

## ARTICLE XVI. CHESAPEAKE /ATLANTIC PRESERVATION OVERLAY DISTRICT\*

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**\*Editor's note:** An ordinance of Nov. 19, 2003(3), amended art. XVI §§ 106-376--106-389, to read as herein set out. Formerly, said article pertained to similar subject matter as enacted by the original Accomack County Zoning Ordinance, as amended. See the Code Comparative Table for a detailed analysis.

**Cross references:** Waterways, ch. 102.

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Sec. 106-376. Purpose and intent.

(a) This article is enacted to implement the requirements of Code of Virginia section 10.1-2100 et seq. (The Chesapeake Bay Preservation Act) and amends this chapter. The intent and the purpose of the Chesapeake / Atlantic Preservation Overlay District is to:

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

(b) This 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 Chesapeake / Atlantic Preservation Area overlay district shall also lie in one or more of the other zoning districts provided for by this chapter. Unless otherwise provided for in the overlay district, the review and approval procedures provided for in all other ordinances of the 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 Code of Virginia, section 10.1-2100 et seq. (The Chesapeake Bay Preservation Act) and Code of Virginia, Section 15.2-2283. Code of Virginia, Section 15.2-2283 states that zoning ordinances may, "also include reasonable provision, not inconsistent with applicable state water quality standards, to protect surface water and groundwater as defined in Code of Virginia, Section 62.1-255. (Ord. of 11-19-2003(3))

Sec. 106-377. Definitions.

For purposes of this article the following words and terms have the following meanings, unless the context clearly indicates otherwise. Words and terms not defined in this article but defined elsewhere in this chapter shall be given the meanings set forth therein.

*Agricultural lands* means those lands used for the planting and harvesting of crops or plant growth of any kind in the open; pasture; horticulture; dairying; floriculture; or raising of poultry and/or livestock.

*Best management practices* or *BMP's* means a practice, or a combination of practices, that is determined by a state or designated area-wide planning agency to be the most effective, practical means of preventing or reducing the amount of pollution generated by nonpoint sources to a level compatible with water quality goals.

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

*Building Envelope* means the area formed by the front, side, and rear building restriction or setback lines of a lot within which the principal buildings must be located.

*Chesapeake /Atlantic Preservation Area* or *CAPA* means any land designated by the board of supervisors pursuant to Part III of the Chesapeake Bay Preservation Area Designation and Management Regulations, VAC 10-20 et seq. and Code of Virginia, § 10.1-2107. A Chesapeake /Atlantic Preservation Area shall consist of a resource protection area and a resource management area.

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

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

*Diameter at breast height* or *DBH* means the diameter of a tree measured outside the bark at a point of four and one-half feet above ground.

*Drip line* means a vertical projection to the ground surface from the furthest lateral extent of a tree's leaf canopy.

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

*Intensely Developed Area* or *IDA* means a portion of RPA or RMA designated by the Board of Supervisors where development is identified that meets any one of the three following criteria:

- (1) Development has severely altered the natural state of the area such that it has more than 50 percent impervious surface;
- (2) Public sewer and water systems, or a constructed stormwater drainage system, or both, have been constructed and served the area by the original program adoption date in the Chesapeake Bay watershed, or February 19, 2009 in the Seaside watershed. This condition does not include areas planned for public sewer and water or constructed stormwater management drainage systems;
- (3) Housing density is equal to or greater than four dwelling units per acre.

*Land disturbance* means any activity causing a land change which may result in soil erosion from water or wind and the movement of sediments into state waters or onto other lands, including but not limited to: clearing, grading, excavating, transporting and filling of land; except that this term shall not apply to minor activities such as home gardening, individual home landscaping, and repairs and home maintenance.

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

*Nontidal wetlands* means those wetlands other than tidal wetlands that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support a prevalence of vegetation typically adopted for life in saturated soil conditions, as defined by the U.S.

Environmental Protection Agency pursuant to Section 404 of the Federal Clean Water Act, in 33 CFR 328-.3b.

*Noxious weeds* means weeds that are difficult to control effectively such as Johnson Grass, Kudzu, and multi flora rose.

*Plan of development* means the process for site plan or subdivision plat review to ensure compliance with Code of Virginia, § 10.1-2109 and this article, prior to any clearing or grading of a site or the issuance of a building permit.

*Public road* means a publicly-owned road designed and constructed in accordance with water quality protection criteria at least as stringent as requirements applicable to the state department of transportation, including regulations promulgated pursuant to the state erosion and sediment control laws and the state stormwater management act. This definition includes those roads where the state department of transportation exercises direct supervision over the design or construction activities.

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

*Resource management area* or *RMA* means the component of the Chesapeake /Atlantic Preservation Area that is not classified as the resource protection area. Resource management areas include land types that, if improperly used or developed, have the potential for causing significant water quality degradation or for diminishing the functional value of the resource protection area.

