

## **Chapter 28**

### **CHESAPEAKE BAY PRESERVATION AREA OVERLAY DISTRICT**

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#### **Sec. 28-1    Short title.**

This chapter may be known and referenced as the "Chesapeake Bay Preservation Area Overlay District" of the Town of Claremont.

(Ord. passed 11-11-2003)

#### **Sec. 28-2.   Findings of fact.**

- A. The Chesapeake Bay and its tributaries are one of the most important and productive estuarine systems in the world, providing economic and social benefits to the citizens of town of Claremont and the Commonwealth of Virginia. The health of the bay is vital to maintaining the town of Claremont's economy and the welfare of its citizens.
- B. The Chesapeake Bay waters have been degraded significantly by many sources of pollution, including nonpoint 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 the shoreline 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. Protected from disturbance, 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 town council 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 the town and the Commonwealth of Virginia.

(Ord. passed 11-11-2003)

**Sec. 28-3. Purpose of chapter.**

- A. This chapter is enacted to implement the requirements of Code of Virginia, §§ 15.2-2283 and 62.1-44.15:72 *et seq.*, the Chesapeake Bay Preservation Act, and amends the town of Claremont zoning ordinance. The intent of the town council and the purpose of the overlay district, under 9 VAC 25-830 *et seq.* Chesapeake Bay Preservation Area Designation and Management Regulations, is to:
  1. Protect and improve the water quality of the Chesapeake Bay, its tributaries, and other state waters by minimizing the effects of human activity upon these waters and implementing the Act, which provides of the definition and protection of certain lands called Chesapeake Bay Preservation Areas, which if improperly used or developed may result in substantial damage to the water quality of the Chesapeake Bay and its tributaries;
  2. Protect existing high quality state waters and restoration of 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, 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 the town of Claremont.
- B. This Chesapeake Bay Preservation Area Overlay 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 district shall also lie in one or more of the other zoning districts provided for by this chapter.
- C. Unless otherwise stated in these regulations, the review and approval procedures provided for in this chapter (include site plan, erosion and sediment control, and building permits for jurisdiction) shall be followed in reviewing and approving development and uses governed by this chapter.

D. This chapter is enacted under the authority of Code of Virginia, §§ 62.1-44.15:72 *et seq.* (the Chesapeake Bay Preservation Act) and Code of Virginia, § 15.2-2283.

E. Code of Virginia, § 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” Code of Virginia, § 62.1255.

(Ord. passed 11-11-2003)

#### **Sec. 28-4. Definitions.**

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

*Agricultural lands.* Lands that are currently (i.e., natural or native vegetation has been removed,) used and managed primarily for the commercial sale of crops and livestock and consists of a minimum of five acres.

*Best management practices (BMPs).* A practice, or combination of practices, that are 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 nonpoint sources to a level compatible with water quality goals.

*Buffer area.* An area of natural or established vegetation managed to protect other components of a resource protection area and state waters from significant degradation due to land disturbances.

*Chesapeake Bay preservation area (CBPA).* Any land designated by the town council pursuant to Part III of the Chesapeake Bay Preservation Area Designation and Management Regulations, 9 VAC 25-830 *et seq.*, and Code of Virginia, § 62.1-44.15:74. A Chesapeake Bay preservation area shall consist of a resource protection area and a resource management area.

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

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

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

*Director.* The person assigned by the town council to administer this chapter.

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

*Erosion and Sediment Control Law.* Article 2.4 (§ 62.1-44.15:51 *et seq.*) of Chapter 3.1 of

Title 6.21 of the Code of Virginia.

*Flood plain.* 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.* Soils (excluding vegetation) with an erodibility index (EI) from sheet and rill erosion equal to or greater than eight. The erodibility index for soil is defined as the product of the formula  $RKLS/T$ , where  $K$  is the soil susceptibility to water erosion in the surface layer;  $R$  is the rainfall and runoff;  $LS$  is the combined effects of slope length and steepness; and  $T$  is the soil loss tolerance.

*Highly permeable soils.* Soils with a given potential to transmit water through the soil profile. *Highly permeable soils* are identified as any soil having a permeability equal to or greater than six 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 National Resources Conservation Service.

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

*Land disturbance.* Any activity upon which causes, contributes to, or results in the removal or covering of the vegetation upon the land, including, but not limited to, clearing, grading, filling, dredging, or excavating. This term shall not include minor activities such as home gardening, planting of trees and shrubs, and home maintenance.

*Lot coverage.* The impervious area of any lot or parcel including, but not limited to, buildings, drives, parking areas, sidewalks, patios, decks, and the like.

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

*Nontidal wetlands.* Those wetlands other than tidal wetlands that "are inundated or saturated by surface or ground water at a frequency and duration sufficient 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 § 404 of the Federal Clean Water Act, in 33 C.F.R. pt. 328.3b.

*Noxious weeds.* Weeds such as Johnson Grass, Kudzu, and multiflora rose.

*Plan of development.* The process for site plan or subdivision plat review to ensure compliance with Code of Virginia, § 62.1-44.15:74 and this chapter, prior to any clearing and grading of a site and the issuance of a building permit.

*Public road.* A publicly owned road designed and constructed in accordance with water quality protection criteria at least as stringent as requirements applicable to the Virginia Department of Transportation (VDOT), including regulations promulgated pursuant to the Erosion and Sediment Control Law and the Virginia Stormwater Management Act. This definition includes those roads where the VDOT exercises direct supervision over the design or construction activities, or both. *Public roads* do not include roads designed and/or constructed by a private developer using VDOT standards.

