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 that (i) the Zoning Administrator or Planning Commission 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, stormwater management treatment, or both; (iii) the facility must be consistent with a stormwater management program that has been approved by the Chesapeake Bay Local Assistance Board as a Phase I modification to the

County's Chesapeake Bay Preservation Area program; (iv) all applicable permits for construction in state or federal waters must be obtained from the appropriate state and federal agencies; (v) approval must be received from the County prior to construction; and (vi) routine maintenance is allowed to be performed on such facilities to assure that they continue to function as designed. This subsection does not intend to allow a best management practice that collects and treats runoff from an individual lot or some portion of the lot to be located within a Resource Protection Area.

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

3.1.9 Interpretation of Resource Protection Area Boundaries.

- (A) Delineation by the Applicant. The site-specific boundaries of the Resource Protection Area shall be determined by the applicant through the performance of an environmental site assessment, subject to approval by the Zoning Administrator and in accordance with Section 3-1.11, Water Quality Impact Assessment or Section 3-1.12, Plan of Development, of this Article. The Chesapeake Bay Preservation Area Designation Maps **may** be used as a guide to the general location of Resource Protection Areas.
- (B) Delineation by the Zoning Administrator. The Zoning Administrator, when requested by an applicant wishing to construct a single family residence, **may** waive the requirement for an environmental site assessment and perform the delineation. The Zoning Administrator **may** use hydrology, soils, plant species, and other data, and consult other appropriate resources as needed to perform the delineation.
- (C) Where Conflict Arises Over Delineation. Where the applicant has provided a site-specific delineation of the RPA, the Zoning Administrator will verify the accuracy of the boundary delineation. In determining the site specific RPA boundary, the Zoning Administrator **may** render adjustments to the applicant's boundary delineation, in accordance with Section 3-1.12, Plan of Development. In the event the adjusted boundary delineation is contested by the applicant, the applicant **may** seek relief, in accordance with the provisions of Section 3-1.12 (I), Denial/Appeal of Plan.

3-1.10 Performance Standards.

- (A) 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.

CBLAD definitions

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

*From the DCR publications revised September 19, 2005 entitled: **Resource Protection Areas: permitted Development Activities***

"For the purpose of the Bay Act program, the following conditions must be present in order for a project to be considered "redevelopment:"

1. *The lot or parcel has been previously developed:*
2. *The new structures and/or impervious areas are approximately in the same physical location as the previously existing structure and/or impervious area;*
3. *the proposed amount of impervious surface is approximately equal to or less than the original development:*
4. *RPA features are not further encroached upon.*

"Development" means the construction or substantial alteration of residential, commercial, industrial,

Zoning Code definitions

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

"Redevelopment": means the process of developing land that is or has been previously developed or used within the past (20) years from the date of adoption of this Article. Land or improvements which have been in disuse for more than said twenty (20) year period shall not be deemed previously developed.

- (B) General Performance Standards for Development and **Redevelopment**.

- (1) Land disturbance shall be limited to the area necessary to provide for the proposed use or development.
- (a) In accordance with an approved site plan, the limits of 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) In the case of residential development, the construction footprint shall not exceed three times the area of impervious cover being constructed, unless otherwise approved by the Zoning Administrator nor shall it exceed the area of the allowable impervious cover of sixteen (16%) percent being constructed.
 - (c) For any development, other than residential, the construction footprint shall not exceed 60% of the site.

- (d) Ingress and egress during construction shall be limited to one access point, unless otherwise approved by the Zoning Administrator.
- (2) Indigenous vegetation shall be preserved to the maximum extent practicable consistent with the use and development permitted and in accordance with the Virginia Erosion and Sediment Control Handbook.
- (a) Existing trees over six (6) inches in diameter at breast height (DBH) shall be preserved outside the construction footprint.
 - (b) Unless otherwise approved by the Zoning Administrator, clearing in the area outside of the construction footprint shall be done by hand, without the use of heavy equipment such as bulldozers and graders.
 - (c) Throughout all phases of construction, the storage of equipment, materials, debris, or fill shall not be allowed beyond the area of the construction footprint.
- (3) Land development shall minimize impervious cover to promote infiltration of stormwater into the ground, consistent with the proposed use or development.
- (4) Notwithstanding any other provisions of this Article 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 Westmoreland County Erosion and Sediment Control Ordinance.
- (5) All on-site sewage disposal systems not requiring an VPDES permit shall be pumped out at least once every five years, in accordance with the provisions of the Virginia Department of Health.
- (a) If deemed appropriate by the Virginia Department of Health and subject to conditions the Virginia Department of Health may set, the owners of such systems, as an alternative to the mandatory pump-out, *may have* the option of having a plastic filter installed, and maintained, in the outflow pipe from the septic tank to filter solid material from the effluent while sustaining adequate flow to the drainfield to permit normal use of the septic system. Such a filter should satisfy standards established in the Sewage Handling and Disposal Regulations (12 VAC 5-610-10 et. seq.) administered by the Virginia Department of Health.
 - (b) In lieu of requiring proof of septic tank pump-out every five years, owners of on-site sewage treatment systems shall submit documentation every five years, certified by a sewage handler permitted by the Virginia Department of Health, that the septic system has been inspected, is functioning properly, and the tank does not need to have the effluent pumped out of it.
- (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 regulations and provision of the Virginia Department of Health. 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. All sewage disposal site records shall be administered to provide adequate notice and enforcement.