*Resource protection area* or *RPA* means that component of the Chesapeake /Atlantic 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* means forest management activities, including but not limited to the harvesting of timber, the construction of roads and trails for best 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 § 10.1-115 of the Code of Virginia and are located on property defined as real estate devoted to forest use under § 58.103-230 of the Code of Virginia.

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

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

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

*Water-dependent facility* means a development of land that cannot exist outside of the resource protection area and must be located on the shoreline by reason of the intrinsic nature of its operation. These facilities include, but are not limited to:

- (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;
- (5) Fisheries or other marine resources facilities; and
- (6) Aquacultural activities and facilities, including storage that requires immediate access from the site to the water.

*Wetlands* means tidal and nontidal wetlands.

(Ord. of 11-19-2003(3))

**Cross references:** Definitions generally, § 1-2.

Sec. 106-378. Areas of applicability.

The Chesapeake /Atlantic Preservation Area overlay district shall apply to all lands identified as CAPAs as designated by the Accomack County Board of Supervisors and as shown on the official zoning map. CAPAs include Resource Protection Areas and Resource Management Areas. The official zoning map, 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 (RPA) includes:

- a. Tidal wetlands;
- b. Nontidal wetlands connect by surface flow and contiguous to tidal wetlands or water bodies with perennial flow;
- c. Tidal shores;
- d. A 100-foot vegetated buffer area located adjacent to and landward of the components listed in subsections (1)a. through c. of this section, and along both sides of any water bodies with perennial flow.

(2) The Resource Management Area (RMA) is composed of those lands lying within the Chesapeake Bay Watershed and the Atlantic Ocean Watershed, as determined by topographical and hydrological survey finds, and as delineated on the official zoning map.

(3) Portions of RPAs and RMAs designated by the Board of Supervisors as Intensely Developed Areas (IDAs) shall serve as redevelopment areas. Areas so designated shall comply with all erosion and sediment control requirements and the performance standards for redevelopment in Section 106-384, Performance Standards.

(4) The official zoning map shows the general location of CAPAs and should be consulted by persons contemplating activities within the county prior to engaging in a regulated activity. The specific location of RPAs shall be delineated on each site or parcel through the review and approval of the plan of development process or as required through the review and approval of a water quality impact assessment.

(5) If the boundaries of a CAPA include a portion of a lot, parcel, or development project, the entire lot, parcel or development project shall comply with the requirements of the overlay district. The subsequent division of property shall not constitute an exemption from this requirement.

(Ord. of 11-19-2003(3))

Sec. 106-379. Interpretation of resource protection area boundaries.

(a) *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, subject to approval by the Administrator and in accordance with the development plan review and approval provisions of section 106-385 or through the review and approval of a water quality impact assessment in accordance with the provisions of section 106-386. The official zoning map shall be used as a guide to the general location of RPAs.

(b) *Delineation by the Administrator:* The 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 Administrator may use remote sensing, hydrology, soils, plant species, and other data, and consult other appropriate resources as needed to perform the delineation.

(c) *Where conflict arises over delineation.* When the applicant provides a site-specific delineation of the RPA, the Administrator will verify the accuracy of the boundary delineation. In determining the site-specific RPA boundary, the Administrator may render adjustments to the applicant's boundary delineation, in accordance with the development plan review and approval provisions of section 106-386. In the event the adjusted boundary delineation is contested by the applicant, the applicant may seek relief in accordance with the provisions of section 106-389, "Exceptions."

(Ord. of 11-19-2003(3))

Sec. 106-380. Use regulations.

Permitted uses, special permit uses, accessory uses, and special requirements in the Chesapeake /Atlantic Preservation Overlay district shall be as established by the underlying zoning district, unless specifically modified by the requirements of this article.

(Ord. of 11-19-2003(3))

Sec. 106-381. Lot size.

Lot size in the Chesapeake /Atlantic Preservation Overlay district shall be subject to the requirements of the underlying zoning district, provided that any lot shall have sufficient area outside the RPA to accommodate an intended development, in accordance with the performance standards in section 106-384, when such development is not otherwise allowed in the RPA.

(Ord. of 11-19-2003(3))

Sec. 106-382. Conflict with other regulations.

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

(Ord. of 11-19-2003(3))

Sec. 106-383. Required conditions.

(a) All development and redevelopment in the Chesapeake /Atlantic Preservation Overlay District exceeding 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 this chapter or a subdivision plat in accordance with chapter 78 (the Accomack County Subdivision Ordinance).

(b) Development in RPAs may be allowed only if it is water-dependent, as defined; constitutes redevelopment; or is a road or driveway satisfying the conditions set forth below; and complies with the performance standards set forth in sections 106-384 and 106-385.

(1) A new or expanded water-dependent facility may be allowed provided that:

- a. It does not conflict with the comprehensive plan;
- b. It complies with the performance criteria set forth in this part;
- c. Any non water dependent component is located outside the RPAs;
- d. Access will be provided with the minimum disturbance necessary. Where possible, single access point will be provided.

(2) Redevelopment shall be permitted within the RPA only if it creates no increase in the amount of impervious cover and no further encroachment within the RPA, and it conforms to applicable stormwater management and erosion and sediment control criteria in this part.