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

*Resource management area (RMA).* The component of the Chesapeake Bay preservation area that is not classified as the resource protection area.

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

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

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

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

*Tidal wetlands.* Vegetated and non vegetated wetlands as defined in Code of Virginia, § 28.2-1300.

*Virginia Stormwater Management Act.* Article 2.3 (§62.1-44.15:24 et seq.) of Chapter 3.1 of Title 6.21 of the Code of Virginia.

*Water-dependent facility.* 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:

- (1) Ports;
- (2) The intake and outfall structures of power plants, water treatment plants, sewage treatment plants, and storm sewers;

- (3) Marinas and other boat docking structures;
- (4) Beaches and other public water-oriented recreation areas; and
- (5) Fisheries or other marine resources facilities.

*Wetlands.* Includes tidal and nontidal wetlands.  
(Ord. passed 11-11-2003)

**Sec. 28-5. Areas of applicability.**

- A. The CBPA shall apply to all lands identified and designated by the town of Claremont and as shown on the Chesapeake Bay preservation areas map (CBPA map). The CBPA map, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this chapter.
- B. Resource protection areas shall consist 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 cause significant degradation to the quality of state waters. In their natural condition, these lands provide for the removal, reduction, or assimilation of sediments, nutrients, and potentially harmful or toxic substances in runoff entering the bay and its tributaries, and minimize the adverse effects of human activities on state waters and aquatic resources.
  1. *Components.*
    - a. Tidal wetlands;
    - b. Nontidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow;
    - c. Tidal shores; and
    - d. A vegetated buffer area not less than 100 feet in width located adjacent to and landward of the components listed in divisions (B)(1)a. through (B)(1)d., and along both sides of any water body with perennial flow. The full buffer area shall be designated as the landward component of the Resource Protection Area notwithstanding the presence of permitted uses, encroachments, and permitted vegetation clearing in compliance with section 28-10.
    - e. Designation of the components listed above shall not be subject to modification unless based on reliable, site-specific information as provided for in section 28-6 or in section 28-11.
  - C. Resource management areas shall include land types that, if improperly used or developed, have potential for causing significant water quality degradation or for diminishing the

functional value of the resource protection area. The following land categories shall be included as resource management areas;

- 1 Flood plains;
- 2 Highly erodible soils that are contiguous to an RPA;
- 3 Highly permeable soils that are contiguous to an RPA;
- 4 Steep slopes, defined as those greater than 15 % and contiguous to an RPA;
- 5 Nontidal wetlands not included in the RPA designation that are contiguous to the RPA;
- 6 A 100-foot land area located adjacent to any resource protection area, where none of the components listed in subsections (C)(1) through (C)(5) of section 28-5 are present

D. If the boundaries of an RMA include only a portion of a lot or parcel, the entire lot or parcel shall comply with the requirements of the overlay district, except as provided in sub section E of section 28-5. The division of property shall not constitute an exemption from this requirement.

E. Developments on any lot or parcel may be excluded from the RMA requirements provided that ;

1. There is no resource management area component as defined by section 28-5(C) in the area to be excluded from the RMA designation,
2. A site- specific delineation of RMA limits as required by section 28-6 of this article is submitted accurately demonstrating the absence of resource management area components.
3. Only the area where the absence of the RMA features has been demonstrated will be excluded from the RMA designation.

F. The CBPA map shows only the general location of CBPAs and should be consulted by persons contemplating activities within the town of Claremont prior to engaging in a regulated activity. The specific location of CBPAs on a lot or parcel shall be delineated on each site or parcel as required under section 28-6 below and through the plan of development review process or as required under section 28-13 through the review and approval of a water quality impact assessment.

## **28-6 Site-specific delineation of CBPA limits.**

A. During the plan of development review process conducted in accordance with section 28-14 or during the review of a water quality impact assessment conducted in accordance with section 28-13, the Town of Claremont shall ensure or confirm that (i) a reliable, site-specific evaluation is conducted to determine whether water bodies on or adjacent to the development site have perennial flow, and (ii) resource protection area boundaries are adjusted, as necessary, on the site, based on this evaluation.

1. *Delineation by the applicant.* The site-specific boundaries of the RPA shall be determined by the applicant through the performance of an environmental site assessment or a water quality impact assessment, subject to approval by the zoning administrator and in accordance with sections 28-13 or 28-14. The site specific delineation is to be prepared by

a qualified soil scientist, certified professional engineer, certified wetland delineator, or licensed professional land surveyor practicing within their area of competence as prescribed by the Code of Virginia.

2. *Where conflict arises over delineation.* Where the applicant has provided a determination of the resource protection area, the zoning administrator shall 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, in accordance with section 28-14 or during the review of a water quality impact assessment, in accordance with section 28-13. In the event the adjusted boundary is contested by the applicant, the applicant may seek relief, in accordance with the provisions of section 28-14.

(Ord. passed 11-11-2003)

**Sec. 28-7. Use regulations.**

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

(Ord. passed 11-11-2003)

**Sec. 28-8. 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 resource protection area to accommodate an intended development, in accordance with the performance standards in sections 28-11 or 28-12, when the development is not otherwise allowed in the resource protection area.

(Ord. passed 11-11-2003)

**Sec. 28-9. Conflict with other regulations.**

In any case where the requirements of this chapter conflict with any other provisions of the town of Claremont code or existing state and federal regulations, whichever imposes the more stringent restriction shall apply.