- (a) This requirement shall not apply to any lot or parcel which was recorded prior to October 1, 1989 if a Sewage Disposal System Construction Permit was issued for such lot or parcel prior to October 1, 1989 and if such permit is currently valid and unexpired.
 - (b) This requirement shall not apply to any lot or parcel recorded prior to **October 1, 1989** for which there is no Sewage Disposal System Construction Permit as described above, and if such lot or parcel is not sufficient in capacity to accommodate a reserve sewage disposal site, as determined by the local Health Department.
- (7) 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 of the Virginia Stormwater Management Regulations (4 VAC 3-20-10 et. seq.)** and achieve the following:
- (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 condition of the County of Westmoreland.
 - (b) For **redevelopment** sites, the non-point source pollution load shall be reduced by at least 10 percent. The Zoning Administrator **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:
 - i. In no case may the post-development non-point source pollution runoff load exceed the pre-development load;
 - ii. Runoff pollution loads must be calculated and the BMPs selected for the expressed purpose of controlling non-point source pollution;
 - iii. 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 Zoning Administrator 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 **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.

- (d) The following stormwater management options shall be considered to comply with Section 3-1.10 (B)(7):
 - i. Incorporation on the site of best management practices that meet the water quality protection requirements set forth in this subsection. For the purposes of this subsection, the “site” may include multiple projects or properties that are adjacent to one another or lie within the same drainage area where a single best management practice will be utilized by those projects to satisfy water quality protection requirements;
 - ii. Compliance with locally adopted regional stormwater management program which has been reviewed and found to achieve water quality protection equivalent to that required by this subsection; and
 - iii. Compliance with site-specific VPDES permit issued by the Department of Environmental Quality, provided that Westmoreland County determines that the permit requires measures that collectively achieve water quality protection equivalent to that required by Section 3-1.10 (B)(7).
- (e) Any maintenance, alteration, use or improvement to an existing structure that does not degrade the quality of surface water discharge, as determined by Westmoreland County, may be exempted from the requirements of this subsection.
- (f) Stormwater management criteria for **redevelopment** shall apply to any **redevelopment**, whether or not it is located within an Intensely Developed Area designated by Westmoreland County.
- (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 Zoning Administrator, in accordance with Section 3-1.12.
- (9) Land upon which agricultural activities are being conducted, including but not limited to crop production, pasture, and dairy and feedlot operations, or lands otherwise defined as agricultural land by Westmoreland County, shall have a soil and water quality conservation assessment conducted that evaluates the effectiveness of existing practices pertaining to soil erosion and sediment control, nutrient management, and management of pesticides, and, where necessary, results in a plan that outlines additional practices needed, to ensure that water quality protection is being accomplished consistent with the Chesapeake Bay Preservation Act and 9 VAC 10-20 et. seq,
 - (a) Recommendations for additional conservation practices need address only those conservation issues applicable to the tract or field being assessed. Any soil and water quality conservation practices that are recommended as a result of such an assessment and are subsequently implemented with financial assistance from federal or state cost-share programs must be designed, consistent with cost-share practice

standards effective in January 1999 in the “Field Office Technical Guide” of the U. S. Department of Agriculture Natural Resource Conservation Service or the January 2001 edition of the “Virginia Agricultural BMP Manual” of the Virginia Department of Conservation and Recreation, respectively. Unless otherwise specified in this Section, general standards pertaining to the various agricultural conservation practices being assessed shall be as follows:

- i. For erosion and sediment control recommendations, the goal shall be, where feasible, to prevent erosion from exceeding the soil loss tolerance level, referred to as “T”, as defined in the “National Soil Survey Handbook” of November 1996 in the “Field Office Technical Guide” of the U. S. Department of Agriculture Natural Resource Conservation Service. However, in no case shall erosion exceed the soil loss consistent with an Alternative Conservation System, referred to as an “ACS”, as defined in the “Field Office Technical Guide” of the U. S. Department of Agriculture Natural Resource Conservation Service.
 - ii. For nutrient management, whenever nutrient management plans are developed, the operator or landowner must provide soil test information, consistent with the Virginia Nutrient Management Training and Certification Regulations (4 VAC 5-15-10 et seq.)
 - iii. For pest chemical control, referrals shall be made to the local cooperative extension agent or any Integrated Pest Management Specialist of the Virginia Cooperative Extension Service. Recommendations shall include copies of applicable information from the “Virginia Pest Management Guide” or other Extension materials related to pest control.
- (b) A higher priority shall be placed on conducting assessments of agricultural fields and tracts adjacent to Resource Protection Areas. However, if the landowner or operator of such a tract also has Resource Management Area fields or tracts in his operation, the assessment for that landowner or operator may be conducted for all fields or tracts in the operation. When such an expanded assessment is completed, priority must return to Resource Protection Area fields and tracts.
- c) The findings and recommendations of such assessments and any resulting soil and water quality conservation plans will be submitted to the local Soil and Water Conservation District Board which will be the plan-approving authority.
- (C) 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.**

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 buffer functions set forth in this Article.

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 3-1.4, Areas of Applicability, and 3-1.12, Plan of Development. Notwithstanding permitted uses, encroachments, and vegetation clearing, as set forth in Section 3-1.7 and this section, the 100 foot buffer area is not reduced in width.

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

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, *existing* vegetation **may** be removed subject to approval by the Zoning Administrator only to provide for reasonable sight lines, access paths, general woodlot management, and best management practices, including those that prevent upland erosion and concentrated flows of stormwater, as follows:
 - (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 and surfaced so as to effectively control erosion.
 - (c) Dead, diseased, or dying trees or shrubbery and noxious weeds (such as Johnson grass, Kudzu and multiflora rose) **may** be removed and thinning of trees allowed as permitted by the Zoning Administrator pursuant to sound horticultural practices.
 - (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 Zoning Administrator **may allow encroachments** into the buffer area in accordance with Sections 3-1.11, Water Quality Impact Assessment, and 3-1.12, 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 mitigate the effects of the encroachment, *and is* equal to the area encroaching the buffer area shall be established elsewhere on the lot or parcel in a way to maximize water quality protection; and
 - (c) The encroachment **may not** extend into the seaward 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 Management Training and Certification Regulations (4 VAC 5-15-10 et seq.) 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 Guild" 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 5-15-10 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.
 - (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 Zoning Administrator, 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 local 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 Zoning Administrator. The Zoning Administrator 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. The Zoning Administrator, 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.

3.1-11 Water Quality Impact Assessment.

- (A) Purpose and Intent. The purpose of the water quality impact assessment is to: (i) identify the impacts of proposed *land disturbance*, development or **redevelopment** on water quality and lands within RPAs and other environmentally-sensitive lands; (ii) ensure that, where development 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.
- (B) 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 3-1.10, (ii) any development in a RMA as deemed necessary by the Zoning Administrator 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.
- (C) Minor Water Quality Impact Assessment. A minor water quality impact assessment pertains only to development within CBPAs for detached, single-family, residential structures which require any modification or encroachment into the landward 50 feet of the 100 foot buffer area. A minor assessment must demonstrate through acceptable calculations that the remaining buffer area 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:
 - (1) Location of the components of the RPA, 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.
- (D) Major Water Quality Impact Assessment. A major water quality impact assessment shall be required for any land disturbance, development or **redevelopment** which (i) requires any modification or encroachment of the landward 50 feet of the 100 foot buffer area and which development is for anything other than a detached single-family residential structure, (ii) disturbs any portion of the seaward 50 feet of the 100 foot buffer area or any other component of an RPA; or (iii) is located in an RMA and is deemed necessary by the Zoning Administrator. The information required in this Section shall be considered a minimum, unless the Zoning Administrator 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:

- (1) All of the information required in a minor water quality impact assessment, as specified in Section 3-1.11 (C).
- (2) A hydro geological element that:
 - (a) Describes the existing topography, soils, hydrology and geology of the site and adjacent lands.
 - (b) Describes the impacts of the proposed development on topography, soils, hydrology and geology on the site and adjacent lands.
 - (c) Indicates the following:
 - 1. Disturbance or removal of wetlands and justification for such action;
 - 2. Disruptions or reductions in the supply of water to wetlands, streams, lakes, rivers or other water bodies;
 - 3. Disruptions to existing hydrology including wetlands and stream circulation patterns;
 - 4. Source location and description of proposed fill material;
 - 5. Location of dredge material and location of dumping area for such material;
 - 6. Location of and impacts on shellfish beds, submerged aquatic vegetation, and fish spawning areas;