(3) Roads and driveways not exempt under section 106-388 may be constructed in or across RPAs only if each of the following conditions are met:

- a. The local government makes a finding that there are no reasonable alternatives to aligning the road or driveway in or across the RPA;
- b. The alignment and design of the road and driveway are optimized, consistent with other applicable requirements, to minimize encroachment in the RPA and adverse effects on water quality.
- c. The design and construction of the road or driveway satisfy all applicable criteria of these regulations, including submission of a complete water quality impact assessment by the applicant;
- d. The local government reviews the plan for the road or driveway proposed in or across a RPA in coordination with local government site plan, subdivision and plan of development approvals.

(c) A water quality impact assessment shall be required for any proposed land disturbance, development, or redevelopment within RPAs.

(Ord. of 11-19-2003(3))

Sec. 106-384. 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:

- (1) Prevent a net increase in nonpoint source pollution from new development;

- (2) Achieve a ten percent reduction in nonpoint source pollution from redevelopment; and
- (3) Achieve a 40 percent reduction in nonpoint source pollution from agricultural uses.
- (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. Ingress and egress during construction shall be limited to one access point, unless otherwise approved by the Administrator.
- (2) Indigenous vegetation except noxious plants shall be preserved to the maximum extent practicable consistent with the use or development permitted in the underlying zoning district and in accordance with the Virginia Erosion and Sediment Control Handbook.
- a. Existing trees over six inches in diameter (at breast height) shall be preserved outside the construction footprint, and shall be protected from construction activities. Diseased trees and trees weakened by age, storm, fire, or other injury may be removed.
- b. Clearing shall be allowed only to provide necessary access, positive site drainage, water quality best management practices and the installation of utilities, as approved by the Administrator.
- (3) Land development shall minimize impervious cover to promote infiltration of stormwater into the ground consistent with the use or development proposed. Total impervious cover resulting from development shall not exceed 60 percent of the site. Surfaces and materials which promote infiltration shall be used where feasible for any required parking area, alley, or other low traffic driveway, unless otherwise approved by the Administrator.
- (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 chapter 38, article III (The Accomack County Erosion and Sediment Control Ordinance).
- (5) All on-site sewage disposal systems not requiring a VPDES permit shall be pumped out at least once every five years, or have 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, or provide certified documentation every five years from 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. This requirement shall not apply to any lot or parcel recorded prior to October 1, 1989, if such lot or parcel is not sufficient in capacity to accommodate a reserve sewage disposal site, as determined by the local health department. Building or construction of any impervious surface shall be prohibited on the area of all sewage disposal sites or on an on-site sewage treatment system which operates

under a permit issued by the state water control board, until the structure is served by public sewer.

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

a. For development, the post-development nonpoint source pollution runoff load shall not exceed the predevelopment load, based on the existing average land cover condition of the subwatershed area as calculated by the Eastern Shore Soil and Water Conservation Service.

b. For redevelopment, both the pre- and post-development loadings shall be calculated by the same procedures. Post redevelopment nonpoint source pollution loading shall be at least ten percent less than the existing loading. However, where the design data is available, the original post-development nonpoint source pollution loadings can be substituted for the existing development loadings.

(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 Administrator, pursuant to section 106-386.

(9) Land in CAPA's upon which agricultural activities are being conducted shall have a soil and water quality conservation assessment. Such assessment [shall] evaluate the effectiveness of existing practices pertaining to soil erosion and sediment control, nutrition management and management of pesticides, and where necessary, results in a plan that outlines additional practices need to ensure that water quality protection is accomplished consistent with this article.

(c) *Buffer area requirements.*

(1) 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 nonpoint source pollution from runoff shall be retained if present and established where it does not exist. Such vegetation includes a mixture of groundcovers, grasses, shrubs, and trees identified by:

- a. Reference lists available from the Administrator;
- b. Appropriate state or local agencies; or
- c. A qualified landscape professional applying the standards and objectives cited in this section.

(2) The buffer area shall be located adjacent to and landward of other resource protection area components and along both sides of any water body with perennial flow. Generally, the buffer area shall be measured 100 feet landward from that point where there is a distinct change from predominantly wetland vegetation to non-wetland vegetation (such as the saltbush line), or from the mean high water point, or the top of a stream bank (See "buffer area" defined). The full buffer area shall be designated as the landward component of the resource protection area.

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

(4) The buffer area shall be maintained to meet the following additional performance standards:

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:

1. Trees may be pruned or removed as necessary to provide for sight lines and vistas, provided that where removed, they shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff by preventing the channeling of water through the buffer. (If desired, lists of suggested replacement vegetation may be obtained from the Administrator).

2. Any path shall be constructed and surfaced so as to effectively control erosion, and prevent channeling through the buffer.

3. Dead, diseased, or dying trees or shrubbery and noxious weeds (such as Johnson grass, kudzu, and multiflora rose) may be removed and thinning of trees may be allowed pursuant to sound horticultural practice.