(Ord. passed 11-11-2003)

**28-10 Purpose of land use and development performance criteria.**

- A. The purpose and intent of these requirements is to achieve the goals of the Act and this ordinance by establishing criteria to implement the following objectives: prevent a net increase in nonpoint source pollution from new development and previously developed land where the runoff was treated by a water quality protection best management practice; achieve a 10% reduction in nonpoint source pollution from redevelopment where the runoff was not treated by one or more water quality best management practices; and achieve a 40% reduction in nonpoint source pollution from agricultural and silvicultural uses.

B. In order to achieve this purpose, the criteria in this and following sections 28-11 and 28-12 establish performance standards to minimize erosion and sedimentation potential, reduce land application of nutrients and toxics, maximize rainwater infiltration, and ensure the long-term performance of the measures employed. 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. Keeping impervious cover to a minimum enhances rainwater infiltration and effectively reduces stormwater runoff potential.

**Sec. 28-11. Development criteria for resource protection areas.**

In addition to the general performance criteria set forth in section 28-12, the criteria in this section are applicable in resource protection areas.

A. Land development within resource protection areas may be allowed only when permitted by the zoning administrator only if it is water-dependent; constitutes redevelopment; is a new use established pursuant to subdivision B.3 of this section; is a road or driveway crossing satisfying the conditions set forth in this subdivision A.4 of this section; or is a flood control or stormwater management facility satisfying the conditions set forth in subdivision A.5 of this section.

1. A water quality impact assessment, as outlined in section 28-13 shall be required for any proposed land disturbance development or redevelopment within resource protection areas and for any other development within resource management areas 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 28-13. The purpose of the water quality impact assessment is to identify the impacts of the proposed development on water quality and lands in the resource protection areas consistent with the goals and objectives of the Act and this chapter, and to determine specific measures for mitigation of those impacts.
2. 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 general performance criteria set forth in section 28-12;
  - c. Any non-water-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.

3. Redevelopment 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 applicable stormwater management criteria and the erosion and sediment control requirements set forth in the Erosion and Sediment Control Law and the Virginia Stormwater Management Act and their attendant regulations, as well as all applicable stormwater management requirements of other state and federal agencies.
4. Roads and driveways not exempt under section 28-14 and which, therefore, must comply with the provisions of this chapter, may be constructed in or across RPAs if each of the following conditions are met:
  - a. The zoning administrator makes a finding that there are no reasonable alternatives to aligning the road or drive in or across the RPA;
  - b. The alignment and design of the road or driveway are optimized, consistent with other applicable requirements, to minimize encroachment in the RPA and minimize adverse effects on water quality;
  - c. The design and construction of the road or driveway satisfy all applicable criteria of this chapter, 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 the plan of development requirements set forth in section 28-14 or the subdivision ordinance.
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 the RPA provided such facilities are allowed and constructed in accordance with the Virginia Stormwater Management Act and its attendant regulations, and provided that:
  - a. The town of Claremont has conclusively established that the location of the facility within the RPA is the optimum location;
  - b. The size of the facility is the minimum necessary to provide necessary flood control, stormwater treatment, or both;
  - c. The facility must be consistent with a comprehensive stormwater management plan developed and approved in accordance with 9VAC25-870-92 of the Virginia Stormwater Management Program (VSMP) regulations;
  - d. All applicable permits for construction have been obtained from the appropriate state and federal agencies;
  - e. The town of Claremont has approved the project prior to construction; and
  - f. Routine maintenance will be performed to assure that these facilities continue to

perform 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.

(Ord. passed 11-11-2003)

**B. *Buffer area requirements.***

**1. *Generally.***

- a. The 100-foot wide buffer area shall be the landward component of the resource protection area as set forth in section 28-5. Notwithstanding permitted uses, encroachments, and vegetation clearing, as set forth in this section, the 100-foot buffer area is not reduced in width.
- b. To minimize the adverse effects of human activities on the other components of resource protection area, state waters, and aquatic life, a 100-foot wide buffer area of vegetation that is effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff shall be retained if present and established where it does not exist.
- c. The 100-foot buffer area shall be deemed to achieve a 75% reduction of sediments and a 40% reduction of nutrients.
- d. *Reestablishment of buffer.* When agricultural or silvicultural uses within the buffer area cease, and the lands are proposed to be converted to other uses, the full 100-foot wide buffer area shall be reestablished. In reestablishing the buffer, management measures shall be undertaken to provide woody vegetation that assures the buffer functions are maintained or established.

**2. *Permitted modifications to the buffer area.***

- a. In order to maintain the functional value of the buffer area, indigenous 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.
  - i. Trees may be pruned or removed as necessary to provide for sight lines and vistas, provided that, where removed, they shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff.
  - ii. Any path shall be constructed and surfaced so as to effectively control erosion.
  - iii. Dead, diseased, or dying trees or shrubbery and noxious weeds (such as Johnson grass, Kudzu, and multiflora rose) may be removed and thinning of trees may be allowed as permitted by the zoning administrator pursuant to sound horticultural practices.