7. Estimation of pre- and post-development pollutant loads in runoff;
 8. Estimation of percent increase in impervious surface on site and type(s) of surfacing materials used;
 9. Percent of site to be cleared for project;
 10. Anticipated duration and phasing schedule of construction project;
 11. Listing of all requisite permits from all applicable agencies necessary to develop project.
- (d) Describes the proposed mitigation measures for the potential hydro geological impacts. Potential mitigation measures include:
1. Proposed erosion and sediment control concepts; 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;
 3. Creation of wetlands to replace those lost;
 4. Minimizing cut and fill.
- (3) A landscape element that:
- (a) Identifies and delineates the location of all woody plant material on site, including all trees six (6) inches or greater diameter at breast height. Where there are groups of trees, stands may be outlined.
 - (b) Describes the impacts the development or use will have on the existing vegetation. Information should include:
 1. General limits of clearing, based on all anticipated improvements, including buildings drives, and utilities;
 2. Clear delineation of all trees and other woody vegetation which will be removed;
 3. Description of plant species to be disturbed or removed.
 - (c) Describes the potential measures for mitigation. Possible mitigation measures include:
 1. Replanting schedule for trees and other woody vegetation removed for construction, including a list of proposed plants and trees to be used;

2. Demonstration that the 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;
 3. Demonstration that indigenous plants are to be used to the greatest extent possible; and
 4. Demonstration that the re-vegetation plan supplements the existing buffer vegetation in a manner that provides for pollutant removal, erosion and runoff control.
- (4) A wastewater element, where applicable, that:
- (a) Includes calculations and locations of anticipated drainfield or wastewater irrigation areas.
 - (b) Provides justification for sewer line locations in environmentally-sensitive areas, where applicable, and describes construction techniques and standards.
 - (c) Discusses any proposed on-site collection and treatment systems, their treatment levels, and impacts on receiving watercourses.
 - (d) Describes the potential impacts of the proposed wastewater systems, including the proposed mitigative measures for these impacts.
- (5) Identification of the existing characteristics and conditions of sensitive lands included as components of Chesapeake Bay Preservation Areas, as defined in this Article.
- (6) Identification of the natural processes and ecological relationships inherent in the site, and an assessment of the impact of the proposed use and development of land on these processes and relationships.
- (E) Submission and Review Requirements.
- (1) Minor Water Quality Impact Assessment
 - (a) Three copies of all site drawings and other applicable information as required by Section 3-1.11 (C) shall be submitted to the Zoning Administrator for review.
 - (b) All information required for the minor water quality impact assessment shall be certified complete by a professional engineer or a certified land surveyor.
 - (c) The minor water quality impact assessment shall be prepared, submitted to and approved by the Zoning Administrator in conjunction with Section 3-1.10 (C), Buffer Area Requirements and Section 3-1.12, Plan of Development

- (2) Major Water Quality Impact Assessment
- (a) Five copies of all site drawings and other applicable information as required by Section 3-1.11 (D), and any other forms and information deemed necessary by the Zoning Administrator shall be submitted to the Zoning Administrator for preliminary review, and to the Planning Commission for approval.
 - (b) All information required for the major water quality impact assessment shall be certified as complete and accurate by a professional engineer.
 - (c) The major water quality impact assessment shall be prepared and submitted to the Zoning Administrator in conjunction with Sections 3-1.12, Plan of Development, or 3-1.15, Exceptions, as deemed necessary by the Zoning Administrator.
 - (d) As part of any major water quality impact assessment submittal, the Zoning Administrator **may** require review by the Chesapeake Bay Local Assistance Department (CBLAD). Upon receipt of a major water quality impact assessment, the Zoning Administrator will determine if such review is warranted and **may** request CBLAD to review the assessment and respond with written comments. Any comments by CBLAD will be incorporated into the final review by the Planning Commission, provided that such comments are provided by CBLAD within ninety (90) days of the request.
 - (e) Within thirty (30) days of the receipt of a major water quality impact assessment, the Zoning Administrator will review the assessment to insure completeness. If the Zoning Administrator finds that the water quality impact assessment is not complete he will return the assessment, along with written comments describing the inadequacies. After correcting such inadequacies the applicant may resubmit the assessment. If the Zoning Administrator finds that the assessment is complete the Zoning Administrator will review and approve the Assessment if consistent with the intent and provisions of this Article or forward the assessment to the Planning Commission if Planning Commission review is required consistent with Section 3-1.15.
 - (f) If Planning Commission review is required per Section 3-1.15, the Planning Commission shall consider the major water quality impact assessment at a public meeting within two months of the date it is certified complete by the Zoning Administrator.

(F) Evaluation Procedure.

