



NEW KENT COUNTY  
PLANNING COMMISSION -- REGULAR MEETING  
OCTOBER 21, 2013, 6:30 PM  
COUNTY ADMINISTRATION BLDG. BOARD ROOM  
AGENDA

**ITEM DESCRIPTION**

1. CALL TO ORDER
2. MOMENT OF SILENCE AND PLEDGE OF ALLEGIANCE
3. ROLL CALL & DETERMINATION OF A QUORUM
4. APPROVAL OF MINUTES

A. SEPTEMBER 16, 2013

5. CITIZEN COMMENT PERIOD

COMMENTS ARE LIMITED TO THOSE ON PLANNING - RELATED ISSUES THAT ARE NOT SCHEDULED FOR A PUBLIC HEARING LATER ON THE AGENDA. PLEASE SIGN UP ON THE SHEET AT THE BACK OF THE ROOM PRIOR TO THE START OF THE MEETING.

6. UNFINISHED BUSINESS - NONE

7. PRESENTATIONS - NONE

8. PUBLIC HEARINGS (HELD AT 7:00 P.M. OR AS SOON THEREAFTER AS POSSIBLE)

A. **APPLICATION CUP-03-13 JACKASS FLATS LLC (MONTE BROWN):** MR. BROWN HAS APPLIED FOR A CONDITIONAL USE PERMIT TO DEVELOP A MINI-STORAGE FACILITY (INCLUDING BOTH ENCLOSED SELF-STORAGE UNITS AND OUTDOOR STORAGE FOR BOATS AND RECREATIONAL VEHICLES) ON A PARCEL AT THE INTERSECTION OF ROUTE 60 AND ROCKAHOCK ROAD. THE PARCEL IS IDENTIFIED AS TAX MAP & PARCEL NUMBER 44-68 (GPIN #D22-2098-2112).

B. **ZT-03-13: AMENDING, RESTATING AND READOPTING STORMWATER MANAGEMENT TO THE NEW KENT COUNTY CODE OF ORDINANCES:** VIRGINIA PROMULGATED NEW STORMWATER REGULATIONS WHICH LOCALITIES ARE REQUIRED TO COMPLY WITH. PURSUANT TO THESE REGULATIONS, NEW KENT COUNTY PROPOSES CHANGES TO THE CURRENT STORMWATER MANAGEMENT ORDINANCE WHICH INCLUDE THE LOCALITY MANAGING A UNIFIED STORMWATER PROGRAM.

9. NEW BUSINESS - NONE

10. CHAIRMAN'S REPORT

11. RRPDC REPORT

**12. COMMISSIONER'S REPORTS**

**13. STAFF REPORTS**

**14. MEETING SCHEDULE**

**A. THE NEXT REGULAR MEETING OF THE PLANNING COMMISSION IS SCHEDULED FOR MONDAY, NOVEMBER 18, 2013 AT 6:30 PM IN THE BOARD ROOM**

**15. ADJOURNMENT**

ITEMS OF INTEREST & INFORMATION ARE ATTACHED SEPARATELY



NEW KENT COUNTY  
PLANNING COMMISSION -- REGULAR MEETING  
SEPTEMBER 16, 2013.  
COUNTY ADMINISTRATION BUILDING BOARD ROOM  
MINUTES

THE REGULAR MEETING OF THE NEW KENT COUNTY PLANNING COMMISSION WAS HELD ON THE 16<sup>th</sup> DAY OF SEPTEMBER IN THE YEAR TWO THOUSAND THIRTEEN OF OUR LORD IN THE BOARDROOM OF THE COUNTY ADMINISTRATION BUILDING AT 6:30 PM.

**IN RE: CALL TO ORDER**

Mr. Chalmers called the meeting to order at 6:30 PM.

Attendance:

Mrs. Patricia Townsend	Present
Mr. Roger Gregory	Present
Mr. Michael Lane	Present
Ms. Katherine Butler	Present
Mrs. Charna Moss-Gregory	Present
Mrs. Joyce Williams	Present
Mr. Richard Kontny, Jr.	Present
Mr. Howard Gammon	Present
Mr. Edward Pollard	Present
Mr. Clarence "Tommy" Tiller	Present
Mr. Jack Chalmers	Present

Also Attending:

- Mrs. Cathy Williams, Recording Secretary
- Mrs. Kelli L. Z. Le Duc, Planning Manager
- Mr. Rodney Hathaway, County Administrator
- Mrs. Michelle Gowdy, County Attorney
- Mr. Kenneth Vaughan, Zoning Administrator
- Mr. Matt Venable, Environmental Planning Manager

Mr. Chalmers established that there was a quorum.

**IN RE: MOMENT OF SILENCE AND PLEDGE OF ALLEGIANCE**

Mr. Chalmers led the moment of silence and Pledge of Allegiance.

**IN RE: APPROVAL OF MINUTES**

A motion was made by Mrs. Townsend to approve the minutes of the April 15, 2013 regular meeting as presented.

The members were polled:

Mr. Howard Gammon	Aye
Mr. Edward Pollard	Aye
Mrs. Patricia Townsend	Aye
Mr. Roger Gregory	Aye
Mr. Michael Lane	Aye
Ms. Katherine Butler	Aye
Mr. Clarence Tiller	Aye
Mrs. Charna Moss-Gregory	Aye
Mrs. Joyce Williams	Aye
Mr. Richard Kontny	Aye
Mr. Jack Chalmers	Aye

The motion carried with an 11:0:0 roll call vote.

**IN RE: CITIZEN COMMENT PERIOD**

*Comments are limited to those on planning related issues that are not scheduled for public hearings later on the agenda. The comment sign-up sheet is located at the back of the room and citizens are required to sign up prior to the start of the meeting.*

Mr. James Poole, 11332 Carriage Road, spoke about the lack of access of the Draft Stormwater Management Ordinance. It was not available to the public until today. This was echoed by public speakers Mr. Phelps and Mr. Schuler. Mr. Poole voiced his concern about the established administration of the permit process from the state to the local level.

Mr. John Phelps, 5570 Tyshire Parkway, spoke about the Draft Ordinance, specifically, the extent of the effects of the surface waters. He will follow up on the Draft Ordinance at a future meeting date once he has completed reviewing it.

Mr. Doug Schuler, 13850 Mountain Laurel Gr., commented on the Land Disturbance permit process. The rules are confusing to him, and he would like more specific clarification of the process.

Mr. Chalmers responded stating there was no ill will intended on the availability of the packet to the public.

There being no one else signed up to speak, the Citizens Comment Period was closed.

**IN RE: OLD BUSINESS**

None.

**IN RE: PRESENTATIONS**

**A. RESOLUTION TO RECOGNIZE, THANK, AND COMMEND MR. DAVID SMITH FOR HIS SERVICE AS A MEMBER OF THE NEW KENT COUNTY PLANNING COMMISSION.**

Mr. Chalmers presented a Resolution to Former Chairman David Smith, for his service and role on the Planning Commission from January 2006 – December 2012; Chairman in 2008, 2011 and 2012.

**Overview of CUP-03-13 Jackass Flats LLC – proposed mini-storage facility.**

Staff gave a brief summary of the proposal and introduced Mr. Monte Brown. Applicant Monte Brown gave a brief overview of the project to the Commission. This item will be scheduled for a public hearing at the October 21st Planning Commission meeting.

Mr. Brown stated that they are proposing to construct the mini-storage facility in three stages:

1<sup>st</sup> Stage – Addressing the existing building modifications – Mr. Monte described its current condition.

2<sup>nd</sup> Stage – Eastern part of property ~ 2.5 acres will be developed for any additional storage units.

Final Stage – Construction of additional units.

Mrs. Townsend asked Mr. Brown if the storage units would be contained or would there be storage of RVs and Boats and if so, would it be visible. Mr. Brown stated that there would be boat and RV storage within a buffered and fenced-in area.

Mr. Chalmers asked about the area being cleaned up. Mr. Brown stated that he has someone managing the property and some of the trailers will be removed.

Mr. Chalmers requested to see professional drawings, rather than hand drawn sketches.

**IN RE: PUBLIC HEARING**

**A. APPLICATION ZT-02-13: AMEND CHAPTER 98, ARTICLE XXVI, BOARD OF ZONING APPEALS, SECTION 98-1023, APPEALS, WITH CHANGES THAT RESULTED FROM THE 2012 GENERAL ASSEMBLY SESSION.**

Mrs. Townsend read the public hearing guidelines and introduced County Attorney Michele Gowdy who presented the application. Ms. Gowdy explained the code section that would need to be updated as a result of the 2012 General Assembly Session. Ms. Gowdy also stressed that the amendment had been reviewed and approved by Mr. Jim Hudson, the Board of Zoning Appeals' attorney.

Mrs. Townsend opened the public hearing for Application ZT-02-13. She asked if anyone wanted to speak. As there were no speakers, Mrs. Townsend closed application ZT-02-13 and turned the meeting back over to Mr. Chalmers.

Mr. Chalmers double-checked to make sure no one had signed up to speak about this issue.

Mr. Chalmers asked if there were any questions or comments from the Commission; there were none.

Mrs. Townsend moved to adopt resolution PC-09-13 to forward zoning text amendment ZT-02-13 to the New Kent County Board of Supervisors with a favorable recommendation.

The members were polled:

Mr. Michael Lane	Aye
Ms. Katherine Butler	Aye
Mr. Clarence Tiller*	Abstain
Mrs. Charna Moss-Gregory	Aye
Mrs. Joyce Williams	Aye
Mr. Richard Kontny	Aye
Mr. Howard Gammon	Aye
Mr. Edward Pollard	Aye
Mrs. Patricia Townsend	Aye
Mr. Roger Gregory	Aye
Mr. Jack Chalmers	Aye

\*Mr. Tiller will be voting on the issue with the Board of Supervisors.

The motion carried with a 10:0:1 roll call vote

**IN RE: NEW BUSINESS**

**Discussion of the Draft Stormwater Ordinance.**

County Attorney Michele Gowdy gave a PowerPoint presentation. She went over the events leading up to the Ordinance, stating that it came out of the 2012 General Assembly. She explained that the state cannot give up total control of the permit process, and will still manage the general permit. The localities however, will administer portions of the permit process. The Permit Process that would occur based on the state regulations was explained by Ms. Gowdy in the slide presentation.

The general permit requires a Stormwater Pollution Prevention Plan, which includes an improved erosion and settlement plan, improved stormwater management plan, a pollution prevention plan and description of any additional control measures necessary to address the TMDL (total maximum daily load) for the Chesapeake Bay.

Ms. Gowdy said originally, the state informed us that the deadline was June 2013, and we had to start enforcing it on July 1, 2013. A one year extension was requested and granted; currently we are in the process of submitting documents to the state asking them to approve our ordinance. The program will be implemented July of 2014.

The following are the items that are needed to be provided to the state:

Policy and Procedures that we are going to use to administer the local VSMP program;  
Funding and Staffing Plan - the fees, which will be amended in the budget process at a later date; and  
Copy of the draft local Ordinance which has been refined and resubmitted to the state for approval.

County Code:

Article 1 – Summary of changes to the Environmental Chapter of the County Code. Board of Supervisors will be taking a more administrative role before going to the Circuit Court.

Article 2: VSMP authority which is the general permit - state has to administrate this. We are given the authority to regulate land disturbance activity through the general format. This will set up the requirements that are required through the state.

Section 3: Erosion and Sediment Control – no change.

Article 4: Proposed – adopted the technical requirements from the state.

Article 5 and 6: No changes – just moved up to a different place in the code.

Ms. Gowdy said that the changes to our codes match the state code, and all documentation will be sent to the state for approval of the plan.

Ms. Gowdy concluded the presentation and introduced Matt Venable, the Environmental Manager, to answer any questions.

Mr. Gregory asked if there would be an appointment of the position. Ms. Gowdy said that the state would be putting through training for staff members.

Mr. Lane asked about funding from the state for the program. Ms. Gowdy answered that there is no funding for this program, but we will be given the authority to amend the pricing and fees for the permit to make up for the cost.

Mr. Lane asked about the impact of development and what extra time and money is going to be put into this program. Mr. Venable stated it would be more work for both parties. For a single family residence, as long as it is kept under an acre, you will probably not see any change.

Mr. Lane asked if there was any flexibility. Mr. Venable answered that anything above 2,500 square feet would need a permit.

Mr. Lane asked about what involvement there would be after construction is completed. Mr. Venable said that there will be more involvement, and that a Stormwater Management Inspector will be coming on board to do inspections based on the BMP Maintenance Agreement.

Ms. Townsend commented on the technical terms used in the agreement and the fact that someone may read it and construe that it would not pertain to them. Everyone agreed that the terminology in the agreement is very technical and Ms. Townsend would like to see it simplified. Mr. Chalmers suggested adding an acronym section. Ms. Townsend agreed it would be a good idea.

Mr. Chalmers asked Commissioners if there were any more comments or questions; there were none.

Mr. Chalmers and Ms. Townsend decided on a work session and discussed times. It was decided on September 23, 2013, at 6:30 pm in the Board Room, for a Work Session meeting. It was recommended that it be posted on the website.

**IN RE: CHAIRMAN'S REPORT**

Mr. Chalmers reported that the annual Golf Tournament for Lanexa Station 4 is September 20<sup>th</sup> at Royal New Kent. Contact him for information.

**IN RE: RICHMOND REGIONAL PLANNING DISTRICT COMMISSION (RRPDC)**

Mr. Pollard gave an update on the RRPDC meeting. At the meeting Mrs. Jacocks reported on the CEDS process and discussed economic and infill development in the region.

**IN RE: COMMISSIONER'S REPORT**

Mr. Lane talked about the motorcycle races at Colonial Downs. He drove through the neighborhood and went to the back of the track and noise level was low. Mr. Gregory also commented that the noise level was low and the turnout for the event was high. He also got feedback from the crowd that was very positive.

**IN RE: STAFF REPORTS**

Ms. Le Duc introduced Mrs. Cathy Williams as a new staff member. She also stated that Mr. Brown's CUP application should be ready for a public hearing next month, as comments from agencies are still being gathered. Depending on what happens at the work session for the Stormwater Ordinance, a public hearing for that in October is possible as well.

**IN RE: MEETING SCHEDULE**

The Planning Commission is scheduled to meet on Monday, October 21, 2013, at 6:30 p.m. in the Boardroom of the County Administration Building.

A reminder was mentioned of the Stormwater Management Ordinance work session on Monday, September 23, 2013, at 6:30 pm in the Boardroom.

**IN RE: ADJOURNMENT**

A motion to adjourn was made and seconded by all.

The meeting was adjourned at 7:54 p.m.