- iv. For shoreline erosion control projects, trees and woody vegetation may be removed, necessary control techniques employed, and appropriate vegetation established to protect or stabilize the shoreline in accordance with the best available technical advice and applicable permit conditions or requirements.
- b. On agricultural lands the agricultural buffer area shall be managed to prevent concentrated flows of surface water from breaching the buffer area and appropriate measures may be taken to prevent noxious weeds from invading the buffer area. Agricultural activities may encroach into the buffer area as follows:
  - i. Agricultural activities may encroach into the landward 50 feet of the 100-foot wide buffer area when at least one agricultural best management practice which, in the opinion of the local soil and water conservation district board, addresses the more predominant water quality issue on the adjacent land—erosion control or nutrient management—is being implemented on the adjacent land, provided that the combination of the undisturbed buffer area and the best management practice achieves water quality protection, pollutant removal, and water resource conservation at least the equivalent of the 100-foot wide buffer area. If nutrient management is identified as the predominant water quality issue, a nutrient management plan, including soil tests, must be developed consistent with the Virginia Nutrient Management Training and Certification Regulations (4VAC5-15) administered by the Virginia Department of Conservation and Recreation.
  - ii. 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 test, 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.
  - iii. The buffer area is not required to be designated adjacent to agricultural drainage ditches if the adjacent agricultural land has in place at least one best management practices as considered by the local soil and water conservation district to address the more predominant water quality issue on the adjacent land, either erosion control or nutrient management.
- iv. If specific problems are identified pertaining to agricultural activities that are causing pollution of the nearby water body with perennial flow or violate performance standards pertaining to the vegetated buffer area, the Town of Claremont, 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.

v. 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 Town of Claremont. The Town of Claremont 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 Town of Claremont, 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. *Permitted encroachments into the buffer area.*

i. When the application of the buffer areas would result in the loss of a buildable area on a lot or parcel recorded prior to 10-1-1989, the zoning administrator may, through an administrative process, permit encroachments into the buffer area in accordance with section 28-14 and the following criteria:

(a) Encroachments into the buffer area 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 equal to the area of encroachment into the buffer area shall be established elsewhere on the lot or parcel.

(c) The encroachment may not extend into the seaward 50 feet of the buffer area.

ii. When the application of the buffer area would result in the loss of buildable area on a lot or parcel recorded between October 1, 1989 and March 1, 2002, encroachments into the buffer area may be allowed thorough an administrative process in accordance with the following criteria:

(a) The lot or parcel was created as a result of a legal process conducted in conformity with the Town of Claremont's subdivision regulations;

(b) Conditions or mitigation measures imposed through a previously approved exception shall be met;

(c) If the use of a best management practice (BMP) was previously required, the BMP shall be evaluated to determine if it continues to function effectively and, if necessary, the BMP shall be reestablished or repaired and maintained as required;

and

- (d) The criteria in subdivision 3i of this subsection shall be met.

(Ord. passed 11-11-2003)

**Sec. 28-12. General performance criteria.**

- A. Land disturbance shall be limited to the area necessary to provide for the proposed use or development.
  - 1. In accordance with an approved site plan, the limits of clearing or grading shall be strictly defined by the construction footprint. The zoning administrator shall review and approve the construction footprint through the plan of development process. These limits shall be clearly shown on submitted plans and plats and physically marked in the development site.
  - 2. The construction footprint shall not exceed the limits designated by the zoning district of the lot or parcel.
  - 3. Ingress and egress during construction shall be limited to one access point, unless otherwise approved by the zoning administrator.
- B. Indigenous vegetation shall be preserved to the maximum extent practicable consistent with the proposed use and development permitted and in accordance with the Virginia Erosion and Sediment Control Handbook.
  - 1. Existing trees over two inches diameter at breast height (DBH) shall be preserved outside the approved construction footprint. Diseased trees or trees weakened by age, storm, fire, or other injury may be removed, when approved by the zoning administrator. Other woody vegetation onsite shall be preserved outside the approved construction footprint.
  - 2. Site clearing for construction activities shall be allowed as approved by the zoning administrator through the plan of development review process outlined under section 28-14.
  - 3. Prior to clearing, grading, and/or filling suitable protective barriers, like safety fencing, shall be erected five feet outside the dripline of any tree or stand of trees to be preserved. Erected protective barriers shall remain throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
- C. Land development shall minimize impervious cover consistent with the proposed use or development.

1. Grid and modular pavement may be used for any required parking area, alley, or other low traffic driveway, unless otherwise not approved by the zoning administrator.
2. Parking space size shall be 162 square feet. Parking space width shall be nine feet; parking space length shall be 18 feet. Two-way drives shall be a minimum of 22 feet.
3. Impervious coverage on any lot or parcel shall be limited to the lot coverage permitted under the zoning district requirements of the lot or parcel as noted on the approved plan of development (site plan, plot plan, other approved plan).

D. Notwithstanding any other provisions of this chapter or exceptions or exemptions thereto, any land disturbing activity exceeding 2,500 square feet, including construction of all single-family houses and septic tanks and drainfields, shall comply with the requirements of Surry County E&S Ordinance. Enforcement for noncompliance with the erosion and sediment control requirements referenced in this criterion shall be conducted under the provisions of the Erosion and Sediment Control Law and attendant regulations.

E. Any Chesapeake Bay Preservation Act land-disturbing activity as defined in §62.1-44.15:24 of the Code of Virginia shall comply with the requirements of 9VAC25-870-51 and 9VAC25-870-103.

F. All development and redevelopment within RMAs and RPAs that exceeds 2,500 square feet of land disturbance 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 plan in accordance with the subdivision ordinance; or a water quality impact assessment in accordance with section 28-14.

G. All on-site sewage treatment systems not requiring a Virginia pollutant discharge elimination system (VPDES) permit shall:

1. Have their system pumped-out at least once every five years, in accordance with the provisions of Surry County health code.
  - a. As an alternative to mandatory pump-out, an owner may install and maintain a plastic filter in the outflow pipe from the septic tank, provided it is deemed appropriate by the Surry health department and subject to any conditions the health department may set. The filter must satisfy the standards established in the sewage handling and disposal regulations under 12 VAC 5-610 *et seq.* as administered by the Virginia department of health.
  - b. Furthermore, in lieu of requiring proof of septic tank pumpout every five years, the Town of Claremont may allow owners of onsite sewage treatment systems to submit documentation, at least every five years, certified by an operator or onsite soil evaluator licensed or certified under Chapter 23 (§ 54.1-2300 *et seq.*) of Title 54.1 of the Code of Virginia as being qualified to operate, maintain, or design onsite sewage systems, that the septic system has been inspected and is functioning properly and does not need to be pumped out.