- (1) Minor Water Quality Impact Assessment
- (a) Upon the completed review of a minor water quality impact assessment, the Zoning Administrator 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 on the following criteria:

1. The necessity of the proposed encroachment and the ability to place improvements elsewhere on the site to avoid disturbance of the buffer area;
 2. Impervious surface is minimized;
 3. Proposed best management practices, where required, achieve the requisite reductions in pollutant loadings;
 4. The development, as proposed, meets the purpose and intent of this Article;
 5. The cumulative impact of the proposed development, when considered in relation to other development in the vicinity, both existing and proposed, will not result in a significant degradation of water quality.
- (b) The Zoning Administrator shall require additional mitigation where potential impacts have not been adequately addressed. Evaluation of mitigation measures will be made by the Zoning Administrator based on the criteria listed in Section 3-1.11 (F)(1)(a).
- (c) The Zoning Administrator shall find the proposal to be inconsistent with the purpose and intent of the Article when the impacts created by the proposal cannot be mitigated. Evaluation of the impacts will be made by the Zoning Administrator based on the criteria listed in item Section 3-1.11 (F)(1)(a).
- (2) Major Water Quality Impact Assessment
- (a) The Zoning Administrator or Planning Commission, consistent with Section 3-1.15, will consider the major water quality impact assessment at a public meeting if such public meeting is required consistent with Section 3-1.15. The Zoning Administrator or Planning Commission, as applicable, will determine if the proposed development is consistent with the purpose and intent of this Article and make a finding based on the following criteria:
1. Within any RPA, the proposed development is water-dependent or **redevelopment**.
 2. The disturbance of any wetlands will be minimized.
 3. The development will not result in significant disruption of the hydrology of the site.
 4. The development will not result in significant degradation to aquatic vegetation or life.
 5. The development will not result in unnecessary destruction of plant materials on site.

6. Proposed erosion and sediment control concepts are adequate to achieve the reductions in runoff and prevent off-site sedimentation.
 7. Proposed stormwater management concepts are adequate to control the stormwater runoff to achieve the required performance standard for pollutant control.
 8. Proposed revegetation of disturbed areas will provide optimum erosion and sediment control benefits as well as runoff and pollutant removal equivalent of the full 100 foot wide undisturbed buffer area.
 9. The design and location of any proposed drainfield will be in accordance with the requirements of Section 3-1.10.
 10. The development, as proposed, is consistent with the purpose and intent of the Overlay District.
 11. The cumulative impact of the proposed development, when considered in relation to other development in the vicinity, both existing and proposed, will not result in a significant degradation of water quality.
- (b) The Zoning Administrator or Planning Commission shall require additional mitigation where potential impacts have not been adequately addressed. Evaluation of mitigation measures will be made by the Planning Commission based on the criteria listed in item (2)(a) above.
- (c) The Zoning Administrator or Planning Commission 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 Zoning Administrator or Planning Commission based on the criteria listed in item (2)(a) above.

3-1.12 Plan of Development Process.

The Plan of Development Process described in this Section shall be followed for all development and **redevelopment** which exceeds 2,500 square feet of land disturbance or which requires a zoning permit, a subdivision plat, or for any other development for which the Zoning Administrator deems it necessary. The requirements of this Section are in addition to the requirements of Sections 10-3.12, 4-5.6, 4-5.12, 4-5.13, and 4-5.14 of the Zoning Ordinance of Westmoreland County or the requirements of the Subdivision Ordinance of Westmoreland County. The information, plans and studies required in this Section may be coordinated or combined, as deemed necessary by the Zoning Administrator. The Zoning Administrator **may** determine that some of the requirements of this Section are unnecessary due to the scope and nature of the proposed development.

(A) Required Information.

- (1) The first step in the plan of development process is the submission of five (5) copies of a preliminary site plan or preliminary subdivision plat in accordance with Section 3-1.12 (B) and the submission of five (5) copies of an environmental site assessment in accordance with Section (C) below.
- (2) The Zoning Administrator shall review the preliminary site plan or plat within thirty (30) days and will either:
 - (a) Approve the preliminary plat or plan as submitted; or
 - (b) The Zoning Administrator shall, with written notice to the applicant, require one or more of the following plans and studies:
 1. A landscaping plan, Section 3-1.12 (D),
 2. A stormwater management plan, Section 3-1.12 (E),
 3. An erosion and sediment control plan, Section 3-1.12 F),
 4. A water quality impact assessment, Section 3-1.11;
 5. A Final Plan, Section 3-1.12 (G).
- (3) The Zoning Administrator shall review such final plans or plats within sixty (60) days and take one of the following actions:
 - (a) Approve, in writing, the final site plans or final subdivision plats. In accordance with the Residential Subdivision Ordinance of Westmoreland County, some subdivision plats will still require further approval of the Board of Supervisors after being approved in accordance with this Section.
 - (b) If a major water quality impact assessment was required, the Zoning Administrator shall, after approving all of the other required plans and studies, forward the major water quality impact assessment to the Planning Commission for approval in accordance with Section 3-1.11, Water Quality Impact Assessment, of this Article.