Respectfully submitted:

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Cathy Williams  
Recording Secretary



## MEMORANDUM

DATE: October 21, 2013

TO: New Kent County Planning Commission

SUBJECT: Application Number CUP-03-13, Jackass Flats LLC

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### REQUEST

Representatives from Jackass Flats LLC have applied for a Conditional Use Permit to develop a mini-storage facility (including both enclosed self-storage units and outdoor storage for boats and recreational vehicles), on a parcel at the intersection of Route 60 and Rockahock Road. Per the application narrative: *"Under the first phase, the facility would include 40 self-storage units and dry storage for boats and RV's. The second and final stage would increase the number of self-storage by 80, bringing the total count of units to 120. The facility would be encased by a secure fencing with a keypad entry gate."*

Jackass Flats LLC Aerial Photo



## PUBLIC HEARINGS

Planning Commission: October 21, 2013 7:00 p.m., County Boardroom  
Board of Supervisors: Tentatively scheduled for November 13, 2013  
7:00 p.m., County Boardroom

## GENERAL INFORMATION

**Tax Parcel:** 44-68

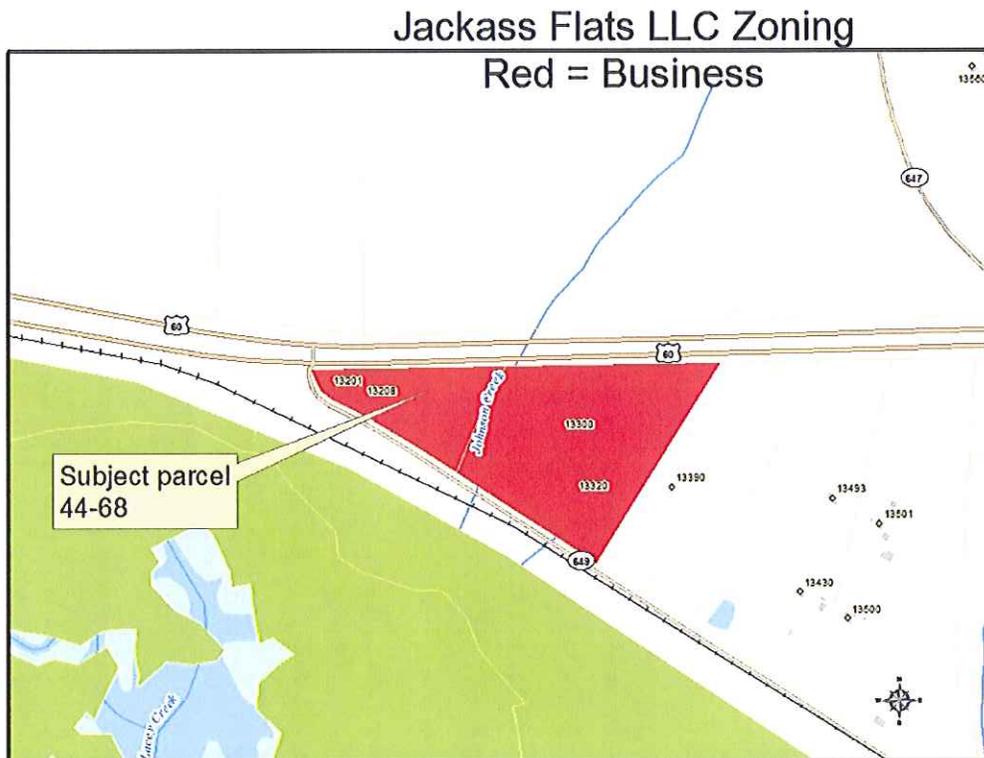
**GPIN:** D22-2098-2112

**Size:** Parcel is 4.1 acres in size

**Owner:** Jackass Flats LLC (Monte Brown)

**Applicant:** Jackass Flats LLC (Monte Brown)

**Zoning:** Business. A conditional use permit is required for a "mini storage warehouse" in the Business zoning classification.



**Adjacent Zoning:** Business to the East, A-1 to the North and West, and the CSX Railroad and Conservation to the South

## Comprehensive Plan Future Land Use Designation: Rural Crossroad

### CONSIDERATIONS

- The New Kent County Zoning Ordinance defines a “mini-storage warehouse” as follows: *Mini-storage warehouse means a building or series of buildings composed of various sized self-contained storage areas primarily used for self-service storage. These self-contained storage areas are independent, fully enclosed bays that are leased to individuals for long-term storage of their household goods or personal property or to businesses for storage of seasonal inventory and business personal property.*
- The New Kent County Comprehensive Plan’s Future Land Use Map designates this property as a Rural Crossroad. Rural Crossroads are characterized by a tight cluster of small commercial establishments such as general stores, banks, restaurants, gas stations, convenience stores, etc. They typically occur at intersections and serve a local population.
- The Zoning Ordinance provides the following performance standards for mini-storage facilities and mini-warehouses, which will apply to the proposed mini-storage facilities on this parcel:

New Kent County Code Section 98-871(i) *Standards for mini-storage facilities and mini-warehouses:*

1. All storage for mini-storage warehouses shall be within a completely enclosed building provided; however, that the outdoor accessory storage of recreational vehicles on the same site is acceptable if such storage is screened from view from adjacent streets and residential properties by landscaping supplemented by fencing.
2. Loading docks shall not be permitted as part of any individual storage unit.
3. Except for purposes of loading and unloading, there shall be no parking or storage of commercial trucks, trailers, and moving vans. This shall not apply to rental trucks and trailers available for hire by consumers.
4. The minimum distance between warehouse buildings shall be 25 feet. Where vehicular circulation lanes and parking and loading spaces are to be provided between structures, the minimum separation distance shall be increased accordingly in order to ensure vehicular and pedestrian safety and adequate emergency access.
5. No activities such as sales or servicing of goods or materials shall be conducted from such storage units. The operation of such a facility shall in no way be deemed to include a transfer and storage business where the use of vehicles is a part of such business.
6. Storage of hazardous and flammable materials shall not be permitted. The owner or operator shall establish rules and regulations for tenants that require that any liquid-fuel powered object or device stored in any storage unit shall have all liquid fuel drained and fuel tanks shall be left unsealed during storage.
7. The maximum length of any single storage building shall be 200 feet.

8. Mini storage warehouses located in any district other than the industrial district shall have all sides visible to a public right of way faced in brick, architectural block, residential siding, or some other material approved by the zoning administrator as being compatible with surrounding properties, development and the intent of the district in which located. Doors providing access to individual units shall face inward and any direct views from public roads of such doors shall be obscured by landscaping supplemented if necessary by earth-forms.
- Access to the property will be located off Route 60, where the current driveway exists. The exact location will be determined by VDOT during the site planning process, as the current access does not meet VDOT spacing standards.
  - The application states: *"The western portion of the property has two existing buildings that have been used for short term residential rental and store frontage. The property north and south boundaries are road frontage. The eastern boundary is shared with one residential homeowner. Currently the eastern boundary is a natural ravine which is wooded and average in width of 75 feet to 150 feet. Located within 1 mile of the property are two active annual campgrounds and two mobile home facilities. All four facilities have increased the growing need for this type of facility. The proposed hours are 10:00 a.m. to 4:00 p.m. weekdays (an active operator on site) 24 hours for current tenants with access codes."*
  - The development of this project will contribute to the County's tax base through real estate and business taxes without increasing the cost for school infrastructure and other residentially related County services.

#### COMMENTS FROM REVIEWING AGENCIES

Staff sent the conditional use permit application and information to all County reviewing agencies and received the following comments:

- New Kent County Fire Marshal
  - Please provide detailed drawings to include fire department access, approach angles, and space between buildings.
  - Please provide plan on the security and process for storage of fueled equipment.
- New Kent County Sheriff's Office
  - In the past we have had several issues with this location, specifically drug trafficking, larcenies, abandoned vehicles left on the property, occupation by homeless people. Which brings up several questions: Will the existing buildings be demolished or brought up to code? What are the plans for lighting arrangements for the facility and storage areas? Will there be a turning land and acceleration lane for Route 60?
  - With the property fencing this plan could actually solve some of the problems we have had with this property in the past.

- New Kent County Director of Public Utilities – The parcel in question is not within a water or sewer service area and is an unmanned facility not requiring water or wastewater systems. Therefore I will offer no comment at this time.
- VDOT
  - Any work within the right of way will require a VDOT land use permit and will need to meet VDOT standards.
  - Route 60 is classified as a Rural Minor Arterial. Entrance spacing standards require 425' separation (measured centerline to centerline) between the site entrance and adjacent entrances or intersections. The existing entrances on site do not meet this standard and will need to be closed. A new entrance may be permitted 425' at least east of Route 649.
  - Route 649 is classified as a local road and entrance spacing standards require only 50' between entrances. However, the existing entrance on Route 649 does not meet the 225' corner clearance standard and will need to be closed.
  - Horizontal and vertical site distance will need to be met at all proposed entrances.
- New Kent County Building Official
  - The buildings could probably be used - it may take an engineer to evaluate the structural integrity, but more than like they could be brought up to code.

### STANDARDS FOR REVIEW

The standards for review of Conditional Use Permits are set forth in Section 98-744 of the New Kent County Zoning Ordinance:

1. *The proposed use shall not be prejudicial to the character of the neighborhood.*
2. *The proposed use shall not adversely affect the general plans for the physical development of the county as embodied in the comprehensive plan.*
3. *The proposed use shall not be detrimental to the use or development of adjacent properties or the general neighborhood nor impair the value of buildings or property in surrounding areas.*
4. *The proposed use shall not unreasonably restrict an adequate supply of light, water, or air to adjacent property nor produce undue congestion in the street.*
5. *The proposed use shall adequately provide for access facilities for the estimated traffic.*
6. *The proposed use shall be subject to any applicable site planning or performance standards enumerated in article XXII of this chapter.*
7. *The proposed use shall be reasonable in terms of the logical, efficient, and economical extension of public services and facilities serving the county, such as water, sewer, streets, police and fire protection, transportation, recreation, and public schools.*

The Zoning Ordinance also lists specific restrictions for conditional use permits. Restrictions on any conditional use may include, but are not limited to the following:

1. Hours of operation
2. Access to and from the subject property
3. Protection of surface and groundwater
4. Lighting of the site, including the intensity and shielding so as to not adversely affect adjacent or nearby property owners
5. Adequate sewer and water supply
6. Sound limitation as needed to ensure peaceful enjoyment of neighboring property
7. Location, size, height, design of buildings, walls, fences, landscaping, and buffer yards
8. Covenants and/or homeowners associations for maintenance of applicable restrictions
9. Timing or phasing of development
10. Type and placement of utilities including underground placements
11. Controls for smoke, dust, and odors
12. Requirements for performance guarantees ensuring that all conditions are met and plans are implemented
13. Any other conditions deemed necessary to protect the health, safety, and general welfare of the public.

**OVERALL ANALYSIS AND RECOMMENDED DRAFT CONDITIONS (please be advised that the Conditions are subject to change prior to Board of Supervisors approval of the permit)**

Staff has reviewed this conditional use permit application in the same manner as other zoning change applications and recommends approval with the following conditions. The following proposed conditions will assist in addressing, protecting, and promoting health, safety, and the general welfare of New Kent County citizens.

1. The mini-storage facility shall meet all requirements set forth in New Kent County Code Section 98-871(i) - Standards for mini-storage facilities and mini-warehouses.

In addition, the parcel-specific conditions set out below shall be met:

- a. Each access point into the mini-storage facility shall be controlled by a gate which can only be accessed by authorized individuals (employees and lessees of storage units).

The landowner shall provide the New Kent Sheriff's Office and New Kent Fire-Rescue Department permanent access pass codes for their use in responding to emergencies, conducting inspections, and enforcing federal, state and local laws and codes. Gates shall be located so as to prevent vehicles from queuing on public right-of-way before entering said gates.

- b. An entrance that meets all of VDOT's spacing requirements must be approved by VDOT. Per the VDOT comment letter dated September 4, 2013, the existing entrances on both Route 60 and Rockahock Road do not meet spacing requirements and will need to be closed. This will be worked out with VDOT during the site planning process.
- c. The applicant shall install all VDOT improvements, including turning lanes, if required.
- d. Only one sign for the subject property shall be allowed along Route 60 (Pocahontas Trail). Said sign shall be restricted to one monument sign that is no more than 64 square feet in area, a maximum of 8' in height, and shall not be internally illuminated. A landscaping area containing at least 6 shrubs shall be installed around the base of the sign. Said shrubs shall be maintained at less than 24" in height.
- e. Site lighting shall not be mounted at a height exceeding 20' above ground.
- f. No mini-storage unit shall exceed 20' in height.
- g. Outdoor storage of boats and recreational vehicles, including outdoor storage provided within 3-sided, covered structures, shall be permitted, provided that said outdoor storage is screened from view of the street rights-of-way and adjacent properties by mini-storage units and by the perimeter fencing required in Condition 1.1.
- h. This Conditional Use Permit shall not limit the amount of square footage of storage space to be provided in the mini-storage facility. However, the appropriate turn movements and turning radii of at least 28' shall be shown around the mini-storage units and outdoor storage areas on the site plan to assure efficient vehicular movement and to assure sufficient access to the site by emergency vehicles.
- i. The use of oil/water separators shall also be used in the stormwater management of the site.
- j. All sidewalks, parking/loading areas, and drive aisles shall be hard surfaced with a permanent pavement. This requirement shall not be interpreted to preclude the use of pervious surfaces such as porous concrete or asphalt as a part of the stormwater management of the site.
- k. Mechanical equipment shall be screened from public view at ground level.
- l. In addition to the transitional buffers and landscape yards required in Article XXVII of the New Kent County Zoning Ordinance, permanent fencing shall be installed around the perimeter of the mini-storage facility to screen the facility from view. Said fencing shall be constructed of masonry, wood, or similar building materials. All perimeter fencing shall be no less than 6' and no greater than 10' in height. Mini-storage units may be used as part of the perimeter fencing, provided that the combination of mini-storage units and fencing forms a uniform, cohesive barrier to entry and visual screen. All fencing shall be properly maintained and shall be kept free of trash, debris, and excessive or tall vegetation.
- m. Temporary chain link fencing may be used along a temporary perimeter during the phased development of the mini-storage facility. This temporary chain link fence shall not be present for longer than 730 days from the issuance of a certificate of occupancy at the conclusion of one phase or the issuance of a building permit at the start of the next phase, whichever is later. The chain link fencing shall be no less than six feet (6') and no

greater than ten feet (10') in height as measured from the surface of the ground. A performance agreement and surety shall be submitted to and approved by the Department of Community Development before the temporary fencing is installed. The County Attorney shall approve the form of the surety. The land owner shall properly maintain all fencing and shall keep it free of trash, debris, and excessive or tall vegetation.

- n. If any of the existing structures on the site will be converted to mini-storage units, the structures must be evaluated by an engineer to determine their structural integrity.

2. This Conditional Use Permit shall expire on the fifth anniversary of its approval if a building permit for this location has not been issued.