2. For new construction, provide 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 Surry County Health Code. This requirement shall not apply to any lot or parcel recorded prior to 10-1-1989, if the lot or parcel is not sufficient in capacity to accommodate a reserve sewage disposal site, as determined by the local health department. Building shall be prohibited on the area of all sewage disposal sites until the structure is served by public sewer or an on-site sewage treatment system that operates under a permit issued by the state water control board. All sewage disposal site records shall be administered to provide adequate notice and enforcement. As an alternative, alternating drainfields may be installed in lieu of the 100% reserve drainfield provided that the following conditions are met.
  - a. Each of the two alternating drainfields shall have at a minimum an area of not less than 50% of the area that would otherwise be required if a single primary drainfield were constructed.
  - b. An area equaling 50% of the area that would otherwise be required for the primary drainfield site must be reserved for subsurface absorption systems that use a flow diversion device, in order to provide for future replacement or repair to meet the requirements for a sewage disposal system and that expansion of the primary system will require an expansion of this reserve area.
  - c. The two alternating drainfields shall be connected by a diversion valve that has been approved by the Surry County Health Department, located in the pipe between the septic tank and the distribution boxes, and is used to alternate the direction of the effluent flow to one drainfield or the other at a time.
  - d. The diversion valves shall not be used for sand mounds, low-pressure distribution systems, repair situations when the installation of a valve is not feasible, or any other approved system for which the use of a valve would adversely affect the design of the system as determined by the Surry County health department.
  - e. The diversion valve shall be a three-port, two-way valve of approved materials.
  - f. There shall be a conduit from the top of the valve to the ground surface with an appropriate cover to be level with or above the ground surface.
  - g. The valve shall not be located in driveways, recreational courts, parking lots, or beneath sheds and other structures.
  - h. The valve shall be used to alternate the drainfields every 12 months to permit the yearly resting of half of the absorption system.
  - i. The Town of Claremont shall notify the property owners annually of the requirement to switch the valve in the opposite direction and alternate the drainfields.

H. 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 them submitted to the zoning administrator in accordance with section 28-14.

- I. 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 the Town of Claremont, shall undergo a soil and water quality conservation assessment. The assessments shall evaluate 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 accomplished consistent with this chapter.
  1. Recommendations for additional conservation practices need address only those conservation issues applicable to the tract or field being assessed. Any soil and water quality conservation practices that are recommended as a result of such an assessment and are subsequently implemented with financial assistance from federal or state cost-share programs must be designed, consistent with cost-share practice standards effective in January 1999 in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resource Conservation Service or the June 2000 edition of the "Virginia Agricultural BMP Manual" of the Virginia Department of Conservation and Recreation, respectively. Unless otherwise specified in this section, general standards pertaining to the various agricultural conservation practices being assessed shall be as follows:
    - (a) For erosion and sediment control recommendations, the goal shall be, where feasible, to prevent erosion from exceeding the soil loss tolerance level, referred to as "T," as defined in the "National Soil Survey Handbook" of November 1996 in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resource Conservation Service. However, in no case shall erosion exceed the soil loss consistent with an Alternative Conservation System, referred to as an "ACS", as defined in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resource Conservation Service.
    - (b) For nutrient management, whenever nutrient management plans are developed, the operator or landowner must provide soil test information, consistent with the Virginia Nutrient Management Training and Certification Regulations (4VAC50-85).
    - (c) For pest chemical control, referrals shall be made to the local cooperative extension agent or an Integrated Pest Management Specialist of the Virginia Cooperative Extension Service. Recommendations shall include copies of applicable information from the "Virginia Pest Management Guide" or other Extension materials related to pest control.
  2. A higher priority shall be placed on conducting assessments of agricultural fields and tracts adjacent to Resource Protection Areas. However, if the landowner or operator of such a tract also has Resource Management Area fields or tracts in his operation, the assessment for that landowner or operator may be conducted for all fields or tracts in the operation. When such an expanded assessment is completed, priority must return to Resource Protection Area fields and tracts.

3. The findings and recommendations of such assessments and any resulting soil and water quality conservation plans will be submitted to the local Soil and Water Conservation District Board, which will be the plan-approving authority.

**Sec. 28-13. Water quality impact assessment.**

**A. Purpose and intent.**

1. The purpose of the water quality impact assessment is to:
  - a. Identify the impacts of proposed land disturbance, development, or redevelopment on water quality and lands in RPAs and other environmentally sensitive lands;
  - b. Ensure that, where land disturbance, development, or redevelopment does take place within RPAs and other sensitive lands, it will occur 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;
  - c. To protect individuals from investing funds for improvements proposed for location on lands unsuited for the development because of high ground water, erosion, or vulnerability to flood and storm damage;
  - d. Provide for administrative relief from terms of this chapter when warranted and in accordance with the requirements contained herein; and
  - e. Specify mitigation which will address water quality protection.
2. The Town of Claremont may determine that a WQIA is warranted within the resource management area because of the unique characteristics of the site or intensity of the proposed development.