- (c) If the Zoning Administrator finds that the plans and studies are improperly or incompletely prepared, or if he finds that further information is required, he shall notify the applicant, in writing, of his findings. The applicant shall then correct the deficiencies or inadequacies noted by the Zoning Administrator, and the applicant may resubmit such revised plans.

(B) Preliminary Site Plan/Subdivision Plat.

- (1) All preliminary site plans and all preliminary subdivision plats shall be certified complete by a professional engineer or certified surveyor duly authorized by the Commonwealth of Virginia to practice as such.
- (2) All such plats and plans shall contain the following information:
 - (a) Certificate signed by the surveyor or engineer setting forth the source of title of the owner of the tract and the place of record of the last instrument in the chain of title.
 - (b) A boundary survey of the tract with an error of closure within the limit of one in ten thousand, related to the true meridian and showing the location and type of boundary evidence.
 - (c) The location of all existing and proposed structures, including marine structures and temporary structures.
 - (d) The location of all existing and proposed septic sewage disposal sites, and the location of all existing and proposed well sites.
 - (e) Documentation of all existing permits and applications relevant to the lot, including, but not limited to, Health Department permits for all wells and septic sewage disposal systems, existing zoning permits, existing special exceptions, existing non-conforming use permits, and existing zoning variances.
- (3) In addition to the above requirements, all preliminary site plans, except those for the construction of one (1) single family detached residential structure and all preliminary subdivision plats shall contain a map identifying soil types at a scale not less than one inch equals five hundred feet (1 inch equals 500 feet).

(C) Environmental Site Assessment.

An environmental site assessment shall be submitted in conjunction with preliminary site plan or preliminary subdivision plan approval.

- (1) The environmental site assessment shall be drawn to scale and clearly delineate the following environmental features:
 - (a) Tidal wetlands.
 - (b) Tidal shores.

- (c) Nontidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow.
 - (d) Highly erodible soils, including steep slopes;
 - (e) A 100 foot buffer area located adjacent to and landward of the components listed in items (1)(a) through (1)(e) above, and along both sides of any water body with perennial flow.
 - (f) Other sensitive environmental features as determined by the Zoning Administrator.
- (2) Wetlands delineations shall be performed consistent with the procedures specified in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, 1986.
 - (3) The environmental site assessment shall delineate the site-specific geographic extent of the RPA as required under Sections 3-1.4 A and 3-1.9 of this Article.
 - (4) The following information shall also be included with the environmental site assessment:
 - (a) The location and extent of all wooded areas before development, the proposed area of post-development clearing, and the location and extent of post-development cover.
 - (b) Computations of total site area, the amount and percentage of existing and proposed open space, and the amount and percentage of existing and proposed impervious cover.
 - (5) 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 Zoning Administrator when the proposed use or development would result in **less than 5,000 square feet of disturbed area**.
- (D) Landscaping Plan.

A landscaping plan shall be submitted in conjunction with site plan approval or as part of subdivision plat approval when required by the Zoning Administrator. If such a plan is required, no clearing or grading 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.

- (1) Contents of the Plan.
 - (a) 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 six (6) inches or greater DBH shall be shown on the landscaping plan. Where there are groups of trees, stands may be outlined instead. The specific number of trees six (6) inches or greater

- DBH to be preserved outside of the construction footprint shall be indicated on the plan. Trees to be removed to create a desired construction footprint shall be clearly delineated on the landscaping plan.
- (b) 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 Article, shall be shown on the landscaping plan.
 - (c) Within the buffer area, trees 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.
 - (d) 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.
 - (e) The plan shall depict grade changes or other work adjacent to trees which would affect them adversely. Specifications shall be provided as to how grade, drainage, and aeration would be maintained around trees to be preserved.
 - (f) The landscaping plan will include specifications for the protection of existing trees and other vegetation during clearing, grading, and all phases of construction.
 - (g) If the proposed development is a change in use from agricultural or silvicultural to some other use, the plan must demonstrate re-establishment of vegetation in the buffer area.
- (2) Plant Specifications.
- (a) 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.
 - (b) 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.
 - (c) 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.

- (3) Maintenance
 - (a) The applicant shall be responsible for the maintenance and replacement of all vegetation as may be required by the provisions of this Article.
 - (b) 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.