4. For shoreline erosion control projects, trees and woody vegetation may be removed, necessary control techniques employed, and appropriate vegetation established to protect or stabilize the shoreline in accordance with the best available technical advice and applicable permit conditions or requirements.

b. 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 Administrator may permit encroachments into the buffer area in accordance with section 106- 385 and the following criteria:

1. Encroachments into the buffer areas shall be the minimum necessary to achieve a reasonable buildable area for a principal structures and necessary utilities;

2. Where practical, 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. and

3. In no case shall the encroachment extend into the waterward 50 feet of the buffer area.

c. On agricultural lands within the RPA the agricultural buffer area shall be managed to prevent concentrated flows of surface water from breaching the buffer area and noxious weeds from invading the buffer area. Agricultural activities may encroach into the buffer as follows:

1. Agricultural activities may encroach into the landward 50 feet of the 100-foot wide buffer area when at least one agricultural best management practice, which, in the opinion of the Eastern Shore Soil and Water Conservation District, 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 predominate water quality issue, a nutrient management plan, including soil test, must be developed consistent with the "Virginia Nutrient Management Training and Certification

Regulations (4 VAC 5-15 et seq. administered by the Virginia Department of Conservation and Recreation.

2. Agricultural activities may encroach within the landward 75 feet of the 100-foot wide buffer area when agricultural best management practices which address erosion control, nutrient management, and chemical pest control, are being implemented on the adjacent land. The erosion control practices must prevent erosion from exceeding the soil loss tolerance level, referred to as "T", as defined in the "National Soil Survey Handbook" of November 1996 in the Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resource Conservation Service. A nutrient management plan, including soil test, must be developed consistent with the "Virginia Nutrient Management Training and Certification Regulations (4 VAC 5-15 et seq.) administered by the Virginia Department of Conservation and Recreation. In conjunction with the remaining buffer area, this collection of best management practices shall be presumed to achieve water quality protection at least the equivalent of that provided by the 100-foot wide buffer area.

3. The buffer area is not required to be designated adjacent to agricultural drainage ditches if the adjacent agricultural land has in place at least one best management practice as considered by the Eastern Shore Soil and Water Conservation District to address the more predominant water quality issue on the adjacent land -either erosion control or nutrient management.

(5) 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 re-established. In re-establishing the buffer, management measures shall be undertaken to provide woody vegetation that assures the buffer functions are maintained or established. (Ord. of 11-19-2003(3))

Sec. 106-385. Development plan review and approval.

Any development or redevelopment, expansion or alteration, exceeding 2,500 square feet of land disturbance in CAPA's shall be accomplished through a plan of development process prior to any clearing or grading of the site or the issuance of any building permit, to assure compliance with all applicable requirements of this article. There shall be two levels of development plan review: a minor review shall be required for land disturbance exceeding 2,500 square feet, but less than 10,000 square feet, including individual single-family construction; a major review shall be required for land disturbance over 10,000 square feet.

(1) *Required Information--Minor development.* For land disturbance exceeding 2,500 square feet, but under 10,000 square feet, including single-family home construction, the following plans and information shall be submitted by the applicant prior to the issuance of a building permit:

- a. A plan, plat or sketch in accordance with section 106-253, which requires the following information to be shown:
  1. The size and shape of the lot or parcel of land on which the proposed building is to be built;
  2. The location of all existing and proposed structures and uses in relation to the property lines of the parcel, and to the right-of-way of any adjoining street or highway;
  3. All rights-of-way and easements, including utility and drainage easement;

4. All watercourses, creeks, streams and drainage patterns on or adjoining the property;
  5. The zoning classification of the parcel, and of all adjoining parcels.
  - b. The plan shall also show:
    1. The landward boundary, if applicable, of the RPA. The applicant may request assistance from the Administrator in locating this boundary.
    2. Existing vegetated and wooded areas to be cleared and areas to be preserved. Existing vegetation and trees outside the areas to be cleared, and within the buffer area, shall be protected and preserved to provide maximum erosion control and runoff benefits. The thinning or removal of dying or diseased trees shall require replacement with equivalent vegetation, living and in healthy condition, equally effective in controlling run-off and erosion, and maintained in a healthy condition. (If desired, lists of suggested replacement vegetation may be obtained from the Administrator).
    3. The plan shall show the total square footage of impervious surface resulting from the proposed construction, which shall not exceed 60 percent of the total lot area.
    4. A soil erosion and sediment control permit shall be obtained, prior to start of any land-disturbing activities.
    5. A permit for the installation of a septic system shall be obtained from the local health department, prior to the issuance of a building permit, and show both primary drainfield and reserve area locations.
    6. A water quality impact assessment, if building in a RPA.
- (2) *Required information--Major development.*
- a. General requirements.
    1. In addition to other requirements of this chapter or the requirements of chapter 78 (of the Accomack County Subdivision Ordinance), the plan of development process shall consist of the plans and studies identified below, for development resulting in land disturbance greater than 10,000 square feet.
    2. These required plans and studies may be coordinated or combined, as deemed appropriate by the Administrator. The Administrator may determine that some of the following information is unnecessary due to the scope and nature of the proposed development. For any of the following requirements the Administrator will, upon request of the applicant prior to submitting a final proposed plan or plat, review a sketch or preliminary plan to advise the applicant on the specific requirements and procedures of this article and other applicable ordinances. (Submission of sketches, preliminary, tentative or partial plans shall not constitute the filing of a final complete site development plan for review and approval).
    3. Seven copies of the following plans or studies shall be submitted, unless otherwise provided for:
      - i. A site plan, in accordance with subsection (2)b. of this section, or a subdivision plat in accordance with the provisions of chapter 78 (The Accomack County Subdivision Ordinance).
      - ii. An environmental site assessment;
      - iii. A landscape plan;
      - iv. A stormwater management plan;
      - v. An erosion and sediment control plan in accordance with chapter 38, article III (the Accomack County Erosion and Sediment Control Ordinance);
      - vi. A water quality impact statement, as required by subsection 106-385(b)