**SUGGESTED MOTIONS**

- 1. In order to address, protect, and promote public convenience, necessity, general welfare, and good zoning practices in the County, I move to adopt Resolution No. PC-10-13 to forward Application CUP-03-13 to the New Kent County Board of Supervisors with a favorable recommendation.

or

- 2. I move to forward Application CUP-03-13 to the New Kent County Board of Supervisors with an unfavorable recommendation for the following reasons:

- a. \_\_\_\_\_
- b. \_\_\_\_\_
- c. \_\_\_\_\_

Attachments:

- Application CUP-03-13
- Advertisement & Adjacent Property Owners List
- Resolution, PC-10-13

Copies to:

- Applicant
- File

## Kelli Le Duc

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**From:** Kelli Le Duc  
**Sent:** Tuesday, October 08, 2013 10:21 AM  
**To:** Kelli Le Duc  
**Subject:** FW: Jackass Flats

PLEASE SEE BELOW COMMENTS FROM THE ENVIRONMENTAL PLANNING MANAGER. THEY WERE RECEIVED AFTER THE STAFF MEMO WAS PRINTED, THEREFORE THEY ARE INCLUDED SEPARATELY.

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**From:** Matthew J. Venable  
**Sent:** Tuesday, October 08, 2013 10:12 AM  
**To:** Kelli Le Duc  
**Subject:** Jackass Flatts

Kelli,

I have few comments for the above mentioned mini-storage proposed at the Jackass Flatts location.

1. There appears to be RPA/Wetlands at two locations on the property. These locations would have to be fully delineated and the 100' RPA buffer along with the 20' CBPA setback shown on the site plans. (This could change the design and location of the future buildings/structures.)
2. Another concern is the stormwater since most likely New Kent would require them to pave the entire site therefore the site would be over the 16% impervious cover threshold.
3. Stormwater calculations would be required to show pre and post development for 2yr and 10yr storms.

If you could please forward these comments to Mr. Chalmers. Thanks and have a good morning.

Matt

PLANNING COMMISSION  
COUNTY OF NEW KENT  
VIRGINIA

PC-10-13

At the regular meeting of the Planning Commission of the County of New Kent, in the Boardroom of the Administration Building in New Kent, Virginia, on the 21<sup>st</sup> day of October, 2013:

Present:

Katherine Butler  
Jack Chalmers  
Howard Gammon  
Roger Gregory  
Charna Moss - Gregory  
Richard Kontny, Jr.  
Michael Lane  
Edward Pollard  
Tommy Tiller  
Patricia Townsend  
Joyce Williams

Vote:

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Motion was made by \_\_\_\_\_, which carried \_\_\_\_\_, to adopt the following resolution:

**A RESOLUTION TO RECOMMEND APPROVAL OF  
CONDITIONAL USE PERMIT APPLICATION CUP-03-13,  
JACKASS FLATS LLC  
TO AUTHORIZE THE CONSTRUCTION OF A MINI-STORAGE FACILITY  
LOCATED ON TAX MAP 44-68 (GPIN D22-2098-2112)**

WHEREAS, Monte Brown with Jackass Flats LLC (property owner and applicant), has submitted a "Conditional Use Permit Application" dated August 29, 2013; and

WHEREAS, said application requests a conditional use permit to construct a mini-storage facility on a parcel identified on the New Kent County digital map as GPIN #D22-2098-2112 (Tax Map and parcel 44-68); and

WHEREAS, subsequent to receiving a complete application and within the timeframes established by Code, the Planning Commission scheduled and conducted a formal and duly advertised public hearing, carefully considering the public comment received; and

WHEREAS, the Planning Commission has evaluated the application based on the current zoning of the parcel, which is Business, the Conditional Use Permit Ordinance, and the proposed conditions in the staff memo; and

WHEREAS, with regard to this application the New Kent County Planning Commission has found:

- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

WHEREAS, the Commission finds that adding conditions to this project is appropriate to address, protect, and promote public convenience, necessity, general welfare, and good zoning practices in the County and the health, safety, and general welfare of the Citizens in the County;

NOW THEREFORE, BE IT RESOLVED that on this, the 21<sup>st</sup> day of October, 2013, by the New Kent County Planning Commission, that Conditional Use Permit Application CUP-03-13 submitted by Monte Brown with Jackass Flats LLC (property owner and applicant), be forwarded to the New Kent County Board of Supervisors with a recommendation of approval with the following conditions:

1. The mini-storage facility shall meet all requirements set forth in New Kent County Code Section 98-871(i) - Standards for mini-storage facilities and mini-warehouses.

In addition, the parcel-specific conditions set out below shall be met:

- a. Each access point into the mini-storage facility shall be controlled by a gate which can only be accessed by authorized individuals (employees and lessees of storage units). The landowner shall provide the New Kent Sheriff's Office and New Kent Fire-Rescue Department permanent access pass codes for their use in responding to emergencies, conducting inspections, and enforcing federal, state and local laws and codes. Gates shall be located so as to prevent vehicles from queuing on public right-of-way before entering said gates.
- b. An entrance that meets all of VDOT's spacing requirements must be approved by VDOT. Per the VDOT comment letter dated September 4, 2013, the existing entrances on both Route 60 and Rockahock Road do not meet spacing requirements and will need to be closed. This will be worked out with VDOT during the site planning process.
- c. The applicant shall install all VDOT improvements, including turning lanes, if required.
- d. Only one sign for the subject property shall be allowed along Route 60 (Pocahontas Trail). Said sign shall be restricted to one monument sign that is no more than 64 square feet in area, a maximum of 8' in height, and shall not be internally illuminated. A landscaping area containing at least 6 shrubs shall be installed around the base of the sign. Said shrubs shall be maintained at less than 24" in height.
- e. Site lighting shall not be mounted at a height exceeding 20' above ground.
- f. No mini-storage unit shall exceed 20' in height.
- g. Outdoor storage of boats and recreational vehicles, including outdoor storage provided within 3-sided, covered structures, shall be permitted, provided that said outdoor storage is screened from view of the street rights-of-way and adjacent properties by mini-storage units and by the perimeter fencing required in Condition 1.1.
- h. This Conditional Use Permit shall not limit the amount of square footage of storage space to be provided in the mini-storage facility. However, the appropriate turn movements and turning radii of at least 28' shall be shown around the mini-storage units and outdoor

storage areas on the site plan to assure efficient vehicular movement and to assure sufficient access to the site by emergency vehicles.

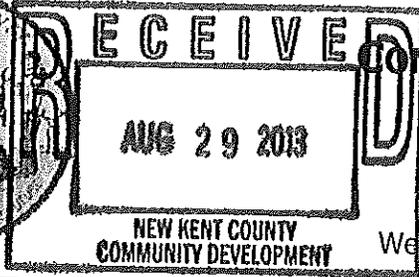
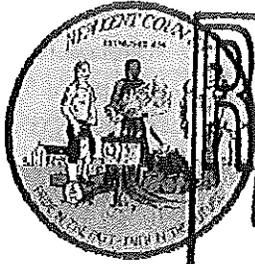
- i. The use of oil/water separators shall also be used in the stormwater management of the site.
- j. All sidewalks, parking/loading areas, and drive aisles shall be hard surfaced with a permanent pavement. This requirement shall not be interpreted to preclude the use of pervious surfaces such as porous concrete or asphalt as a part of the stormwater management of the site.
- k. Mechanical equipment shall be screened from public view at ground level.
- l. In addition to the transitional buffers and landscape yards required in Article XXVII of the New Kent County Zoning Ordinance, permanent fencing shall be installed around the perimeter of the mini-storage facility to screen the facility from view. Said fencing shall be constructed of masonry, wood, or similar building materials. All perimeter fencing shall be no less than 6' and no greater than 10' in height. Mini-storage units may be used as part of the perimeter fencing, provided that the combination of mini-storage units and fencing forms a uniform, cohesive barrier to entry and visual screen. All fencing shall be properly maintained and shall be kept free of trash, debris, and excessive or tall vegetation.
- m. Temporary chain link fencing may be used along a temporary perimeter during the phased development of the mini-storage facility. This temporary chain link fence shall not be present for longer than 730 days from the issuance of a certificate of occupancy at the conclusion of one phase or the issuance of a building permit at the start of the next phase, whichever is later. The chain link fencing shall be no less than six feet (6') and no greater than ten feet (10') in height as measured from the surface of the ground. A performance agreement and surety shall be submitted to and approved by the Department of Community Development before the temporary fencing is installed. The County Attorney shall approve the form of the surety. The land owner shall properly maintain all fencing and shall keep it free of trash, debris, and excessive or tall vegetation.
- n. If any of the existing structures on the site will be converted to mini-storage units, the structures must be evaluated by an engineer to determine their structural integrity.

2. This Conditional Use Permit shall expire on the fifth anniversary of its approval if a building permit for this location has not been issued.

Attested:

---

Jonathan Stanger  
Assistant County Administrator and  
Director of Community Development



**CONDITIONAL USE PERMIT (CUP)  
APPLICATION**  
County of New Kent, Virginia  
Planning Department  
Web site: [www.co.new-kent.va.us/planning](http://www.co.new-kent.va.us/planning)

New Kent County ♦ Community Development Department-Planning ♦ P O Box 50 ♦ New Kent, VA 23124 ♦ Phone 804-966-9690 ♦ Fax 804-966-8531  
\*\*Use P O Box for all mail. Street address: 12007 Courthouse Circle, New Kent, VA 23124 FOR DELIVERIES ONLY\*\*

**DESCRIPTION OF PROPERTY**

Tax Map Parcel Number(s): 44-68 Total Lot Area (Acres): 4.1+/-  
 GPIN: D22-2098-2112  
 Property street address: 13201 + 13208 Rockahock Rd.  
 Current Zoning: Business Proposed Zoning: \_\_\_\_\_  
 Current Use: VACANT Proposed Use: MINI-STORAGE  
 Does proposed zoning/use include entire property? [X] YES [ ] NO  
 If no, how much will be used for proposed use? \_\_\_\_\_

**OFFICE USE ONLY**  
\*DO NOT WRITE IN THIS BOX\*

Application No: CUP-03-13  
 AFD Status: n/a  
 Date Received: 8/29/13  
 Tax Receipts: Yes No  
 Fee Amount: \$ Waived  
 Staff Initials: Advising Only

**PROPERTY OWNERS INFORMATION**

Name: Jackass Flats LLC (Monte C Brown)  
 Address: 4707 Candlelight Ln  
 City: Glen Allen State: Va Zip: 23060  
 Telephone: Work: N/A Home: 804-432-5113  
 Cellular/Pager: 757-784-0233 (Monte) Fax: \_\_\_\_\_  
 E-mail Address: bc23089va@aol.com

**APPLICANT'S INFORMATION**

Name: Monte C Brown  
 Address: 4707 Candlelight Ln.  
 City: Glen Allen State: Va Zip: 23060  
 Telephone: Work: N/A Home: 804-432-5113  
 Cellular/Pager: 757-784-0233 Fax: \_\_\_\_\_  
 E-mail Address: bc23089va@aol.com

**AGENTS INFORMATION**

Name: N/A  
 Address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
 Telephone: Work: \_\_\_\_\_ Home: \_\_\_\_\_  
 Cellular/Pager: \_\_\_\_\_ Fax: \_\_\_\_\_  
 E-mail Address: \_\_\_\_\_

**WATER/SEWER SUPPLY**

Public Water     Public Sewer     Well     Septic  
 Other: \_\_\_\_\_

As part of the submission, the following questions must be answered in detail in narrative form. Answers of "Yes" or "No" are **NOT ACCEPTABLE** and the application is not complete until 25 copies of this narrative have been submitted.

1. Describe in detail, the proposed use(s) of the property.
2. Describe in detail, how the proposed use may impact surrounding properties. Please relate your response to the existing zoning and land uses in the area, plus the characteristics of the proposed use—hours of operation, activity levels, appearance, etc.
3. Describe the proposed water and wastewater utility infrastructure including sources, discharges, permits, construction, ownership, and maintenance responsibilities.
4. Describe the environmental impact of the proposed development and the efforts to be undertaken to abate air, water, noise, stormwater, and other environmental impacts during and after construction.
5. Describe what techniques will be used to control traffic flow and what impacts the proposed use will have on existing roadways and provide a professionally prepared traffic impact analysis for any development expected to generate 1,000 vehicle trips per day or more.
6. Describe the impact of the proposed use on New Kent County's Schools.
7. Describe the impact of the proposed use on New Kent County public services—water service, wastewater disposal, solid waste disposal, fire, rescue, law enforcement, libraries, etc.
8. Describe the impact the proposed use(s) will have on any historic sites or structures on the property or in the vicinity.
9. Describe the impact the proposed use(s) will have on any rare, endangered, or irreplaceable species or natural areas.
10. Describe the impact the proposed use(s) will have on the scenic or natural beauty of the County.

For those plans requiring review by the Planning Commission, the applicant shall, in addition to the plan sheets required above, submit an overall plan on one (1) or more eleven inch by seventeen inch (11" x 17") reproducible sheets and shall provide sufficient copies of larger plan sheets as required for the Planning Commission distribution list of twelve (12). In addition, the applicant shall provide electronic copies of all applicable documents.

I/We as the property owner/applicant/agent give permission for County personnel to enter subject properties in relation to the administration of this application and to any applicable New Kent County, State of Virginia or U.S. Federal Government regulations. Additionally, if the County Planning Department deems it necessary for an outside agency or organizations review any technical part of this application, I/we agree to reimburse the County for all costs associated with such outside reviews and consultation within 15 business days of being billed by the County.

Property Owner Signature:	<u>Mona C. B...</u>	Date:	<u>8/26/13</u>
Property Owner Signature:	<u>[Signature]</u>	Date:	<u>8/26/13</u>
Property Owner Signature:	_____	Date:	_____
Applicant/Agent Signature:	_____	Date:	_____
Applicant/Agent Signature:	_____	Date:	_____

**All property owners must sign the application**

**FEES**

The fees for this application consist of an application fee and a Map Maintenance fee (see below for calculations). The fee for this application is **\$1600.00 plus \$40.00 per acre/fraction.** Make checks payable to *Treasurer of New Kent County*. **Fees must be submitted at time of application.**

	Fee:	\$	<u>1600.00</u>
+ \$40.00 per acre(fraction),			
Number of acre(fraction): _____ x \$40=		\$	_____
Map Maintenance Fee:		\$	<u>35.00</u>
+ \$10.00 per acre(fraction),			
Number of acres(fraction): _____ x \$10=		\$	_____
<b>Total Due:</b>		\$	_____

*all fees waived except for advertising, Per RH*

Questions;

**1. Describe in detail, the proposed use(s) of the property.**

4.10+/- acres zoned commercial located in Lanexa Virginia. 2.75 +/- acres located on the east side of the property that is undeveloped. The request is to operate a storage facility. The property borders Pocahontas Trail and Rockahock Road. The land would require a land disturbance permit to remove existing stumps and site preparation. Under the first phase, the facility would include 40 self-storage units and dry storage for boats and RVs. The second and final stage would increase the number of self-storage by 80; bring the total count of units to 120. The facility would be incased by a secure fencing with a keypad entry gate.