**B. Applicability.** A water quality impact assessment shall be required for any proposed land disturbance, development, or redevelopment activity within a resource protection area as permitted consistent with this chapter, any buffer encroachment as provided for in section 28-11; for any other development in resource management areas as deemed necessary by the zoning administrator due to the unique site characteristics or intensity of the proposed use or 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 land disturbance, development, or redevelopment activity within a CBPA which causes no more than 5,000 square feet of land disturbance and/or which proposes to encroach into the landward 50 feet of the 100-foot buffer area as permitted under section 28-11. A minor assessment must demonstrate that the undisturbed buffer area, enhanced vegetative plantings, and any required best management practices will result in the removal of no less than 75% of sediments and 40% of nutrients from post-development stormwater runoff and that will retard

runoff, prevent erosion, and filter nonpoint source pollution the equivalent of the full undisturbed 100-foot buffer area. A minor assessment shall include a site drawing to scale which shows the following:

1. Location of the components of the resource protection area, including the 100-foot buffer area and the location of any water body with perennial flow;
2. Location of the resource management area;
3. 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;
4. Type and location of proposed best management practices to mitigate the proposed encroachment;
5. Location of existing vegetation onsite, including the number and type of trees and other vegetation to be removed in the buffer to accommodate the encroachment or modification; and
6. Re-vegetation plan that supplements the existing buffer vegetation in a manner that provides for pollutant removal, erosion, and runoff control.
7. Area of proposed land disturbance within the RPA

D. *Major water quality impact assessment.* A major water quality impact assessment shall be required for any development which exceeds 5,000 square feet of land disturbance within CBPAs and proposes to encroach into the seaward 50 feet of the 100-foot buffer area; proposes to disturb any portion of the seaward 50 feet of the 100-foot buffer area or any other component of an RPA; or is located solely in a RMA when 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 impact assessment:

1. All of the information required in a minor water quality impact assessment, as specified in division (C) above;
2. A hydrogeological element that:
  - a. Describes the existing topography, soils, and hydrology 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:

- i. Disturbance or removal of wetlands and justification for the action;
- ii. Disruptions or reductions in the supply of water to wetland, streams, lakes, rivers, or other water bodies;
- iii. Disruptions to existing hydrology including wetland and stream circulation patterns;
- iv. Source location of and description of proposed fill material;
- v. Location of dredging and location of dumping area for the dredged material;
- vi. Estimation of pre- and post-development pollutant loads in runoff;
- vii. Estimation of percent increase in impervious surface on site, type(s) of surfacing material used;
- viii. Percent of site to be cleared for project;
- ix. Anticipated duration and phasing schedule of construction project; and
- x. Listing of all requisite permits from all applicable agencies necessary to develop project.

d. Describes the proposed mitigation measures for the potential hydrogeological impacts. Potential mitigating measures include:

- i. Additional proposed erosion and sediment control concepts beyond those normally required under section 28-12; these additional concepts may include the following: minimizing the extent of cleared area; perimeter controls; reduction of runoff velocities; measures to stabilize disturbed areas; schedule and personnel for site inspection; and
- ii. Proposed stormwater management system for nonpoint source quality and quantity control.

e. A vegetative element that:

- i. Identifies and delineates the location of all woody plant material on site, including all trees on site two inches or greater diameter at breast height or, where there are groups of trees, the stands may be outlined;
- ii. 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; and
- (c) Description of all plant species to be disturbed or removed.

iii. Describes the proposed measures for mitigation. Possible mitigation measures include:

- A. Proposed design plan and replanting schedule for trees and other woody vegetation removed for construction, including a list of proposed plants and trees to be used;
- B. Demonstration that the re-vegetation plan supplements the 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 overload flow benefits from the vegetation; and/or
- D. Demonstration that indigenous plants are to be used to the greatest extent possible.

E. *Submission and review requirements.*

1. Five copies of all site drawings and other applicable information as required by divisions (c) and (d) above shall be submitted to the zoning administrator for review.
2. All information required in this section shall be certified as complete and accurate by a licensed professional engineer, certified wetland delineator, or licensed professional land surveyor practicing within their area of competence as prescribed by the code of Virginia.
3. A minor water quality impact assessment shall be prepared and submitted to and reviewed by the zoning administrator in conjunction with section 28-14, and when land disturbance is proposed within the resource protection area.
4. A major water quality impact assessment shall be prepared and submitted to and reviewed by the zoning administrator in conjunction with a request for rezoning, special use permit, or in conjunction with section 28-14, as deemed necessary by the zoning administrator.
5. As part of any major water quality impact assessment submittal, the zoning administrator may require review by the Department of Environmental Quality (DEQ). Upon receipt of a major water quality impact assessment, the zoning administrator will determine if the

review is warranted and may request DEQ to review the assessment and respond with written comments. Any comments by DEQ will be incorporated into the final Review by the zoning administrator, provided that the comments are provided by DEQ within 90 days of the request.

*F. Evaluation procedure.*

1. Upon the completed review of a minor water quality impact assessment, the zoning administrator will determine that any proposed modification or encroachment into the buffer area is consistent with the provisions of this chapter 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 area;
  - d. Proposed mitigation measures 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, is consistent with the spirit and intent of this chapter; and
  - 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 zoning administrator will determine whether or not the proposed development is consistent with the spirit and intent of this chapter and make a finding based upon the following criteria:
  - a. Within any RPA, the proposed development is water-dependent or redevelopment;
  - b. The percentage of existing wetlands disturbed by the development. The number of square feet or acres to be disturbed;
  - 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 "no net increase" in pollutant loadings;
- g. Proposed revegetation of disturbed areas will provide optimum erosion and sediment control benefits, as well as runoff control and pollutant removal equivalent of the full 100-foot undisturbed buffer area;
- h. The design and location of any proposed drainfield will be in accordance with the requirements of section 28-12; and
- i. The development is consistent with the spirit and intent of the overlay district.