b. Subdivision plat or site plan. Subdivision plats will be prepared and submitted in accordance with chapter 78. A site plan, for purposes of this article, shall be prepared to the scale of one inch equals 100 feet, or larger. The plan shall show the name and address of the owner or developer, the magisterial district in which the property is located, the base zoning district and any other rezoning overlay districts in which the parcel is located, the date, north point, scale of the drawing and number of sheets, the names of all adjacent property owners and the zoning classifications of all adjoining parcels. A blank space of at least four inches by four inches shall be provided on the plan for use by the approving authorities. The site plan shall clearly show the same information required in subsection 106-226.

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:

i. Tidal wetlands;

ii. Tidal shores;

iii. Nontidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow;

iv. A 100 foot buffer area located adjacent to and landward of the components listed in subsections (2)c.1.i through iii. of this section, and along both sides of any water body with perennial flow.

2. Wetlands delineations shall be performed consistent with the methods and procedures used and accepted by the U.S. Army Corps of Engineers.

3. The environmental site assessment shall delineate the site specific geographic extent of the RPA

4. The environmental site assessment shall be drawn at the same scale as the preliminary site plan or subdivision plat.

d. Landscape plan. A landscape plan shall be submitted in conjunction with site plan approval or as part of a subdivision plat approval. No clearing or grading of any lot or parcel shall be permitted without an approved landscape plan.

1. *Contents of the plan.*

i. A drawing to scale showing the general limits of clearing for all proposed improvements, and clearly delineating the location, size, and description of existing and proposed plant material. All existing trees on the site six inches or greater in diameter (measured at breast height above ground level) shall be shown. Where there are groups of trees, stands may be outlined instead. The specific number of trees six inches or greater to be preserved outside of the construction footprint shall be indicated on the plan. Trees to be removed to create a desired construction footprint, and trees within the buffer area to be removed for sight lines, vistas, access paths, and best management practices, and shoreline erosion control as provided for in this article, shall be shown on the plan and shall be clearly delineated.

ii. A replanting schedule for trees and other significant vegetation removed for construction, including a list of possible replacement plants and trees that includes indigenous plants to the greatest extent possible. (If desired, listed of suggested replacement vegetation may be obtained from the Administrator).

- iii. Delineation of any required buffer area and any plant material to be added to establish or supplement the buffer area, as required by this article, shall be shown.
- iv. Grade changes or other work adjacent to trees which would affect them adversely. Specifications for the protection of existing trees during clearing, grading, and all phases of construction, showing that significant trees and vegetation will be preserved to the greatest extent possible to provide maximum erosion control and runoff benefits.

2. *Plant specifications.*

- i. 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, in accordance with the American Standards for Nursery Stock.
- ii. All supplementary or replacement plant material shall be living and in a healthy condition. Plant materials and handling shall conform to the standards of the most recent edition of the American Standard for Nursery Stock, published by the American Association of Nurserymen.
- iii. Where areas to be preserved, as designated on an approved landscape plan, are encroached, replacement of existing trees and other vegetation will be achieved at a ratio of two planted trees to one removed. Replacement trees shall be a minimum of two inches (DBH) at the time of planting.

3. *Maintenance.*

- i. The applicant shall be responsible for maintenance and replacement of all vegetation as may be required by the provisions of this article.
  - ii. 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 material 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 as part of the plan of development process required by this article and in conjunction with site plan or subdivision plan approval.
- 1. Contents of the plan. The stormwater management plan shall contain maps, charts, graphs, tables, photographs, narrative descriptions, explanations, and citations to supporting reference as appropriate to communicate the information required by the article. At a minimum, the stormwater management plan must contain the following:
    - i. Location and design of all planned stormwater control devices;
    - ii. Procedures for implementing nonstructural stormwater control practices and techniques;
    - iii. Pre- and post-development nonpoint source pollutant loadings with supporting documentation of all utilized coefficients and calculations;
    - iv. For facilities, verification of structural soundness, including a professional engineer or class IIIB surveyor certifications.
  - 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 state stormwater management handbook, state erosion and sediment control handbook, or any other good engineering methods deemed appropriate by the 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 then a maintenance agreement shall be executed between the responsible party and the county.