**2. Describe in detail, how the proposed use may impact surrounding properties. Please relate your response to the existing zoning and land uses in the area, plus the characteristics of the proposed use—hours of operation, activity levels, appearance, etc.**

Currently the property is zoned commercial. The western portion of the property has two existing buildings that have been used for short term residential rental and store frontage. The property north and south boundaries are road frontage. The eastern boundary is shared with one residential homeowner. Currently the eastern boundary is a natural ravine which is wooded and average in width of 75 feet to 150 feet. Located within 1 mile of the property, are two active annual campgrounds and two mobile home facilities. All four facilities have increased the growing need for this type of facility. The proposed hours are 10a.m. to 4p.m. weekdays (an active operator of site) 24 hours for current tenants with access codes.

**3. Describe the proposed water and wastewater utility infrastructure including sources, discharges, permits, construction, ownership, and maintenance responsibilities.**

There is an active well located on the western portion of the property. No upgrades are scheduled. No waste (bathroom, sinks, or etc.) will be required.

**4. Describe the environmental impact of the proposed development and the efforts to be undertaken to abate air, water, noise, storm water, and other environmental impacts during and after construction.**

The land has been forested, leaving several stumps. A land disturbance permit will be required. Storm water will be engineered into catch ponds to prevent contamination to the natural water systems in the area. Minimal noise will be created by the development of the property (no more than noise created by a residential home construction). The only noise created by the storage facility would be the cars driving in or out of the property. (Noise created by Rt. 60 is a greater impact)

**5. Describe what techniques will be used to control traffic flow and what impacts the proposed use will have on existing roadways and provide a professionally prepared traffic impact analysis for any development expected to generate 1,000 vehicle trips per day or more.**

The entry will be located off Rt. 60 where there is an existing driveway. Improvements will be made to allow all types of vehicular traffic that would use the property to pull safely off of the highway and park.

**6. Describe the impact of the proposed use on New Kent County's Schools.**

There is no impact to any school systems.

**7. Describe the impact of the proposed use on New Kent County public services—water service, wastewater disposal, solid waste disposal, fire, rescue, law enforcement, libraries, etc.**

There will be no impact to the county's public services, water, wastewater disposal, or solid waste disposal systems. There may be a minimal impact to fire, rescue, and law enforcement. This will be minimized by security systems and fire preventive systems.

**8. Describe the impact the proposed use(s) will have on any historic sites or structures on the property or in the vicinity.**

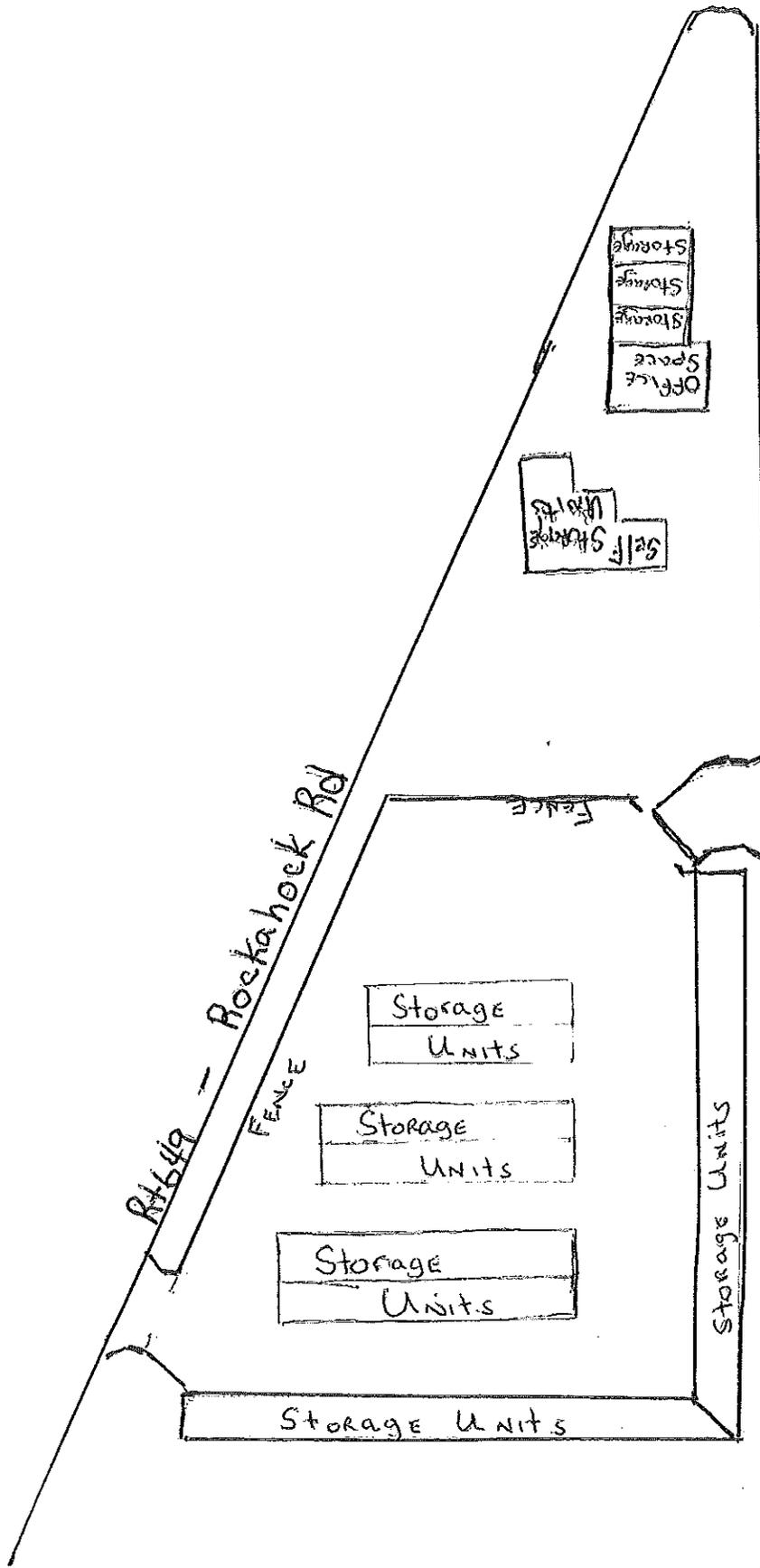
No known historic knowledge for this property has been recorded. Nearby historic property will not be affected by the improvements to this property.

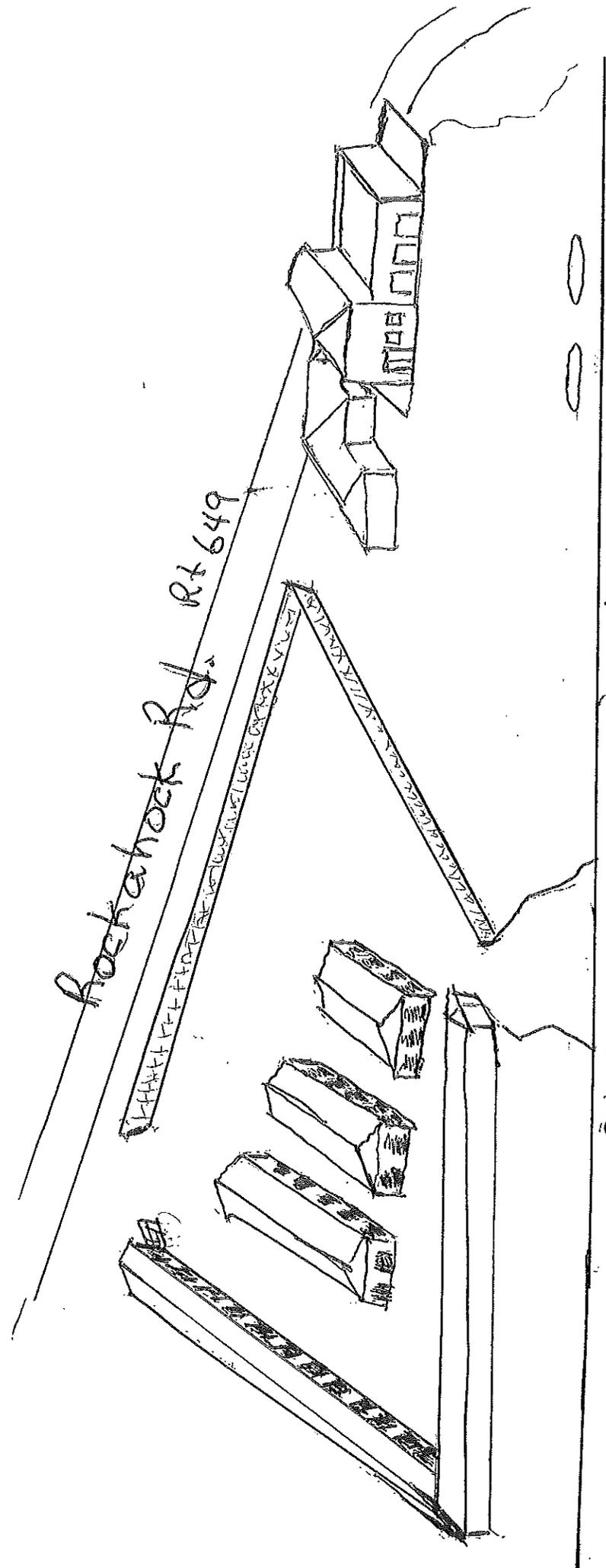
**9. Describe the impact the proposed use(s) will have on any rare, endangered, or irreplaceable species or natural areas.**

There are no known rare, endangered, or irreplaceable species or natural areas.

**10. Describe the impact the proposed use(s) will have on the scenic or natural beauty of the County.**

Currently the property is cutover timber. We will leave the trees that still exist along the road frontage, giving more privacy to the property and keeping a rural feel and natural beauty of New Kent. We believe that the improvements to the property will enhance the scenic beauty of the property.





Rockahock Rd. Rt 649

Rt 60 Pocahontas Trail

**PUBLIC NOTICE  
NEW KENT COUNTY PLANNING COMMISSION**

Notice is hereby given that the following public hearings will be held on Monday, October 21, 2013 at 7:00 PM or as soon thereafter as possible in the Boardroom of the New Kent County Administration Building located in New Kent, VA, where the Planning Commission of the County of New Kent may or may not take action on the following:

1. **Application CUP-03-13 Jackass Flats LLC (Monte Brown):** Mr. Brown has applied for a Conditional Use Permit to develop a mini-storage facility (including both enclosed self-storage units and outdoor storage for boats and recreational vehicles), on a parcel at the intersection of Route 60 and Rockahock Road. The parcel is identified as Tax Map & Parcel Number 44-68 (GPIN #D22-2098-2112).
2. **Application ZT-03-13 Amending, Restating and Readopting Stormwater Management to the New Kent County Code of Ordinances:** Virginia promulgated new Stormwater regulations which localities are required to comply with. Pursuant to these regulations, New Kent County proposes changes to the current Stormwater Management ordinance which include the locality managing a unified stormwater program.

Questions concerning the public hearings may be directed to the Department of Community Development at 804-966-9690. All interested persons may appear and present their opinions at the above time and place. If a member of the public cannot attend the hearing, comments may be submitted in writing to the New Kent County Department of Community Development, P.O. Box 150, New Kent, VA 23124; by fax to 804-966-8531, or by email to [planning@newkent-va.us](mailto:planning@newkent-va.us). Comments received by 12:00 P.M. on the day of the hearing will be distributed to Planning Commission members and made a part of the public record. Copies of applications, proposed resolutions, and staff reports may be viewed approximately one week prior to the hearings in the New Kent County Department of Community Development at 12007 Courthouse Circle, New Kent, VA 23124 during regular business hours or at <http://www.co.new-kent.va.us/index.aspx?NID=143>. Anyone needing assistance or accommodation under the provisions of the Americans with Disabilities Act should call the County Administrator's Office at (804)966-9683 at least 24 hours in advance of the hearing. If a meeting cannot be held due to inclement weather, the meeting will be held on the next business day that the New Kent County offices are open.

**PLANNING COMMISSION**

**NEW KENT COUNTY  
Notice of Mailing**

Applicant Name: Jackass Flats (Monte Brown)  
Application Number: CUP-03-13  
Public Hearing Date: Monday, October 21, 2013

**STATE OF VIRGINIA  
COUNTY OF NEW KENT, to wit**

I, Kelli L. Z. Le Duc, of the New Kent County Planning Division, do make oath that notices as required by Section 15.1-431 of the Code of Virginia, 1950, as amended, were mailed on the 4<sup>th</sup> day of October 2013, by first class mail, postage prepaid, to the persons whose names and addresses are attached.

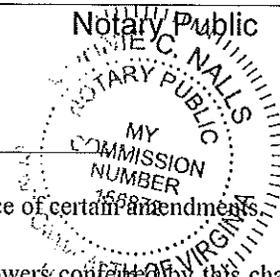
Kelli L. Z. Le Duc  
Signed

Subscribed and sworn to before me this 4<sup>th</sup> day of October, 2013.

Cornie C. Nalls

My commission expires:

5/31/16



§ 15.2-2204. Advertisement of plans, ordinances, etc.; joint public hearings; written notice of certain amendments

A. Plans or ordinances, or amendments thereof, recommended or adopted under the powers conferred by this chapter need not be advertised in full, but may be advertised by reference. Every such advertisement shall contain a descriptive summary of the proposed action and a reference to the place or places within the locality where copies of the proposed plans, ordinances or amendments may be examined.

The local planning commission shall not recommend nor the governing body adopt any plan, ordinance or amendment thereof until notice of intention to do so has been published once a week for two successive weeks in some newspaper published or having general circulation in the locality; however, the notice for both the local planning commission and the governing body may be published concurrently. The notice shall specify the time and place of hearing at which persons affected may appear and present their views, not less than five days nor more than 21 days after the second advertisement appears in such newspaper. The local planning commission and governing body may hold a joint public hearing after public notice as set forth hereinabove. If a joint hearing is held, then public notice as set forth above need be given only by the governing body. The term "two successive weeks" as used in this paragraph shall mean that such notice shall be published at least twice in such newspaper with not less than six days elapsing between the first and second publication. After enactment of any plan, ordinance or amendment, further publication thereof shall not be required.

B. When a proposed amendment of the zoning ordinance involves a change in the zoning map classification of 25 or fewer parcels of land, then, in addition to the advertising as required by subsection A, written notice shall be given by the local planning commission, or its representative, at least five days before the hearing to the owner or owners, their agent or the occupant, of each parcel involved; to the owners, their agent or the occupant, of all abutting property and property immediately across the street or road from the property affected, including those parcels which lie in other localities of the Commonwealth; and, if any portion of the affected property is within a planned unit development, then to such incorporated property owner's associations within the planned unit development that have members owning property located within 2,000

feet of the affected property as may be required by the commission or its agent. However, when a proposed amendment to the zoning ordinance involves a tract of land not less than 500 acres owned by the Commonwealth or by the federal government, and when the proposed change affects only a portion of the larger tract, notice need be given only to the owners of those properties that are adjacent to the affected area of the larger tract. Notice sent by registered or certified mail to the last known address of such owner as shown on the current real estate tax assessment books or current real estate tax assessment records shall be deemed adequate compliance with this requirement. If the hearing is continued, notice shall be remailed. Costs of any notice required under this chapter shall be taxed to the applicant.