(E) Stormwater Management Plan.

A stormwater management plan shall be submitted in conjunction with site plan or subdivision plan approval, when required by the Zoning Administrator.

(1) Contents of the Plan.

The stormwater management plan shall contain maps, charts, graphs, tables, photographs, narrative descriptions, explanations, and citations to supporting references as appropriate to communicate the information required by this Article. At a minimum, the stormwater management plan must contain the following:

- (a) Location and design of all planned stormwater control devices.
 - (b) Procedures for implementing non-structural stormwater control practices and techniques.
 - (c) Pre- and post-development non-point source pollutant loadings with supporting documentation of all utilized coefficients and calculations.
 - (d) For facilities, verification of structural soundness, including a Professional Engineer or Class III B Surveyor Certification.
- (2) Site specific facilities shall be designed for the ultimate development of the contributing watershed based on zoning, comprehensive plans, local public facility master plans, or other similar planning documents.
 - (3) All engineering calculations must be performed in accordance with procedures outlined in the current edition of the Virginia Stormwater Management Handbook, Virginia Erosion and Sediment Control Handbook, Virginia Department of Transportation Drainage Manual or any other good engineering methods deemed appropriate by the Zoning Administrator.
 - (4) The plan shall establish a long-term schedule for inspection and maintenance of stormwater management facilities that includes all maintenance requirements and persons responsible for performing maintenance. If the designated maintenance responsibility is with a party other than the County of Westmoreland then a maintenance agreement shall be executed between the responsible party and the County of Westmoreland.

(F) Erosion and Sediment Control Plan.

An erosion and sediment control plan shall be submitted that satisfies the requirements of this Article and in accordance with the requirements of the Erosion and Sediment Control Ordinance of Westmoreland County, in conjunction with site plan or subdivision plan approval, when required by the Zoning Administrator.

(G) Final Plan.

Final plans for property within CBPAs shall be final plats for land to be subdivided or site plans for land not to be subdivided as required in Sections 10-3.4 and 10-3.12 of the Zoning Ordinance of Westmoreland County.

(1) Final plans for all lands within CBPAs shall include the following additional information:

- (a) The delineation of the Resource Protection Area boundary including the 100 foot wide buffer component;
- (b) Plat or plan note stating that no land disturbance is allowed in the buffer are without review and approval by the Zoning Administrator;
- (c) All wetlands permits required by law;
- (d) A maintenance agreement as deemed necessary and appropriate by the Zoning Administrator to ensure proper maintenance of best management practices in order to continue their functions.

(2) Installation and Bonding Requirements.

- (a) 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.
- (b) 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 Westmoreland County a form of surety satisfactory to the Zoning Administrator in an amount not to exceed 150% of the value of 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.
- (c) 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 of Westmoreland.
- (d) All required stormwater management facilities or other specifications shall be installed and approved within eighteen (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 Westmoreland County. The County of Westmoreland may collect from the applicant the amount by which the reasonable cost of required actions exceeds the amount of the surety held.

- (e) 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 Zoning Administrator, such unexpended or unobligated portion of the surety held shall be refunded to the applicant or terminated within sixty (60) days following the receipt of the applicant's request for final inspection. The Zoning Administrator may require a certificate of substantial completion from a Professional Engineer or Class IIIB Surveyor before making a final inspection.

- (H) Administration of the Plan of Development Process.

The Zoning Administrator shall administer the Plan of Development Process in accordance with the guidelines and requirements of this Section 3-12 and also in accordance with Sections 10-3.4 and 10-3.12 of the Zoning Ordinance of Westmoreland County or the Subdivision Ordinance of Westmoreland County.

- (I) 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 Planning Commission. In granting or denying an appeal, the Planning Commission must find such plan to be in accordance with all applicable ordinances and include necessary elements to mitigate any detrimental impact on water quality and upon adjacent property and the surrounding area, or such plan meets the purpose and intent of the performance standards in this Article. If the Planning Commission finds that the applicant's plan does not meet the above stated criteria, they shall deny approval of the plan.

3-1.13 Nonconforming Use and Development Waivers.

The lawful use of a building or structure which existed on September 12, 1990 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 Article 8 of the Zoning Ordinance of Westmoreland County.