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 chapter 38, article III (the Accomack County Erosion and Sediment Control Ordinance), in conjunction with site plan or subdivision plan approval. In lieu of other development plan requirements, agricultural irrigation ponds, ditches, and dams may be developed in accordance with standards as determined by the soil and water conservation district which show compliance with the performance criteria of this chapter and other applicable state or federal regulations.

g. Water quality impact assessment. If required by subsection 106-386(d), a major water quality impact assessment shall be submitted and reviewed, in accordance with that section, as part of a complete development plan.

(3) *Development plan review process and administration.*

a. No permit shall be issued by any administrative officer or agent of the county for the construction of any building or improvement requiring a permit in any area covered by the development plan except in conformity to the provisions of this chapter and after approval of a complete development plan.

b. The Administrator shall review all components of the proposed development plan, consult as necessary or as requested with the applicants, visit the site, request opinions, and/or decisions from other county or commonwealth departments or agencies, determine other additional information necessary for consideration of the proposed developments, and consult on all matters herein with the planning commission of the county.

c. No change, revision, or erasure shall be made on any pending or final site development plan, or on any accompanying data sheet, where approval has been endorsed on the plan or sheets unless authorization for such changes is granted in writing by the approving body or the agent.

d. Approval, modifications and approval, or disapproval, of a complete development plan by the Administrator shall occur within 90 days of filing of all required documents in the office of the agent, unless abnormal circumstances exist in which case the time may be extended by action of the governing body.

e. Approval of a development plan pursuant to this chapter shall expire 12 months after the date of approval, unless building permits have been obtained for construction. One extension not to exceed 12 months may be granted upon written request. Justification by the applicant to the agent for the county prior to lapse of approval, and extension of all bond and surety agreements, shall be provided in the request.

f. County and state agencies responsible for the supervision and enforcement of this chapter shall periodically inspect the site during the period of construction, as they may require.

g. Installation and bonding requirements.

1. Where buffer areas, landscaping, stormwater management facilities or other specifications of any approved plan are required, no certificate of occupancy shall be

issued until the installation of required plant materials or facilities is completed, in accordance with the approved site plan.

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

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

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

5. After all required actions of the approved development 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 Administrator such unexpended or unobligated portion of the surety held shall be refunded to the applicant or terminated within 60 days of following the receipt of the applicant's request for final inspection. The Administrator may require a certificate of substantial completion from a professional engineer or class IIIB surveyor before making a final inspection.

h. Any development plan may be revised, provided request for revision shall be filed and processed in the same manner as the original.

i. Upon compliance with the terms of this chapter and the satisfactory completion of construction, the agent of the county shall furnish a certificate of approval. Certificates of approval, upon ratification by the governing body shall release all the bonds which may have been furnished.

j. The board of supervisors shall establish from time to time a schedule of fees for the examination and processing of development plans.

(Ord. of 11-19-2003(3))

#### Sec. 106-386. Water quality impact assessment.

(a) *Purpose and intent.* The purpose of the water quality impact assessment is to:

- (1) Identify the impacts of proposed development or land disturbance on water quality and lands within resource protection areas and other environmentally-sensitive lands;
- (2) Ensure that, where development does take place within resource protection areas and other sensitive lands, it will be located on those portions of a site and in a manner that will be least disruptive to the natural functions of resource protection areas and other sensitive lands;
- (3) To protect individuals from investing funds for improvements proposed for location on lands unsuited for such development because of high groundwater, erosion, or vulnerability to flood and storm damage; and

(4) Specify mitigation which will address water quality protection.

(b) *Water quality impact assessment (WQIA) required.* A water quality impact assessment is required for any:

(1) Proposed development within a RPA, including any buffer modification or encroachment as provided for in section 106-384 "Performance Standards".

(2) Development in a RMA as deemed necessary by the 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. The applicable water quality impact assessment, if required, will be submitted as part of a complete proposed development plan, and reviewed in accordance with the criteria cited in the following appropriate subsections.

(c) *Minor water quality impact assessment.*

(1) A minor water quality impact assessment pertains to land disturbances and development within RPAs which causes no more than 10,000 square feet of land disturbance and requires any encroachment into the landward 50 feet of the 100-foot buffer area. A minor assessment must demonstrate that the remaining buffer area and required best management practices will achieve sediment and pollutant reduction and erosion prevention equivalent to the full undisturbed buffer area. A minor assessment shall include a site drawing which shows the following:

a. Location of the components of the resource protection area, including the 100-foot buffer area and any water body with perennial flow.

b. Location and nature of the proposed encroachment into the buffer area, including: areas of clearing or grading; location of any structures, drives, or other impervious cover; type of surfacing or paving to be used, and location of sewage disposal systems or reserve drainfields.

c. Type and location of proposed best management practices to mitigate the proposed encroachment, including soil erosion and sediment control and stormwater runoff management.