- 3. 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 divisions (F)(1) and (F)(2) above.
- 4. The zoning administrator shall find the proposal to be inconsistent with the purpose and intent of this chapter 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 divisions (F)(1) and (F)(2) above.

(Ord. passed 11-11-2003)

#### **Sec. 28-14. Plan of development process.**

- A. *Generally.* Any development or redevelopment exceeding 2,500 square feet of land disturbance shall be accomplished through a plan of development process prior to any development preparation activities onsite, such as clearing and grading of the site and the issuance of any building permit, to assure compliance of all applicable requirements of this chapter.
- B. *Required information.* In addition to the requirements of sections 95-191 *et seq.*, the plan of development process shall consist of the plans and studies identified below. These required plans and studies may be coordinated or combined, as deemed appropriate by the zoning administrator. The zoning administrator 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:
  - 1. A site plan in accordance with the provisions of sections 95-191 *et seq.*;
  - 2. An environmental site assessment, inclusive of the results of the site specific determination of CBPA boundaries, per 28-6;

3. A water quality impact assessment, if required;
4. A landscaping plan;
5. A stormwater management plan; and
6. An erosion and sediment control plan in accordance with the provisions of Surry County soil erosion and sediment control ordinance.

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. Resource protection area boundaries inclusive of the components itemized in section 28-5;
  - b. Resource management area boundaries inclusive of the components itemized in section 28-5; and
  - c. Other sensitive environmental features as determined by zoning administrator.
2. Wetlands delineations shall be performed consistent with the procedures specified in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, 1987.
3. The environmental site assessment shall delineate the geographic extent of the resource protection area on the specific site or parcel as required by section 28-6;
4. 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 licensed professional engineer, certified wetland delineator, or a licensed professional land surveyor practicing within their area of competence as prescribed by the Code of Virginia. 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 and there are no designated CBPAs identified on the parcel according to the CBPA map.

D. *Landscaping plan.* A landscaping plan shall be submitted in conjunction with site plan review and approval or as part of subdivision plat approval. No clearing or grading of any lot or parcel will be permitted without an approved landscaping plan. Landscaping plans shall be prepared and/or certified by a design professional 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 two inches or greater diameter at breast height (DBH) shall be shown on the landscaping plan, or where there are groups of trees, the stands may be outlined instead. The specific number of trees two inches or greater DBH to be preserved outside of the building envelope shall be indicated 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.
- b. 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 chapter, shall be shown on the landscaping plan.
- c. Within the buffer area, trees and other woody vegetation to be removed for sight lines, vistas, access paths, and best management practices, as provided for in section 28-12, shall be shown on the plan. Vegetation required by this chapter to replace any existing trees within the buffer area or mitigate for any RPA encroachment shall be also be depicted on the landscaping plan.
- d. Trees and other woody vegetation to be removed for shoreline stabilization projects and any replacement vegetation required by this chapter 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 agriculture or silviculture to some other use, the plan must demonstrate the re-establishment of woody 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 three planted trees to one removed. Replacement trees shall be a minimum 1-1/2 inches DBH at the time of planting.

- d. Use of native or indigenous species.

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 chapter.
- 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 chapter.

E. *Stormwater management plan.* A stormwater management plan shall be submitted as part of the plan of development process required by this chapter and in conjunction with site plan or subdivision plan approval. 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 the Virginia Stormwater Management Act and its attendant regulations.

F. *Erosion and sediment control plan.* An erosion and sediment control plan shall be submitted that satisfies the requirements of this chapter and in accordance with Surry County erosion and sediment control requirements, in conjunction with site plan or subdivision plan approval.

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 95-191 *et seq.*

1. *Generally.* Final plans for all lands within CBPAs shall include the following additional information:

- a. The delineation of the resource protection area and resource management area boundaries;
- b. Plat or plan note stating that no land disturbance is allowed in the buffer area without review and approval by the zoning administrator;
- c. Plat or plan notation of the permissibility of only water dependent facilities or redevelopment in resource protection areas, including the 100-foot wide buffer area;
- d. Plat or plan note stating the requirement for pump out and 100% reserve drainfield sites for onsite sewage treatment systems, when applicable;

- e. All wetlands permits required by law; and

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 material 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 the town of Claremont a form of surety satisfactory to the zoning administrator in an amount equal to the remaining plant materials, related materials, or installation costs of the required landscaping or facilities 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 town of Claremont.
- d. All required stormwater management facilities or other specifications shall be installed and approved within 18 months of project commencement. Should the applicant fail, after proper notice, to initiate, complete, or maintain appropriate actions required by the approved plan, the surety may be forfeited to the town of Claremont. The town of Claremont 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 action of the approved site plan have been completed, the applicant must submit a written request for final inspection. If the requirements of the approved plan have been completed to the satisfaction of the zoning administrator, the unexpended or unobligated portion of the surety held shall be refunded to the applicant or terminated within 60 days following 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 III B Surveyor before making a final inspection.

3. *Administrative responsibility.* Administration of the plan of development process shall be in accordance with §§ 151.125 *et seq.* The zoning administrator shall approve, approve subject to conditions, or disapprove the plans in accordance with the reviewing authorities' recommendations. The zoning administrator shall return notification of plan review results to the applicant, including recommended conditions or modifications. In the event that the results and/or recommended conditions or modifications are acceptable to the applicant, the plan shall be so modified, if required, and approved.