When a proposed amendment of the zoning ordinance involves a change in the zoning map classification of more than 25 parcels of land, or a change to the applicable zoning ordinance text regulations that decreases the allowed dwelling unit density of any parcel of land, then, in addition to the advertising as required by subsection A, written notice shall be given by the local planning commission, or its representative, at least five days before the hearing to the owner, owners, or their agent of each parcel of land involved, provided, however, that written notice of such changes to zoning ordinance text regulations shall not have to be mailed to the owner, owners, or their agent of lots shown on a subdivision plat approved and recorded pursuant to the provisions of Article 6 (§ 15.2-2240 et seq.) where such lots are less than 11,500 square feet. One notice sent by first class mail to the last known address of such owner as shown on the current real estate tax assessment books or current real estate tax assessment records shall be deemed adequate compliance with this requirement, provided that a representative of the local commission shall make affidavit that such mailings have been made and file such affidavit with the papers in the case. Nothing in this subsection shall be construed as to invalidate any subsequently adopted amendment or ordinance because of the inadvertent failure by the representative of the local commission to give written notice to the owner, owners or their agent of any parcel involved.

The governing body may provide that, in the case of a condominium or a cooperative, the written notice may be mailed to the unit owners' association or proprietary lessees' association, respectively, in lieu of each individual unit owner.

Whenever the notices required hereby are sent by an agency, department or division of the local governing body, or their representative, such notices may be sent by first class mail; however, a representative of such agency, department or division shall make affidavit that such mailings have been made and file such affidavit with the papers in the case.

A party's actual notice of, or active participation in, the proceedings for which the written notice provided by this section is required shall waive the right of that party to challenge the validity of the proceeding due to failure of the party to receive the written notice required by this section.

C. When a proposed comprehensive plan or amendment thereto; a proposed change in zoning map classification; or an application for special exception for a change in use or to increase by greater than 50 percent of the bulk or height of an existing or proposed building, but not including renewals of previously approved special exceptions, involves any parcel of land located within one-half mile of a boundary of an adjoining locality of the Commonwealth, then, in addition to the advertising and written notification as required by this section, written notice shall also be given by the local commission, or its representative, at least 10 days before the hearing to the chief administrative officer, or his designee, of such adjoining locality.

D. When (i) a proposed comprehensive plan or amendment thereto, (ii) a proposed change in zoning map classification, or (iii) an application for special exception for a change in use involves any parcel of land located within 3,000 feet of a boundary of a military base, military installation, military airport, excluding armories operated by the Virginia National Guard, or licensed public-use airport then, in addition to the advertising and written notification as required by this section, written notice shall also be given by the local commission, or its representative, at least 30 days before the hearing to the commander of the military base, military installation, military airport, or owner of such public-use airport, and the notice shall advise the military commander or owner of such public-use airport of the opportunity to submit comments or recommendations.

E. The adoption or amendment prior to July 1, 1996, of any plan or ordinance under the authority of prior acts shall not be declared invalid by reason of a failure to advertise or give notice as may be required by such act or by this chapter, provided a public hearing was conducted by the governing body prior to such adoption or amendment. Every action contesting a decision of a locality based on a failure to advertise or give notice as may be required by this chapter shall be filed within 30 days of such decision with the circuit court having jurisdiction of the land affected by the decision. However, any litigation pending prior to July 1, 1996, shall not be affected by the 1996 amendment to this section.

F. Notwithstanding any contrary provision of law, general or special, the City of Richmond may cause such notice to be published in any newspaper of general circulation in the city.

G. When a proposed comprehensive plan or amendment of an existing plan designates or alters previously designated corridors or routes for electric transmission lines of 150 kilovolts or more, written notice shall also be given by the local planning commission, or its representative, at least 10 days before the hearing to each electric utility with a certificated service territory that includes all or any part of such designated electric transmission corridors or routes.

H. When any applicant requesting a written order, requirement, decision, or determination from the zoning administrator, other administrative officer, or a board of zoning appeals that is subject to the appeal provisions contained in § 15.2-2311 or 15.2-2314, is not the owner or the agent of the owner of the real property subject to the written order, requirement, decision or determination, written notice shall be given to the owner of the property within 10 days of the receipt of such request. Such written notice shall be given by the zoning administrator or other administrative officer or, at the direction of the administrator or officer, the requesting applicant shall be required to give the owner such notice and to provide satisfactory evidence to the zoning administrator or other administrative officer that the notice has been given. Written notice mailed to the owner at the last known address of the owner as shown on the current real estate tax assessment books or current real estate tax assessment records shall satisfy the notice requirements of this subsection.

This subsection shall not apply to inquiries from the governing body, planning commission, or employees of the locality made in the normal course of business.

(Code 1950, § 15-961.4; 1962, c. 407, § 15.1-431; 1964, c. 632; 1968, cc. 354, 714; 1973, cc. 117, 334; 1974, cc. 100, 570; 1975, c. 641; 1976, c. 642; 1977, c. 65; 1982, c. 291; 1990, c. 61; 1992, cc. 353, 757; 1993, cc. 128, 734; 1994, c. 774; 1995, c. 178; 1996, cc. 613, 667; 1997, c. 587; 2001, c. 406; 2002, c. 634; 2004, cc. 539, 799; 2005, c. 514; 2007, cc. 761, 813; 2011, c. 457; 2012, c. 548; 2013, cc. 149, 213.)

---

**Kenneth Stolarski  
13300 Rockahock Rd.  
Lanexa, VA 23089**

CUP-03-13

**Stanley Hula Jr.  
17303 Sandy Point Rd.  
Charles City, VA 23030**

CUP-03-13

**Brenda Brown  
12551 Pocahontas Trail  
Providence Forge, VA 23140**

CUP-03-13

**CSX Transportation Inc.  
500 Water Street  
Jacksonville, FL 32202**

CUP-03-13

**Hole in the Wall Club  
7100 River Road  
Richmond, VA 23229**

CUP-03-13

## MEMORANDUM

TO: Thomas Tiller, Jr.  
Jack Chalmers  
Howard Gammon  
Roger Gregory, IV  
Michael B. Lane, Sr.  
Charna Moss-Gregory  
Edward W. Pollard  
Richard Kontny, Jr.  
Katherine Butler  
Patricia E. Townsend  
Joyce B. Williams

From: Michelle M. Gowdy  
County Attorney

Re: Amendment of County Code Chapter 82 Environment

Date: October 8, 2013

Listed below are a summary of the changes to New Kent County Code Chapter 82 entitled "Environmental" which includes the new Stormwater regulations. The General Assembly in 2012 passed changes to the Virginia Code which requires that localities adhere to the new Stormwater Regulations with the Department of Environmental Quality overseeing the management of such programs. New Kent County was given a one-year extension in the implementation of this program; but the extension will expire and our program must be in place by July 1, 2014. These amendments incorporate the changes that are required by the Code and Regulations promulgated by the State.

Summary of the County Code Changes:

- Article I: In General (ADDITION OF MATERIALS THAT APPLY TO THE ENTIRE CHAPTER ON THE ENVIRONMENT)
  - Most definitions that apply to the entire chapter have been moved here to avoid redundancy in later articles. Definitions that are specific to articles/ordinances are left in those articles/ordinances.
  - Added section on severability.
  - Added section on hearings and appeals. The same was removed from the Erosion and Sediment Ordinance to avoid redundancy.
  - Change in number or sections reserved under this article to avoid renumbering conflicts later.
- Article II: VSMP Authority (NEW)

- Article II was formerly Erosion and Sediment Control (ESC). VSMP was inserted here in Article II—before ESC and Stormwater—because conceptually it is an umbrella program that encompasses and references those two later ordinances.
- Article II establishes the County as a VSMP authority as required by the Virginia Stormwater Management Act, giving authority to the County—by way of a VSMP Administrator—to regulate land-disturbing activities.
- Sets out requirements for when and where VSMP permits are required. The process of obtaining a permit makes references to the ESC and Stormwater Ordinances of New Kent County that already exist (though amended to meet the state requirements).
- For transparency, Stormwater Pollution Prevention Plan (SWPPP) and Pollution Prevention Plan (PPP) requirements are laid out, so that permit applicants are aware of all the steps needed to obtain the VSMP permit from the County. (*See the guidance flowchart for further explanation.*)
- Article III: Erosion and Settlement (MINOR CHANGES)
  - Moved from Article II to Article III; sections renumbered accordingly.
  - Definitions that are already covered by Article I are removed.
  - Section on appeals process removed (already covered by Article I).
  - Cross-references to Code sections updated to reflect changes in numbering.
- Article IV: Stormwater Management Ordinance (CHANGES TO TECHNICAL REQUIREMENTS)
  - Moved from Article III to Article IV; sections renumbered accordingly.
  - Definitions that are already covered by Article I are removed.
  - Section 82-93 references and adopts of the corresponding technical requirements of the State Act, which vary depending on the date of project approval.
  - Section 82-97 reflects the plan review requirements of the State Act.
  - Cross-references to Code sections updated to reflect changes in numbering.
  - Changes to “Purpose” reflect the Article’s role as an element of the overall VSMP.
  - Where state laws and regulations are referenced, the words “or subsequent revisions thereof” are inserted to avoid the need to revise the Code in the event of changes at the state level.
- Article V: Wetlands (MOVED)
  - Formerly Article IV, the ordinance is relabeled Article V, but no section number changes were necessary. The Article is otherwise exactly the same.
- Article VI: Sand Dunes and Beaches (MOVED)
  - Formerly Article V, now Article VI. The section numbers remain unchanged, and the content of the ordinance is exactly the same.

**Recommended Motion:** In order to address, protect, and promote public convenience, necessity, general welfare, and good zoning practices in the County, I move to adopt Resolution No. PC-11-13 to forward zoning text amendment ZT-03-13 to the New Kent County Board of Supervisors with a favorable recommendation.

**BOARD OF SUPERVISORS  
COUNTY OF NEW KENT  
VIRGINIA**

**O-\_\_-13**

At the regular meeting of the Board of Supervisors of the County of New Kent in the Boardroom of the Administration Building in New Kent, Virginia, on the \_\_<sup>th</sup> day of \_\_\_\_\_, 2013:

Present:

Vote:

James H. Burrell  
Thomas W. Evelyn  
Ron Stiers  
Tommy Tiller  
W. R. Davis, Jr.

Motion was made by \_\_\_\_, which carried \_\_: \_\_, to adopt the following ordinance:

***AN ORDINANCE REPEALING, AMENDING, RESTATING AND READOPTING  
STORMWATER MANAGEMENT TO THE NEW KENT COUNTY CODE OF  
ORDINANCES***

***WHEREAS***, the Commonwealth of Virginia is integrating stormwater management and erosion and sediment control into a unified stormwater program; and

***WHEREAS***, localities are tasked with administering the unified stormwater program pursuant to the Stormwater Management Act, Article 1.1 (10.1-603.2 et.seq.) of Chapter 6, Title 10.1 of the Code of Virginia or any subsequent revisions thereof; and

***WHEREAS***, the Board of Supervisors desires to protect the health, safety, welfare, and property of New Kent County residents and businesses and the quality of waters within the County;

***NOW THEREFORE BE IT ORDAINED*** that the New Kent County Code be repealed, amended, restated, and readopted as follows:

**Article I. In General**

**Sec. 82-01. Definitions.**

The following words and terms used in this Chapter have the following meanings unless the context clearly indicates a different meaning:

“Agreement in lieu of plan” means a contract between the plan-approving authority and the owner that specifies conservation measures that must be implemented in the construction of a single-family residence. This contract may be executed by the plan-approving authority in lieu of a formal or engineered site plan for the residence.

“Applicant” means any person submitting an application for a permit or requesting issuance of a permit under this Chapter.

“Best management practice” or “BMP” means schedules of activities, prohibitions of practices, including both structural and nonstructural practices, maintenance procedures, and other management practices to prevent or reduce the pollution of surface waters and groundwater systems from the impacts of land-disturbing activities. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

“Best management practice implementation plan” or “BMP Implementation Plan” is a site specific design plan for the implementation of BMPs on an individual lot or parcel within a larger common plan of development. The BMP Implementation plan documents compliance with the BMP pollutant load and volume reduction performance goals assigned to the individual lot or parcel as well as any applicable elements of the Pollution Prevention Plan (“PPP”), and Total Maximum Daily Load (“TMDL”), Action Plans of the Virginia Stormwater

Management Program (“VSMP”) Authority Permit issued by New Kent County for the larger common plan of development.

“Board” means the Virginia Soil and Water Conservation Board, or “VSWCB”.

“Certified combined administrator for ESC” means an employee or agent of a VESCP authority who holds a certificate of competence from the board in the combined ESC classifications of program administrator, plan reviewer, and project inspector in the area of ESC.

“Certified combined administrator for SWM” means an employee or agent of a VSMP authority who holds a certificate of competence from the board in the combined classifications of program administrator, plan reviewer, and project inspector in the area of SWM.

“Certified plan reviewer for ESC” means an employee or agent of a VESCP authority who: (i) holds a certificate of competence from the board in the classification of plan reviewer in the area of ESC; (ii) is licensed as a professional engineer, architect, certified landscape architect, or land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia; or (iii) is a professional soil scientist as defined in Chapter 22 (§ 54.1-2200 et seq.) of Title 54.1 of the Code of Virginia.

“Certified plan reviewer for SWM” means an employee or agent of a VSMP authority who holds a certificate of competence from the board in the classification of plan reviewer in the area of SWM.

"Certified program administrator for ESC" means an employee or agent of a VESCP authority who holds a certificate of competence from the board in the classification of program administrator in the area of ESC.

"Certified program administrator for SWM" means an employee or agent of a VSMP authority who holds a certificate of competence from the board in the classification of program administrator in the area of SWM.

"Certified project inspector for ESC" means an employee or agent of a VESCP authority who holds a certificate of competence from the board in the classification of project inspector in the area of ESC.

"Certified project inspector for SWM" means an employee or agent of a VSMP authority who holds a certificate of competence from the board in the classification of project inspector in the area of SWM.

"Combined administrator for ESC" means anyone who is responsible for performing the combined duties of a program administrator, plan reviewer and project inspector of a VESCP authority.

"Combined administrator for SWM" means anyone who is responsible for performing the combined duties of a program administrator, plan reviewer and project inspector of a VSMP authority.

"Chesapeake Bay Preservation Act land-disturbing activity" means a land-disturbing activity including clearing, grading or excavation that results in a land disturbance equal or greater than 2,500 square feet and less than one acre in all areas of jurisdictions designated as subject to the regulations adopted pursuant to the Chesapeake Bay Preservation Act, Code of Virginia, §10.1-2100, *et seq.*

"Clean Water Act" or "CWA" means the Federal Clean Water Act (33 USC 1251 *et seq.*), formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483, and Public Law 97-117, or any subsequent revisions thereto.