No change or expansion of use shall be allowed with the exception that:

- (1) The Zoning Administrator **may grant** a nonconforming use and development waiver for structures on legal nonconforming lots or parcels to provide for remodeling and alterations to such nonconforming structures provided that:
 - (a) There will be no increase in non-point source pollution load; and
 - (b) Any development or land disturbance exceeding an area of 2,500 square feet complies with all erosion and sediment control requirement of this Article.
- (2) An application for a nonconforming use and development waiver shall be made to and upon forms furnished by the Zoning Administrator and shall include for the purpose of proper enforcement of this Article, the following information:
 - (a) Name and address of applicant and property owner.
 - (b) Legal description of the property and type of proposed use and development.
 - (c) A scaled drawing of the lot or parcel, location of buildings and proposed additions relative to the lot lines, and boundary of the Resource Protection Area.
 - (d) Location and description of any existing private water supply or sewage system.
- (3) A nonconforming use and development waiver shall become null and void twelve months from the date issued if no substantial work has commenced.
- (4) An application for the expansion of a nonconforming principal structure **may** be approved by the Zoning Administrator through an administrative review process provided that the following findings are made:
 - a) The request for the waiver is the minimum necessary to afford relief;
 - b) Granting the waiver will not confer upon the applicant any specific privileges that are denied by this Article to other property owners in similar situations;
 - c) The waiver is in harmony with the purpose and intent of this Article and does not result in water quality degradation;

- d) The waiver is not based on conditions or circumstances that are self-created or self-imposed;
- e) Reasonable and appropriate conditions are imposed, as warranted, that will prevent the waiver from causing a degradation of water quality;
- f) Other findings, as appropriate and required by the Westmoreland County are met; and
- g) In no case shall this provision apply to accessory structures.

3-1.14 Exemptions.

(A) Exemptions for Public Utilities, Railroads, and Facilities

Construction, installation, operation, and maintenance of electric, natural gas, fiber-optic, and telephone transmission lines, railroads, and public roads and their appurtenant structures in accordance with (i) regulations promulgated pursuant to the Erosion and Sediment Control Law (§ 10.1-560 et seq. Of the Code of Virginia) and the Stormwater Management Act (§ 10.1-603.1 et seq. Of the Code of Virginia, (ii) an erosion and sediment control plan and a stormwater management plan approved by the Virginia Department of Conservation and Recreation, or (iii) local water quality protection criteria at least as stringent as the above state requirements are deemed to comply with this Article. The exemption of public roads is further conditioned on the requirement that the road alignment and design has been optimized, consistent with all applicable requirements, to prevent or otherwise minimize the encroachment in the Resource Protection Area 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, underground telecommunications and cable television lines owned, permitted or both, by a local government or regional service authority shall be exempt from the Overlay District provided that:

- 1) To the degree possible, the location of such utilities and facilities should be outside Resource Protection Areas;
- 2) No more land shall be disturbed than is necessary to provide for the proposed utility installation;
- 3) All such construction, installation, and maintenance of such utilities and facilities shall be in compliance with all applicable state and federal requirements and permits and designed and conducted in a manner that protects water quality; and
- 4) Any land disturbance exceeding an area of 2,500 square feet complies with all Westmoreland County erosion and sediment control requirements.

(C) 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 the January 1997 edition of "Forestry Best Management Practices for Water Quality in Virginia (Technical Guide)". The Virginia Department of Forestry will oversee and document installation of best management practices and will monitor in-stream impacts of forestry operations in Chesapeake Bay Preservation Areas.

(D) 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 Zoning Administrator that:

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

3-1.15 Exceptions.

- (A) A request for an exception to the requirements of Sections 3-1.7 and 3-1.10 C of this Article shall be made in writing to the Planning Commission. It shall identify the impacts of the proposed exception on water quality and on lands within the Resource Protection Area through the performance of a water quality impact assessment which complies with the provisions of Section 3-1.11.

Westmoreland County 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.

- (B) The Planning Commission shall review the request for an exception and the water quality impact assessment and may grant the exception with such conditions and safeguards as deemed necessary to further the purpose and intent of this Article if the Commission finds:
- 1) Granting the exception will not confer upon the applicant any special privileges denied by this Article to other property owners in the Overlay District;
 - 2) The exception request is not based on conditions or circumstances that are self-created or self-imposed, nor does the request arise from conditions or circumstances either permitted or 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 the Overlay District, not injurious to the neighborhood or otherwise detrimental to the public welfare, and is not of substantial detriment to water quality; and
 - 5) Reasonable and appropriate conditions are imposed which will prevent the exception request from causing a degradation of water quality.
- (C) If the Planning Commission cannot make the required findings, or refuses to grant the exception, the Planning Commission shall return the request for an exception together with the water quality impact assessment and the written findings and rationales for the decision to the applicant.
- (D) A request for an exception to the requirements of provisions of this Article **other than Sections 3-1.7 (Required Conditions) and 3-1.10 C (Buffer Area Requirements)** shall be made in writing to the Zoning Administrator. The Zoning Administrator **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) Exceptions to §3-1.10.B **may** be made provided that the findings noted in §3-1.15 C are made.

3-2. Reserved.