d. Location of existing vegetation onsite and the location of trees and other vegetation to be removed from the buffer to accommodate the buffer encroachment or modification;

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

(2) Upon the completed review of a minor water quality impact assessment, the Administrator will determine if the proposed encroachment into the buffer area is consistent with the provisions of this article and make a finding based upon the following criteria in conjunction with subsection 106-386(1), "Required information--Minor Development:"

a. The necessity of the proposed encroachment and the ability to place improvements elsewhere on the site to avoid disturbance to the buffer area;

b. Impervious surface is minimized;

c. Proposed best management practices, where required, achieve the requisite reductions in pollutant loadings;

d. The development, as proposed, meets the purpose and intent of this article;

e. The cumulative impact of the proposed development, when considered in relation to other development in the vicinity, both existing and proposed, will not result in a significant degradation of water quality.

(d) *Major water quality impact assessment.* A major water quality impact assessment shall be required for any development which exceeds 10,000 square feet of land disturbance within RPAs and requires any encroachment into the 100-foot buffer area; causes less than 10,000 square feet of land disturbance and requires any encroachment into the waterward 50 feet of the 100-foot buffer area; disturbs any portion of any other component of RPA; or is located in a RPA and is deemed necessary by the administrator . Such assessment shall be prepared and submitted for review in conjunction with subsection 106-386(2), or with any request for rezoning or special use, as deemed necessary by the Administrator. The information required in this section shall be considered a minimum, unless the Administrator determines that some of the elements are unnecessary due to the scope and nature of the proposed use and development of land. All information required in this section should be certified as complete and accurate by a professional engineer or a certified land surveyor, or other person qualified to do such work. 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 subsection (c) of this section.
- (2) A hydrogeological 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, and hydrology on the site and adjacent lands.
  - c. Indicates the following:
    1. Disturbance or destruction of wetlands and justification for such action;
    2. Disruptions or reductions in the supply of water to wetlands, or connect streams, creeks, ponds, or other waterways;
    3. Disruptions to existing hydrology including wetland 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. Estimation of pre- and post-development pollutant loads in runoff.
    7. Estimation of percent increase in impervious surface on-site and type of surfacing materials used;
    8. Percent of site to be cleared for project;
    9. Anticipated duration and phasing schedule of construction project;
    10. 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 mitigation measures include:
    1. A soil erosion and sediment control plan or agreement explaining 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) The landscape element/plan required by subsection 106-385(2)d.
- (4) In reviewing a major water quality impact assessment, the Administrator will determine if the proposed development is consistent with the purpose and intent of the

article. The Administrator may request the Virginia Department of Conservation and Recreation (DCR) to review such assessment and respond with written comments, which will be incorporated into the Administrator's final review provided that such comments are provided by DCR within 90 days of the request. The Administrator's findings shall be based upon the following criteria:

- a. Within the RPA, the proposed development is water-dependent, redevelopment, or a road or drive permitted under section 106-383(b);
- b. The disturbance of wetlands will be minimized;
- c. The development will not result in significant disruption of the hydrology of the site.
- d. The development will not result in unnecessary destruction of plant materials on-site;
- e. Proposed erosion and sediment control concepts are adequate to achieve the reductions in runoff and prevent off-site sedimentation;
- f. Proposed stormwater management concepts are adequate to control the stormwater runoff to achieve the required objectives and standards for pollutant control;
- g. Proposed revegetation of disturbed areas will provide runoff control and pollutant removal equivalent to 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 106-384;
- i. The development, as proposed, is consistent with the purpose and intent of the overlay district;

(5) A completed water quality impact assessment shall include evidence that all wetlands permits required by law have been obtained.

(Ord. of 11-19-2003(3))

#### Sec. 106-387. Nonconformities.

The lawful use of a building or structure which existed on the effective date of the ordinance from which this article derives or which exists at the time of any amendment of this article, and which is not in conformity with new provision of this overlay district may be continued in accordance with the following provisions, and the provisions in this chapter for nonconforming uses:

- (1) No change or expansion of use of an existing nonconforming structure shall be allowed with the exception that the Administrator may grant a waiver for the expansion of an existing principal structure on a legal nonconforming lot or parcel to provide for remodeling and alterations or additions to such nonconforming structures in accordance with article XII of this chapter, provided that:
  - a. The waiver request is the minimum necessary to afford relief;
  - b. The waiver is not based on conditions or circumstances which are self-created or self-imposed, nor does the request arise from conditions or circumstances either permitted or nonconforming that are related to adjacent parcels;
  - c. The waiver is in harmony with the purpose and intent of this article; and is not substantially detrimental to water quality.
  - d. Reasonable and appropriate conditions are imposed, as warranted, that will prevent the waiver from causing a degradation of water quality.
  - e. Granting the waiver will not confer upon the applicant any special privileges that are denied by this article to other property owners in the overlay district.