"Clearing" means any activity which removes the vegetative ground cover including, but not limited to, root mat removal and/or topsoil removal.

"Common plan of development or sale" means a contiguous area where separate and distinct construction activities may be taking place at different times on different schedules.

"Control measure" means any best management practice or other method used to prevent or reduce the discharge of pollutants to surface waters.

"County" means New Kent County, Virginia.

“Department” or “DEQ” Department of Environmental Quality.

“Development” means a tract of land developed or to be developed as a single unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain three or more residential dwelling units.

“Drainage area” means a land area, water area, or both from which runoff flows to a common point.

“Erosion Control Handbook” means the state adopted erosion and sediment control handbook or the equivalent with such amendments, modifications and supplements as may, from time to time, be properly adopted.

“Erosion Impact Area” means an area of land not associated with current land disturbing activity but subject to persistent soil erosion resulting in the delivery of sediment onto neighboring properties or into state waters. This definition shall not apply to any lot or parcel of land of 10,000 square feet or less used for residential purposes or to shorelines where the erosion results from wave action or other coastal processes.

“Excavating” means any digging, scooping or other method of removing earth materials.

“Flood Fringe” means the portion of the floodplain outside the floodway that is usually covered with water from the 100-year flood or storm event. This includes, but is not limited to, the flood or floodway fringe designated by the Federal Emergency Management Agency.

“Flooding” means a volume of water that is too great to be confined within the banks or walls of the stream, water body or conveyance system and that overflows onto adjacent lands, thereby causing or threatening damage.

“Floodplain” means the area adjacent to a channel, river, stream, or other water body that is susceptible to being inundated by water normally associated with the 100-year flood or storm event. This includes, but is not limited to, the floodplain designated by the Federal Emergency Management Agency.

“Flood-prone area” means the component of a natural or restored stormwater conveyance system that is outside the main channel. Flood-prone areas may include, but are not limited to, the floodplain, the floodway, the flood fringe, wetlands, riparian buffers, or other areas adjacent to the main channel.

“Filling” means any depositing or stockpiling of earth materials.

“Floodway” means the channel of a river or other watercourse and the adjacent land areas, usually associated with flowing water, that must be reserved in order to discharge the 100-year flood or storm event without cumulatively increasing the water surface elevation more than

one foot. This includes, but is not limited to, the floodway designated by the Federal Emergency Management Agency.

“General permit” means the permit issued by the Department of Environmental Quality, and titled the VSMP GENERAL PERMIT FOR DISCHARGES OF STORMWATER FROM CONSTRUCTION ACTIVITIES found at 4VAC 50-60-1170 or subsequent versions of the regulation authorizing a category of discharges under the Clean Water Act (“CWA”) and Virginia Stormwater Management Act within a geographical area of the Commonwealth of Virginia.

“Grading” means any excavating or filling of earth materials, or any combination thereof, including the land in it excavated or filled condition.

“Hydrologic Unit Code” or “HUC” means a watershed unit established in the most recent version of Virginia’s 6<sup>th</sup> Order National Watershed Boundary District.

“Impervious Cover” means a surface composed of material that significantly impedes or prevents natural infiltration of water into soil.

“Inspection” means an on-site review of the project’s compliance with the permit or the state permit, the VSMP, and any applicable design criteria, or an on-site review to obtain information or conduct surveys or investigations necessary in the implementation or enforcement of the Act and this Chapter.

“Karst area” means any land area predominantly underlain at the surface or shallow subsurface by limestone, dolomite, or other soluble bedrock regardless of any obvious surface karst features.

“Karst features” means sinkholes, sinking and losing streams, caves, large flow springs, and other such landscape features found in karst areas.

“Land disturbance” or “land-disturbing activity” means a manmade change to the land surface that potentially changes its runoff characteristics including any clearing, grading, or excavation except that the term shall not include those exemptions specified in Section 82-24 of this Article.

“Layout” means a conceptual drawing sufficient to provide for the specified stormwater management facilities required at the time of approval.

“Localized Flooding” means smaller scale flooding that may occur outside of a stormwater conveyance system. This may include high water, ponding, or standing water from stormwater runoff, which is likely to cause property damage or unsafe conditions.

“Main channel” means the portion of stormwater conveyance system that contains the base flow and small frequent storm events.

“Major modification” means, for the purposes of this Chapter, the modification or amendment of an existing state permit before its expiration that is not a minor modification as defined in this regulation.

“Maximum extent practicable” or “MEP” means the technology-based discharge standard for municipal separate storm sewer systems established by CWA §402(p). MEP is achieved, in part, by selecting and implementing effective structural and nonstructural best management practices (BMPs) and rejecting ineffective BMPs and replacing them with effective best management practices (BMPs). MEP is an iterative standard, which evolves over time as urban runoff management knowledge increases. As such, the operator’s MS4 program must continually be assessed and modified to incorporate improved programs, control measures, BMPs, etc., to attain compliance with water quality standards.

“Minor modification” means an amendment to an existing permit before its expiration not requiring extensive review and evaluation including, but not limited to, changes in EPA promulgated test protocols, increasing monitoring frequency requirements, changes in sampling locations, and changes to compliance dates within the overall compliance schedules. A minor permit modification or amendment does not substantially alter permit conditions, substantially increase or decrease the amount of surface water impacts, increase the size of the operation, or reduce the capacity of the facility to protect human health or the environment.

“Natural channel design concepts” means the utilization of engineering analysis based on fluvial geomorphic processes to create, rehabilitate, restore, or stabilize an open conveyance system for the purpose of creating or recreating a stream that conveys its bankfull storm event within its banks and allows larger flows to access its floodplain.

“Natural Stream” means a tidal or nontidal watercourse that is part of the natural topography. It usually maintains a continuous or seasonal flow during the year and is characterized as being irregular in cross-section with a meandering course. Constructed channels such as drainage ditches or swales shall not be considered natural streams; however, channels designed utilizing natural channel design concepts may be considered natural streams.

“Operator” means the owner or operator of any facility or activity subject to regulation under this Ordinance.

“Owner” means the owner of a freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receive, executor, trustee, lessee or other person, firm or corporation in control of a property.

“Peak flow rate” means the maximum instantaneous flow from a prescribed design storm at a particular location.

“Percent impervious” means the impervious area within the site divided by the area of the site multiplied by 100.

“Permittee” means the person to whom the Permit is issued.

“Person” means any individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, governmental body, including federal, state or local entity as applicable, any interstate body or any other legal entity.

“Point of discharge” means a location at which concentrated stormwater runoff is released.

“Post development” refers to conditions that reasonably may be expected or anticipated to exist after completion of the land development activity on a specific site.

“Predevelopment” refers to the conditions that exist at the time that plans for the land development of a tract of land are submitted to the plan approval VSMP authority. Where phased development or plan approval occurs (preliminary grading, demolition of existing structures, roads and utilities, etc.), the existing conditions at the time prior to the first item being submitted shall establish predevelopment conditions.

“Prior developed lands” means land that has been previously utilized for residential, commercial, industrial, institutional, recreation, transportation or utility facilities or structures, and that will have the impervious areas associated with those uses altered during a land-disturbance activity.

“Regulations” means the Virginia Stormwater Management Program (VSMP) Permit Regulations, 4 VAC 50-60-10, et seq., as amended, or subsequent revisions thereof.

“Resource management area” or “RMA” means that component of the Chesapeake Bay Preservation Area that is not classified as a resource protection area. RMAs 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 Bay Preservation Area comprised of lands at or near the shoreline that have 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.

“Responsible land disturber” means an individual from the project or development team, who will be in charge and responsible for carrying out a land disturbing activity covered by an approved plan or agreement in lieu of a plan, who (i) holds a responsible land disturber certificate of competence, (ii) holds a current certificate of competence from the board in the areas of combined administration, program administration, inspection, or plan review, (iii) holds

a current contractor certificate of competence for erosion and sediment control, or (iv) is licensed in Virginia as a professional engineer, architect, certified landscape architect or land surveyor pursuant to Section 54.1-400 *et seq.* of Chapter 4 of Title 54.1 of the Code of Virginia or any subsequent revisions thereof.

“Runoff” or “Stormwater Runoff” means that portion of precipitation that is discharged across the land surface or through conveyances to one or more waterways.

“Runoff characteristics” include maximum velocity, peak flow rate, and flow duration.

“Runoff volume” means the volume of water that runs off the site from a prescribed design storm.

“Single-family residence” means a noncommercial dwelling that is occupied exclusively by one family.

“Site” means the land or water area where any facility or activity is physically located or conducted, a parcel of land being developed, or a designated area of a parcel in which the land development project is located. Areas channelward of mean low water in tidal Virginia shall not be considered part of a site.

“Site hydrology” means the movement of water on, across, through and off the site as determined by parameters including, but not limited to, soil types, soil permeability, vegetative cover, seasonal water tables, slopes, land cover, and impervious cover.

“State” means the Commonwealth of Virginia.

“State Water Control Law” means Chapter 3.1 (62.1-44.2 *et seq.*) of Title 62.1 of the Code of Virginia or any subsequent revisions thereof.

“State waters” means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands.

“Stormwater” means precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff, and surface runoff and drainage.

“Stormwater conveyance system” means a combination of drainage components that are used to convey stormwater discharge, either within or downstream of the land-disturbing activity. This includes:

1. “Manmade stormwater conveyance system” means a pipe, ditch, vegetated swale, or other stormwater conveyance system constructed by man except for restored stormwater conveyance systems;

2. “Natural stormwater conveyance system” means the main channel of a natural stream and the flood-prone area adjacent to the main channel; or
3. “Restored stormwater conveyance system” means a stormwater conveyance system that has been designed and constructed using natural channel design concepts. Restored stormwater conveyance systems include the main channel and the flood-prone area adjacent to the main channel.

“Stormwater discharge associated with construction activity” means a discharge of stormwater runoff from areas where land-disturbing activities (e.g., clearing, grading, or excavation); construction materials or equipment storage or maintenance (e.g., fill piles, borrow area, concrete truck washout, fueling); or other industrial stormwater directly related to the construction process (e.g. concrete or asphalt batch plants) are located.

“Stormwater management facility” means a control measure that controls stormwater runoff and changes the characteristics of that runoff including, but not limited to, the quantity and quality, the period of release or the velocity of flow.

“Stormwater management plan” means a document(s) containing material for describing methods for complying with the requirements of Section 82-95 of this Chapter.

“Stormwater Pollution Prevention Plan” or “SWPPP” means a document that is prepared in accordance with good engineering practices and that identifies potential sources of pollution that may reasonably be expected to affect the quality of stormwater discharges from the construction site, and otherwise meets the requirements of this Chapter.

“Subdivision” means the same as defined in Section 91-5 of the New Kent County Subdivision Code entitled “Definitions.”

“Surface waters” means:

1. All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide;
2. All interstate waters, including interstate wetlands;
3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters (i) that are or could be used by interstate or foreign travelers for recreational or other purposes, (ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce, or (iii) that are used or could be used for industrial purposes by industries in interstate commerce;

4. All impoundments of waters otherwise defined as surface waters under this definition;
5. Tributaries of waters identified in subdivisions 1 through 4 of this definition;
6. The territorial sea; and
7. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in subdivisions 1 through 6 of this definition.

“Total maximum daily load” or “TMDL” means the sum of the individual wasteload allocations for point sources, load allocations for nonpoint sources, natural background loading and a margin of safety. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure. The TMDL process provides for point versus nonpoint source trade-offs.

“Transporting” means any moving of earth materials from one place to another, other than such movement incidental to grading when such movement results in destroying the vegetative ground cover either by tracking or by the buildup of earth materials to the extent that erosion and sedimentation will result from the soil or earth materials over which such transporting occurs.

“Virginia Stormwater Management Act” or “Act” means Article 1.1 (10.1-603.1 *et seq.*) of Chapter 6 of Title 10.1 of the Code of Virginia or any subsequent revision thereof.

“Virginia Stormwater BMP Clearinghouse website” means a website that contains detailed design standards and specifications for control measures that may be used in Virginia to comply with the requirements of the Virginia Stormwater Management Act and associated regulations.

“Virginia Stormwater Management Program” or “VSMP” means a program approved by the VSWCB after September 13, 2011, that has been established by a locality to manage the quality and quantity of runoff resulting from land-disturbing activities and shall include such items as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement, where authorized in this Article, and evaluation consistent with the requirements of this Article and associated regulations.

“Virginia Stormwater Management Program authority” or “VSMP authority” means an authority approved by the Board after September 13, 2011, to operate a Virginia Stormwater Management Program or, until such approval is given, the Department. An authority may include a locality; state entity, including the Department; federal entity; or, for linear projects subject to annual standards and specifications in accordance with subsection B of §10.1-603.5 of the Code of Virginia or any subsequent revisions thereof, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or

authorities created pursuant to §15.2-5102 of the Code of Virginia or any subsequent revisions thereof.

“VSMP Authority Permit” means an approval to conduct a land-disturbing activity issued by the Administrator for the initiation of a land-disturbing activity, in accordance with this Chapter, and which may only be issued after evidence of general permit coverage has been provided by the Department, where applicable.

“Wasteload Allocation” or “Wasteload” or “WLA” means the portion of a receiving surface water’s loading or assimilative capacity allocated to one of its existing or future point sources of pollution. WLAs are a type of water quality-based effluent limitation.

“Watershed” means a defined land area drained by a river or stream, karst system, or system of connecting rivers or streams such that all surface water within the area flows through a single outlet for the watershed.

“Wetlands” means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

#### **Sec. 82-02. Severability.**

If any of the Articles, sections, paragraphs, sentences, clauses, or phrases of this Chapter shall be declared unconstitutional or invalid by a valid judgment or decree of a court of competent jurisdiction, such unconstitutionality or invalidity shall not affect the validity of the Chapter in its entirety or any of the remaining Articles, sections, paragraphs, sentences, clauses, and phrases.

#### **Sec. 82-03. Hearings and Appeals.**

- (a) Any permit applicant, permittee, or person subject to the requirements of this Chapter, who is aggrieved by any action of New Kent County or its employees taken without a formal hearing, or by inaction of New Kent County or its employees, may demand in writing a formal hearing by the Board of Supervisors provided a petition requesting such hearing is filed with the Administrator within 30 days after notice of such action is given by the County.
- (b) The hearings held under this section shall be conducted by the Board of Supervisors at a regular or special meeting of the Board of Supervisors, or by at least one member of the Board of Supervisors designated by the Chairman to

conduct such hearings on behalf of the Board at any other time and place authorized by the Board of Supervisors.