4. *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 or recommended conditions or modifications are unacceptable to the applicant, the applicant may appeal the administrative decision to the planning commission. In granting or denying an appeal, the planning commission must find the 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 the plan meets the purpose and intent of the performance standards in this chapter. If the planning commission finds that the applicant's plan does not meet the above stated criteria, they shall deny approval of the plan.

(Ord. passed 11-11-2003)

**Sec. 28-15. Nonconforming uses and noncomplying structures.**

- A. The lawful use of a building or structure which existed on 12-31-2003 and which is not in conformity with the provision of the overlay district may be continued in accordance with sections 95-221 *et seq.*
- B. No change or expansion of use shall be allowed with the exception that:
  1. The zoning administrator may grant a nonconforming use and/or waiver for structures on legal nonconforming lots or parcels to provide for remodeling and alterations to but not necessarily the expansion of nonconforming structures provided that:
    - a. There will be no increase in nonpoint 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 chapter.
  2. An application for a nonconforming use and/or waiver shall be made to and upon forms furnished by the zoning administrator and shall include for the purpose of proper enforcement of this chapter, 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 sketch of the dimensions of the lot or parcel, location of buildings and proposed additions relative to the lot lines, and boundary of the resource protection area and resource management area; and
    - 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 12 months from the date issued if no substantial work has commenced; and

4. An application for the expansion of an existing 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 chapter to other property owners in similar situations;
  - c. The waiver is in harmony with the purpose and intent of this chapter 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 town of Claremont are met; and
  - g. In no case shall this provision apply to accessory structures.
5. This chapter shall not be construed to prevent the reconstruction of pre-existing structures within CBPAs from occurring as a result of casualty loss unless otherwise restricted by the town of Claremont.

(Ord. passed 11-11-2003)

### **Sec. 28-16. Exemptions.**

- A. *Exemptions for public utilities, railroads, public roads, 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 regulations promulgated pursuant to the erosion and sediment control law and the stormwater management act, an erosion and sediment control plan and a stormwater management plan approved by the Virginia department of environmental quality, or local water quality protection criteria at least as stringent as the above state requirements are deemed to comply with this chapter. The exemption of public roads is further conditioned on the following: 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 the town of Claremont or regional service authority shall be exempt from the overlay district provided that:
  1. To the degree possible, the location of the 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 the construction, installation, and maintenance of the 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 Surry County erosion and sediment control requirements.

C. *Exemptions for silvicultural activities.* Silvicultural activities in Chesapeake Bay Preservation Areas are exempt from the requirements of this chapter provided that silvicultural operations adhere to water quality protection procedures prescribed by the Virginia department of forestry in the fifth edition (March 2011) of “Virginia’s Forestry Best Management Practices for Water Quality Technical Manual.” 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 exempt from the overlay district provided that they comply with the requirements listed below: water wells; passive recreation facilities such as boardwalks, trails, and pathways; and historic preservation and archaeological activities.

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 Surry County erosion and sediment control requirements.

(Ord. passed 11-11-2003)

**Sec. 28-17. Exceptions.**

A. A request for an exception to the requirements of sections 28-11 and 28-12 shall be made in writing to the zoning administrator. The application shall identify the impacts of the proposed exception on water quality and on lands within the RPA through the performance of a water quality impact assessment which complies with these provisions, and address the findings

listed below.

B. The Claremont Town Council shall review the application and all required documentation inclusive of a water quality impact assessment, that comprise requests for exceptions to section 28-11, following a public notice and a public hearing as required by section 15.2-2204 of the Code of Virginia, may grant the exception with such conditions and safeguards as deemed necessary to further the purpose and intent of these provisions provided it finds:

1. Granting the exception will not confer upon the applicant any special privileges that are denied by these provisions to other property owners in the CBPA who are similarly situated;
2. The exception request is not based upon conditions or circumstances that are self-created or self-imposed,
3. The exception request is the minimum necessary to afford relief;
4. The exception request will be consistent with the purpose and intent of these provisions, and 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 from causing a degradation of water quality.

C. Exceptions to section 28-12 can be made after an administrative review by the Zoning Administrator of the application and all required documentation, inclusive of a water quality impact assessment, provided the findings identified in 28-17.B above are made, but without the requirement for a public hearing.

D. A request for an exception to the requirements of these provisions other than Sections 28-11 and 28-12 shall be made in writing to the zoning administrator. The administrator may grant these exceptions provided that:

1. Exceptions to the requirements are the minimum necessary to afford relief.
2. Reasonable and appropriate conditions are imposed which will prevent the exception from causing a degradation of water quality.

#### **Sec. 28.16. - Exception appeal.**

A. If the Claremont Town Council or zoning administrator cannot make the required findings or refuses to grant an exception, the applicant may appeal by submitting a written application for review to the board of zoning appeals ("board") in accordance with Section 95-334 of this ordinance. The board shall hear the appeal as soon as practical after receipt of a complete application accompanied by the water quality impact assessment and the Claremont Town Council's written findings and rationale.

B. In rendering its decision, the board shall consider the application materials, inclusive of the water quality impact assessment and the findings and rationale of the Claremont Town Council and balance the hardship to the property owner with the purpose, intent, and objectives of these provisions.

(Ord. passed 11-11-2003)

**This ordinance was adopted on** \_\_\_\_\_

\_\_\_\_\_  
**George L. Edwards, Mayor**

**Attest:** \_\_\_\_\_  
**Mary Jane Beasley**