(2) Unimproved nonconforming lots of record at the time of the effective date of the ordinance from which this chapter is derived which are of insufficient size to meet the minimum requirements of this chapter regarding area, frontage, setbacks, width, depth, side and rear yards, or buffer area requirements may be used as permitted by this article or the regulations for the underlying district in which the lot is located, through an administrative process and subject to the following:

- a. Lots must comply with all minimum zoning requirements, provisions, and other applicable ordinances in effect on the date such lot was recorded;
- b. When the application of the full 100 foot buffer would result in the loss of a buildable area on a lot or parcel recorded prior to October 1, 1989, the Administrator may permit encroachments into the buffer area in accordance with the following:
  1. Encroachments into the buffer area shall be the minimum to achieve a reasonable buildable area for the principle structure and necessary utilities;
  2. Where practicable, an area equal to the area of encroachment into the buffer shall be established elsewhere on the lot or parcel in a way to maximize water quality protection and mitigate the effects of the buffer encroachment; and
  3. In no case shall the encroachment extend into the waterward 50 feet of the buffer. In any case where a 50 foot buffer area cannot be maintained, an applicant may request an exception in accordance with section 106-389.

(3) An application to alter or expand a nonconforming use shall be made to and upon forms furnished by the 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 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;
- d. Location and description of any existing private water supply or sewage system.

(Ord. of 11-19-2003(3))

Sec. 106-388. Exemptions.

(a) *Exemptions for public utilities, railroads, and public roads.*

(1) 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 state erosion and sediment control law, (Code of Virginia, § 10.1-560 et seq.) and the Stormwater Management Act (Code of Virginia, § 10.1- 603.1 et seq.): an erosion and sediment control plan and stormwater management plan approved by the Virginia Department of Conservation and Recreation; or local water quality protection criteria at least as stringent as the above state requirements will be deemed to constitute compliance with these regulations. The exemption of public roads is further conditioned on the following:

- a. Optimization of the road alignment and design, consistent with other applicable requirements, to prevent or otherwise minimize encroachment in the resource protection area and adverse effects on water quality;
- b. Public roads shall include those roads which satisfy all the same construction, siting, and water quality standards applicable to roads built by the state department of transportation.

(2) Construction, installation, and maintenance of water, sewer, natural gas, and 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:

- a. To the degree possible, the location of such utilities and facilities should be outside RPAs;
- b. No more land shall be disturbed than is necessary to provide for the desired utility installation;
- c. 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
- d. Any land disturbance complies with all the county erosion and sediment control requirements.

(b) *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 most recent edition of its Forestry Best Management Practices for Water Quality in Virginia Technical Guide.

(c) *Exemptions in resource protection areas (RPAs).* The following land disturbances in RPAs may be exempted from the overlay district: water wells; passive recreation facilities such as boardwalks, trails, and pathways; and historic preservation and archaeological activities, provided that it is demonstrated to the satisfaction of the Administrator:

- (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 shall comply with all the county erosion and sediment control requirements.

(Ord. of 11-19-2003(3))

(d) *Partial Exemptions for vested intense seaward development in resource protection areas (RPAs).*

(1) The following land development in RPAs shall be exempted from the buffer area requirements of the overlay district, to the extent necessary to provide a minimum building envelope of 3,500 square feet, provided that all of the following is demonstrated to the satisfaction of the Administrator:

- (a) The development is located to the east and seaward of the Chesapeake Bay / Seaside watershed divide.
- (b) The development is on a parcel with vested rights established prior to February 19, 2009.
- (c) The development is on a parcel demonstrated to lack a minimum building envelope of 3,500 square feet outside the RPA. Development shall be permitted to encroach into the RPA only to the extent necessary to provide a building envelope of 3,500 square feet.

- (d) The development preserves all existing vegetation, within the yard setback areas required for main structures by the underlying zoning district, that is located in the RPA and seaward (waterward) of the proposed construction.
- (e) Any land disturbance exceeding 2,500 square feet shall comply with all county erosion and sediment control requirements.
- (f) Compliance with all other requirements of the overlay district is demonstrated (buffer area requirements exempted per (c) above).

Sec. 106-389. Exceptions.

- (a) If an applicant contends that the strict application of this article would result in severe hardship, a request for an exception to the requirements of this overlay district shall be made in writing to the Administrator. It 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 the provisions of section 106-385.
- (b) The Board of Zoning Appeals 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 it is determined that:
  - (1) Granting the exception will not confer upon the applicant any special privileges that are denied by this article to other property owners in the overlay district;
  - (2) The exception request is not based upon conditions or circumstances that are self created or self imposed, nor does the request arise from conditions or circumstances either permitted or nonconforming that are related to adjacent parcels;
  - (3) The exception request is the minimum necessary to afford relief;
  - (4) The exception request will be consistent with the purpose and intent of the overlay district, is not injurious to the neighborhood or otherwise detrimental to the public welfare, and is not substantially detrimental to water quality; and
  - (5) Reasonable and appropriate conditions are imposed which will prevent the exception request from causing a degradation of water quality.

(Ord. of 11-19-2003(3))

Secs. 106-390--106-400. Reserved.