- (c) A verbatim recording of the proceedings of such hearings shall be taken and filed with the Board of Supervisors. Depositions may be taken and read as in actions at law.
- (d) The Board of Supervisors or its designated member, as the case may be, shall have the power to issue subpoenas and subpoenas duces tecum, and at the request of any party shall issue such subpoenas. The failure of a witness without legal excuse to appear or testify or to produce documents shall be acted upon by the Board of Supervisors, or its designated member, which action may include the procurement of an order of enforcement from the circuit court. Witnesses who are subpoenaed shall receive the same fees and reimbursement for mileage as in civil actions.
- (e) Final decisions of the County under this Chapter shall be subject to review by the County Circuit Court, provided that an appeal is filed within 30 days of the date of any written decision by the administrator or the plan approving authority.

Secs. 82-04—82-19. Reserved.

## ~~Article II Erosion and Sediment Control~~

### ~~Sec. 82-31. Definitions.~~

~~The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:~~

~~*Administrator* means the county director of planning, or his designee.~~

~~*Agreement in lieu of a plan* means a contract between the plan approving authority and the owner which specifies conservation measures which must be implemented in the construction of a single family residence; this contract may be executed by the plan approving authority in lieu of a formal site plan.~~

~~*Applicant* means any person submitting an erosion and sediment control plan for approval or requesting the issuance of a permit, when required, authorizing land disturbing activities to commence.~~

~~*Best management practices or BMPs* means a practice, or a combination of practices, that is determined by a state or designated area wide planning agency to be the most effective, practical~~

means of preventing or reducing the amount of pollution generated by nonpoint sources to a level compatible with water quality goals.

*Board* means the state soil and water conservation board.

*Certified inspector* means an employee or agent of the program authority who:

(1)

Holds a certificate of competence from the board in the area of project inspection; or

(2)

Is enrolled in the board's training program for project inspection and successfully completes such program within one year after enrollment.

*Certified plan reviewer* means an employee or agent of a program authority who:

(1)

Holds a certificate of competence from the board in the area of plan review;

(2)

Is enrolled in the board's training program for plan review and successfully completes such program within one year of enrollment; or

(3)

Is licensed as a professional engineer, architect, certified landscape architect or land surveyor pursuant to Code of Virginia, § 54.1-400 et seq.

*Certified program administrator* means an employee or agent of a program authority who holds a certificate of competence from the board in the area of program administration or is enrolled in the board's training program for program administration and successfully completes such program within one year after enrollment.

*Chesapeake Bay Preservation Area* or *CBPA* means any land designated by the board of supervisors of the county pursuant to Part III of the Chesapeake Bay Preservation Area Designation and Management Regulations, VR 179-02-01, and Code of Virginia § 10.1-2109. A Chesapeake Bay Preservation Area shall consist of a resource protection area and a resource management area.

*Clearing* means any activity which removes the vegetative ground cover including, but not limited to, root mat removal and/or topsoil removal.

*County* means New Kent County, Virginia.

*Department* means the Virginia Department of Conservation and Recreation.

*Development* means a tract of land developed or to be developed as a single unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain three or more residential dwelling units.

*Director* means the director of the Virginia Department of Conservation and Recreation.

*District or soil and water conservation district* means the Colonial Soil and Water Conservation District.

*Erosion impact area* means an area of land not associated with current land-disturbing activity, but subject to persistent soil erosion resulting in the delivery of sediment onto neighboring properties or into state waters. This definition shall not apply to any lot or parcel of land of 10,000 square feet or less used for residential purposes or to shorelines where the erosion results from wave action or other coastal processes.

*Erosion and sediment control plan, conservation plan or plan* means a document containing material for the conservation of soil and water resources of a unit or a group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory and management information with needed interpretations, and a record of decisions contributing to conservation treatment. The plan shall contain all major conservation decisions to assure that the entire unit or units of land will be so treated as to achieve the conservation objectives.

*Excavating* means any digging, scooping or other method of removing earth materials.

*Filling* means any depositing or stockpiling of earth materials.

*Grading* means any excavating or filling of earth materials, or any combination thereof, including the land in it excavated or filled condition.

*Land disturbing activity* means any land change which may result in soil erosion from water or wind and the movement of sediments into state waters or onto lands in the commonwealth including, but not limited to, the clearing, grading, excavating, transporting and filling of land, except that the term shall not include:

- (1) Disturbed land areas of less than 2,500 square feet in size;
- (2) Minor land disturbing activities such as home gardens and individual home landscaping, repairs and maintenance;
- (3) Individual service connections;
- (4) Installation, maintenance or repair of any underground public utility lines when such activity occurs on an existing hard surfaced road, street or sidewalk, provided that such land disturbing activity is confined to the area of the road, street, or sidewalk which is hard surfaced;

- (5) ~~Septic tank lines or drainage fields unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;~~
- (6) ~~Surface or deep mining;~~
- (7) ~~Exploration or drilling for oil and gas, including the well site; roads, feeder lines and off site disposal areas;~~
- (8) ~~Tilling, planting or harvesting of agricultural, horticultural or forest crops, or livestock feedlot operations, including engineering operations and agricultural engineering options as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the Dam Safety Act, Code of Virginia, § 10.1-604 et seq., ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage and land irrigation. However, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Code of Virginia, § 10.1-1100 et seq., or is converted to bona fide agricultural or improved pasture use as described in Code of Virginia, § 10.1-1163(B);~~
- (9) ~~Repair or rebuilding of the tracks, right of way, bridges, communication facilities and other related structures and facilities of a railroad company;~~
- (10) ~~Installation of fenceposts and signposts or telephone and electric poles and other kinds of posts or poles;~~
- (11) ~~Shoreline erosion control projects on tidal waters when all of the land-disturbing activities are within the regulatory authority of and approved by local wetlands boards, the marine resources commission, or the United States Army Corps of Engineers; however, any associated land that is disturbed outside of this exempted area shall remain subject to this chapter and the regulations set forth herein; and~~
- (12) ~~Emergency work to protect life, limb or property, and emergency repairs; however, if the land-disturbing activity would have required an approved erosion and sediment control plan, if the activity were not an emergency, then the land area disturbed shall be shaped and stabilized in accordance with the requirements of the plan approving authority.~~

*Land-disturbing permit* means a permit issued by the program authority for the clearing, filling, excavating, grading, transporting of land or for any combination thereof for any purpose set forth in this article.

*Local erosion and sediment control program or program* means an outline of the various methods employed by the program authority to regulate land disturbing activities and thereby minimize erosion and sedimentation in compliance with the state program and may include such items as local ordinances, policies and guidelines, technical materials, inspection, enforcement and evaluation.

*Owner* means the owner of a freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee or other person, firm or corporation in control of a property.

*Permittee* means the person to whom the permit authorizing land disturbing activities is issued or the person who certifies that the approved erosion and sediment control plan will be followed.

*Person* means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town, or other political subdivision of this state, any interstate body, or any other legal entity.

*Plan approving authority* shall mean the planning department of the county.

*Program authority* means the county which has adopted a soil erosion and sediment control program approved by the board.

*Resource management area or RMA* means that component of the Chesapeake Bay Preservation Area that is not classified as a resource protection area. RMAs 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 Bay Preservation Area comprised of lands at or near the shoreline that have 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.

*Responsible land disturber* means an individual from the project or development team, who will be in charge of and responsible for carrying out a land disturbing activity covered by an approved plan, who (i) holds a responsible land disturber certificate of competence, (ii) holds a current certificate of competence from the board in the areas of combined administration, program administration, inspection, or plan review, (iii) holds a current contractor certificate of competence for erosion and sediment control, or (iv) is licensed in Virginia as a professional engineer, architect,

certified landscape architect or land surveyor pursuant to Code of Virginia, Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1.

~~Single-family residence means a noncommercial dwelling that is occupied exclusively by one family.~~

~~State erosion and sediment control program or state program means the program administered by the Virginia Soil and Water Conservation Board pursuant to the Code of Virginia, § 10.1-560 et seq., including regulations designed to minimize erosion and sedimentation.~~

~~State waters means all waters on the surface and under the ground, wholly or partially within or bordering the commonwealth or within its jurisdictions.~~

~~Transporting means any moving of earth materials from one place to another, other than such movement incidental to grading when such movement results in destroying the vegetative ground cover either by tracking or by the buildup of earth materials to the extent that erosion and sedimentation will result from the soil or earth materials over which such transporting occurs.~~

~~Wetlands means those areas that are inundated or saturated by surface water or groundwater at a frequency or duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.~~

~~(Ord. No. O-12-01, 11-5-2001; Ord. No. O-29-02, 12-9-2002; Ord. No. O-12-03, 11-3-2003)~~

~~State law reference—Similar provisions, Code of Virginia, § 10.1-560.~~

## ~~Sec. 82-32. Utility and railroad companies.~~

~~Construction, installation or maintenance of electric and telephone utility lines and natural gas pipelines, and the tracks, rights of way, bridges, communication facilities and other related structures and facilities of railroad companies must be conducted pursuant to Code of Virginia, § 10.1-563(D).~~

~~(Ord. No. O-12-01, 11-5-2001; Ord. No. O-29-02, 12-9-2002)~~

## ~~Sec. 82-33. Standards.~~

~~Pursuant to Code of Virginia, § 10.1-562, the county hereby adopts the regulations, references, guidelines, standards and specifications promulgated by the Virginia Soil and Water Conservation Board for the effective control of soil erosion and sedimentation deposition to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources. Said regulations, references, guidelines, standards, and specifications for erosion and sedimentation control are included in, but not limited to, the "Virginia Erosion and Sediment Control Regulations," the Virginia Stormwater Management Handbook, and the Virginia Erosion and Sediment Control Handbook, as amended from time to time.~~

*(Ord. No. O-12-01, 11-5-2001; Ord. No. O-29-02, 12-9-2002)*

**Sec. 82-34. Application.**

All development and redevelopment exceeding 2,500 square feet of land disturbances, including construction of all single-family houses, and septic tanks and drainfields relating to construction of buildings to be served thereby, shall be subject to a plan of development process, including the approval of a site plan in accordance with the provisions of chapter 98 or a subdivision plat in accordance with chapter 90. This section shall not apply to state agency projects except as provided for in Code of Virginia § 10.1-564.

*(Ord. No. O-12-01, 11-5-2001; Ord. No. O-29-02, 12-9-2002)*

**Sec. 82-35. Erosion and sediment control plan; requirements; fees.**

(a)

The plan required by section 82-34 shall include an erosion and sediment control plan detailing those methods and techniques to be utilized in the control of erosion and sedimentation. Where the land-disturbing activity results from the construction of a single-family residence, an agreement in lieu of a plan may be substituted for an erosion and sediment control plan if executed by the plan approving authority. The standards contained within the "Virginia Erosion and Sediment Control Regulations," the Virginia Stormwater Management Handbook, and the Virginia Erosion and Sediment Control Handbook, and as adopted by the county pursuant to section 82-33, are to be used by the applicant when making a submittal under the provisions of this article and in the preparation of an erosion and sediment control plan.

(b)

Pursuant to Code of Virginia § 10.1-561.1, an erosion and sediment control plan shall not be approved until it is reviewed by a certified plan reviewer.

(c)

Upon approval of an erosion and sediment control plan, a land-disturbing permit shall be issued. No such permit shall be issued until performance is secured as required by this article and all required fees have been paid.

(d)

A plan review and inspection fee shall be charged according to the fee ordinance of the county.

(e)

Except as otherwise allowed by law, no agency authorized under law to issue grading, building or other permits for activities involving land-disturbing activities may issue any such permits until the applicant therefor submits with his application evidence of a plan approved under the provisions of this article.

(f)

~~Where the land-disturbing activities involve lands under the jurisdictions of more than one local control program, an erosion and sediment control plan may, at the option of the applicant, be submitted to the state water control board for review and approval rather than to each jurisdiction concerned.~~

~~(g)~~

~~The preparation, submission and approval of an erosion and sediment control plan shall ultimately be the responsibility of the landowner.~~

~~(h)~~

~~Except as provided herein, no person may engage in any land-disturbing activities until he has submitted to the program authority an erosion and sediment control plan for the land-disturbing activity and such plan has been approved by the plan approving authority in conformance with this chapter.~~

~~(Ord. No. O 12 01, 11 5 2001; Ord. No. O 29 02, 12 9 2002)~~

~~Sec. 82-36. Plan submission; requirements and approval; bonding.~~

~~(a)~~

~~Erosion and sediment control plans shall be prepared and certified by a Virginia licensed professional engineer, architect, certified landscape architect or land surveyor.~~

~~(b)~~

~~Five copies of the erosion and sediment control plan shall be submitted to the administrator, and be accompanied by the following information:~~

~~(1)~~

~~Name, address and phone number of applicant.~~

~~(2)~~

~~Name, address and phone number of landowner of record.~~

~~(3)~~

~~Name, address and phone number of the person preparing the plan.~~

~~(4)~~

~~Location of the site including, but not limited to, road number, tax map reference and lot number.~~

~~(5)~~

~~Other information as determined by the administrator, which may include, but is not limited to, units of clearing and grading, wood lines, tree size, topography, soils, boundaries of areas designated as RPAs and/or RMAs pursuant to chapter 94 of this Code.~~

~~(e)~~

~~Upon submission of an erosion and sediment control plan to the administrator:~~

~~(1)~~

The plan approving authority shall, within 45 days, approve any such plan if it determines the plan meets the conservation standards adopted by this article and if the person responsible for carrying out the plan certifies that he will properly perform the erosion and sediment control measures included in the plan and will conform to the provisions of this article.

(2)

The plan approving authority shall act on all plans submitted within 45 days from their receipt by either approving such plan in writing or by disapproving such plan in writing and giving the specific reasons for its disapproval. When a plan submitted for approval under this article is found, upon review, to be inadequate, the plan approving authority shall specify such modifications, terms and condition as will permit approval of the plan and communicate those requirements to the applicant within 45 days.

(3)

If no action is taken by the plan approving authority within the time specified in this section, the plan shall be deemed approved and the person authorized to proceed with the proposed activity.

(d)

~~Surety. All control measures required by this article shall be undertaken at the expense of the owner or his agent; and pending actual compliance with the terms of this article, the owner or his agent shall execute and file with the administrator prior to the issuance of the land-disturbing permit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the county attorney, to pay the approximate total cost of providing the erosion and sediment control improvements and a reasonable allowance for estimated administrative costs and inflation which shall not exceed 25 percent of the estimated cost of the conservation action. The surety required by this section must be in a form approved by the county attorney, guaranteeing that the required control measures will be properly and satisfactory undertaken and maintained. Should it be necessary for the county to take such conservation action and call upon the Surety to pay for the control measures undertaken, due to the owner's failure, after proper notice, within the time specified in section ~~§2-40~~, to initiate or maintain appropriate conservation action, the county may also collect from the applicant any cost in excess of the amount of the surety held. The minimum performance bond with surety, cash escrow, letter of credit, or any combination thereof required under this section shall be \$500.00. Within 60 days of the adequate stabilization of the land disturbing activity such performance bond with surety, cash escrow, or letter of credit, or the unexpended or unobligated portion thereof, shall be released or refunded to the owner or his agent or terminated as the case may be. Adequate stabilization will consist of at least 85 percent vegetative cover. The administrator shall have the sole authority to determine whether adequate vegetation exists.~~

*(Ord. No. O-12-01, 11-5-2001; Ord. No. O-29-02, 12-9-2002; Ord. No. O-12-03, 11-3-2003)*

~~Sec. 82-37. Name of responsible land disturber.~~

~~As a prerequisite to engaging in the land disturbing activities shown on the approved plan, the person responsible for carrying out the plan shall provide the name of an responsible land disturber to the program authority as provided by Code of Virginia, § 10.1-561, who will be in charge of and responsible for carrying out the land disturbing activity in accordance with the approved plan. Failure to provide the name of the responsible land disturber may result in revocation of the approval of the plan and the person responsible for carrying out the plan and/or the responsible land disturber shall be subject to penalties as provided in this chapter.~~

~~(Ord. No. O-12-03, 11-3-2003)~~

~~Editor's note—~~

~~Ord. No. O-12-03, adopted Nov. 3, 2003, renumbered the former §§ ~~82-37~~ 82-42 as §§ ~~82-38~~ 82-43 and enacted a new § ~~82-37~~ as set out herein. The historical notation has been retained with the amended provisions for reference purposes.~~

~~Sec. 82-38. Amendment of plan.~~

~~An approved plan may be changed by the plan approving authority in the following cases:~~

~~(1)~~

~~Where inspection has revealed that the plan is inadequate to satisfy applicable regulations; or~~

~~(2)~~

~~Where the person responsible for carrying out the approved plan finds that because of changed circumstances or for other reasons the approved plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of this article, are agreed to by the plan approving authority and the person responsible for carrying out the plan.~~

~~(Ord. No. O-12-01, 11-5-2001; Ord. No. O-29-02, 12-9-2002; Ord. No. O-12-03, 11-3-2003)~~

~~State law reference—Similar provisions, Code of Virginia, 10.1-563.~~

~~Note—See the editor's note to § ~~82-37~~~~

~~Sec. 82-39. Designation of erosion impact area.~~

~~The program authority will require the approval of a conservation plan for any land identified as an erosion impact area in order to prevent further erosion.~~

~~(Ord. No. O-12-01, 11-5-2001; Ord. No. O-29-02, 12-9-2002; Ord. No. O-12-03, 11-3-2003)~~

~~State law reference—Code of Virginia, § 10.1-563(E).~~

*Note—See the editor's note to § 82-37*

**Sec. 82-40. Inspection and enforcement.**

(a)

Inspection and enforcement of this article shall rest with the administrator who is authorized to enter upon any property in the county when the administrator has reasonable cause to believe that a violation exists upon the property.

(b)

The plan approving authority shall provide for periodic on-site inspections as set forth in ~~VESCR 4 VAC 50-30-60B~~ and require that a responsible land disturber be in charge of and responsible for carrying out the land disturbing activity. Pursuant to Code of Virginia, § 10.1-566(A), the owner, permittee or person responsible for carrying out the plan shall be provided an opportunity to accompany the administrator. Notice of the right of inspection shall be included in all land disturbing permits issued. The administrator shall be responsible for developing and implementing a filing system for land disturbing projects. The responsible land disturber shall be required by the plan approving authority to periodically inspect the land disturbing activity.

(c)

Upon determination that a violation exists or that the permittee has failed to comply with the plan, the administrator shall prepare a notice to comply which shall contain a detailed description of the conservation measures necessary for compliance. Such notice shall be served upon the permittee or person responsible for carrying out the plan by registered or certified mail to the address specified by the permittee in the permit application. If no action is taken within 48 hours of delivery of the notice to comply, the permittee shall be deemed to be in violation of this article and shall be subject to the penalties set forth in section 82-43. If the permittee fails to comply within the 48 hours required by this section, the administrator may revoke the land disturbing permit and may issue a stop work order requiring that all or part of the land disturbing activities permitted on the site be stopped until the specified corrective measures have been taken or, if land disturbing activities have commenced without an approved plan, requiring that all of the land disturbing activities be stopped until an approved plan or any required permits are obtained. If a stop work order is issued, the administrator shall simultaneously file for appropriate relief with the circuit court. The administrator may also prepare a letter of intent to utilize the performance cash escrow or other legal arrangement to perform the conservation measures to correct the deficiency.

(1)

Except as provided in this subsection, the stop work order may be issued only after the alleged violator has failed to comply with a notice to comply. The stop work order shall be served in the same manner as a notice to comply, and shall remain in effect for seven days from the date of service pending application by the enforcing authority or alleged violator for appropriate relief to the circuit court. Where the

~~alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the commonwealth, or where the land-disturbing activities have commenced without an approved plan or any required permits, a stop work order may be issued whether or not the alleged violator has been issued a notice to comply.~~

~~(2)~~

~~If the administrator sends a letter of intent to utilize the performance guarantee to the permittee, it shall be sent by registered or certified mail. If no action is taken to correct the deficiencies within five days of the sending of the letter of intent to utilize the security, then the administrator shall proceed to authorize the corrective measures to be made and to recover the cost from the security.~~

~~(3)~~

~~If the alleged violator has not obtained an approved plan or any required permits within seven days from the date of service of the stop work order, the administrator may issue a second stop work order to the owner requiring that all construction and any other work on the site, other than corrective measures, be stopped until an approved plan and any required permits have been obtained.~~

~~(Ord. No. O-12-01, 11-5-2001; Ord. No. O-29-02, 12-9-2002; Ord. No. O-12-03, 11-3-2003)~~

~~Note—See the editor's note to § 82-37.~~

#### ~~Sec. 82-41. Administrative appeal; judicial review.~~

~~Final decisions of the administrator or the plan approving authority under this article shall be subject to review by the county circuit court, provided that an appeal is filed within 30 days of the date of any written decision by the administrator or the plan approving authority.~~

~~(Ord. No. O-12-01, 11-5-2001; Ord. No. O-29-02, 12-9-2002; Ord. No. O-12-03, 11-3-2003)~~

~~Note—See the editor's note to § 82-37.~~

#### ~~Sec. 82-42. Liability for land-disturbing activities.~~

~~Compliance with the provisions of this article shall be prima facie evidence in any legal or equitable proceeding for damages caused by erosion or sedimentation that all requirements of law have been met and the complaining party must show negligence in order to recover any damages.~~

~~(Ord. No. O-12-01, 11-5-2001; Ord. No. O-29-02, 12-9-2002; Ord. No. O-12-03, 11-3-2003)~~

~~Note—See the editor's note to § 82-37.~~

#### ~~Sec. 82-43. Civil penalties for violation of article.~~

~~(a)~~

~~Any violations of any regulation or order of the administrator, any provision of the program, any condition of a permit or any provision of this article shall upon a finding of an appropriate general district court or circuit court be subject to a civil penalty as set forth in subsection (b) of this section, except that the civil penalty for commencement of land-disturbing activities without an approved plan shall be \$1,000.00. Each day during which the violation is found to exist shall constitute a separate offence. In no event shall a series of specified violations arising from the same operative set of facts result in civil penalties which exceed a total of \$3,000.00, except that a series of violations arising from the commencement of land-disturbing activities without an approved plan for any site shall not result in civil penalties which exceed a total of \$10,000.00.~~

(b)

~~A civil penalty is hereby established for the violation of any state erosion and sediment control minimum standards as set forth in the Erosion and Sediment Control Handbook, in the amount of \$100.00 for any one violation.~~

(e)

~~Nothing in this section shall be deemed to limit the authority of the county to apply to the county circuit court for injunctive relief to enjoin a violation or threatened violation of this article, or to seek damages in a civil action, including but not limited to the recovery of any cost(s) incurred for conservation efforts undertaken by the county.~~

(d)

~~Without limiting the remedies which may be obtained in this section, any person violating or failing, neglecting or refusing to obey any injunction, mandamus or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to exceed \$2,000.00 for each violation. A civil action for such violation or failure may be brought by the locality wherein the land lies. Any civil penalties assessed by a court shall be paid into the treasury of the locality wherein the land lies, except that where the violator is the locality itself, or its agent, the court shall direct the penalty to be paid into the state treasury.~~

(e)

~~Any person who has violated or failed, neglected or refused to obey any regulation or order of the administrator or the plan approving authority, or any condition of a permit or any provision of this article, may consent to the payment of civil charges for violations in specific sums, as set forth in subsection (b) not to exceed the limit specified in subsection (d) of this section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under subsection (a) or (d).~~

*(Ord. No. O-12-01, 11-5-2001; Ord. No. O-29-02, 12-9-2002; Ord. No. O-12-03, 11-3-2003)*

*State law reference—Penalties, injunctions and other legal actions, Code of Virginia, § 10.1-562(D) and § 10.1-569.*

## Article II. VSMP Authority

### Sec. 82-20. Definitions.

The following words and terms used in this Article have the following meanings unless the context clearly indicates a different meaning:

“Administrator” means the Certified VSMP Program Administrator or his/her designated agent.

“Development” means land disturbance and the resulting landform associated with the construction of residential, commercial, industrial, institutional, recreation, transportation or utility facilities or structures or the clearing of land for non-agricultural or non-silvicultural purposes.

### Sec. 82-21. Establishment of New Kent County as a Virginia Stormwater Management Program Authority.

(a) In order to ensure the health, safety, and welfare of its citizens and to protect property, state waters, stream channels, and other natural resources from the potential harm of unmanaged stormwater, New Kent County is hereby designated as a Virginia Stormwater Management Program (“VSMP”) Authority. Following the guidance of the Virginia State Water Control Board (“VSWCB”), the County establishes procedures whereby stormwater requirements related to water quality and quantity shall be administered and enforced.

(b) Administration and enforcement of the VSMP shall be the duty of a Certified VSMP Administrator (“the Administrator”) and/or his or her designee.

(c) This ordinance is adopted pursuant to the Stormwater Management Act, Article 1.1 (§10.1-603.2 *et seq.*) of Chapter 6 of Title 10.1 of the Code of Virginia or any subsequent revisions thereof and any subsequent revisions thereof.

### Sec. 82-22. Land Disturbing Activities.

Except as provided in the exemptions found in section 82-24, no person may engage in any land-disturbing activity until a VSMP permit has been issued by the Administrator in accordance with the provisions of this Article. Furthermore, no grading, building or other permit shall be issued for property unless a VSMP authority permit has been issued by the Administrator.

**Sec. 82-23. VSMP Permit; Requirements.**

- (a) The Administrator shall issue a VSMP authority permit to applicants who:
- (1) Submit a VSMP permit application which includes:
- (A) The general permit registration statement;
- (B) An approved Erosion and Sediment Control ("ESC") Plan pursuant to sections 82-61 *et seq.* of this Chapter; and
- (C) A Stormwater Management Plan ("SWMP") approved by the Administrator pursuant to the requirements of sections 82-91 *et seq.* of this Chapter;
- (2) Provide evidence that general permit coverage has been issued by the State;
- (3) Pay all fees required pursuant to the New Kent County Fee Schedule and post the required surety; and
- (4) Demonstrate, through the application and other documentation, all land clearing, construction, disturbance, land development and drainage will be done according to the approved permit.
- (b) Permit applications shall be acted upon within 60 days after the Administrator has determined that the application is complete. The Administrator may either issue the permit or deny the permit and shall provide written rationale for the denial. Any permit application that has been previously denied shall be acted on within 45 days after the application has been revised, resubmitted for approval, and deemed complete.
- (c) VSMP Permits are issued for a term of five (5) years. Activity requiring a VSMP Permit may obtain coverage at any time during the permit term. Land-disturbing activities grandfathered pursuant to section 82-93 of this Chapter may remain subject to the technical criteria of Part 11(c) of the Virginia Stormwater Regulations for two (2) additional permit cycles provided coverage under the original VSMP Permit coverage is maintained. After two (2) permit cycles passed, or should the original VSMP Permit coverage not be maintained, portions of the project not under construction shall become subject to any new technical criteria adopted after original VSMP permit coverage was issued.

**Sec. 82-24. Exemptions.**

(a) Notwithstanding any other provisions of this Chapter, the following activities are exempt, unless otherwise required by federal law:

(1) Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted under the provisions of Title 45.1 of the Code of Virginia or any subsequent revisions thereof;

(2) Clearing of lands specifically for agricultural purposes and the management, tilling, planting, or harvesting of agricultural, horticultural, or forest crops, livestock feedlot operations, or as additionally set forth by the VSWCB in regulations, including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 of Title 10.1 of the Code of Virginia regarding (10.1-1100 *et seq.*) or is converted to bona fide agricultural or improved pasture use as described in subsection B of 10.1-1163 of the Code of Virginia or any subsequent revisions thereof ;

(3) Land disturbing activities, including modifications and additions to any existing activities, for which the disturbance is less than or equal to 2,500 square feet. This exemption does not apply if the activity is part of a larger common plan of development or sale that disturbs at least 2,500 square feet;

(4) Land disturbing activity of less than one acre, related to single-family residences that are not part of a larger plan of development. (This does not exempt these land disturbing activities from having to meet the requirements of the Chesapeake Bay Preservation Act.)

(5) Discharges to a sanitary sewer or a combined sewer system;

(6) Activities under a State or Federal reclamation program to return an abandoned property to an agricultural or open land use;

(7) Routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original construction of the project. The paving of an existing road with a compacted or impervious surface and reestablishment of existing associated ditches and shoulders shall be deemed routine maintenance if performed in accordance with this subsection; and

- (8) Conducting land disturbing activities in response to a public emergency where the related work requires immediate authorization to avoid imminent danger to human health or the environment. In such situations, the Administrator shall be advised of the disturbance within seven days of commencing the land-disturbing activity and compliance with the administrative requirements of Sec. 82-23 is required within 30 days of commencing the land-disturbing activity.

**Sec. 82-25. Stormwater Pollution Prevention Plan Requirements.**

- (a) A Stormwater Pollution Prevention Plan ("SWPPP"), required for the general permit issued by the State, shall include:
- (1) An approved Erosion and Settlement Control plan pursuant to Article 3, section 82-61 et seq, of this Chapter;
  - (2) A Stormwater Management Plan approved by the Administrator pursuant to the requirements Article 4, section 82-91 et seq., of this Chapter;
  - (3) A Pollution Prevention Plan ("PPP") consistent with the requirements of section 82-26 of this Chapter; and
  - (4) If a specific Wasteload Allocation ("WLA") for a pollutant has been established in a Total Maximum Daily Load ("TMDL") and is assigned to stormwater discharges from a construction activity, additional control measures must be identified and implemented by the operator so that discharges are consistent with the assumptions and requirements of the WLA in a State Water Control Board-approved TMDL.
- (b) The SWPPP must address the following requirements, to the extent otherwise required by state law or regulations and any applicable requirements of a state permit:
- (1) Control stormwater volume and velocity within the site to minimize soil erosion;
  - (2) Control stormwater discharges, including both peak flow rates and total stormwater volume, to minimize erosion at outlets and to minimize downstream channel and stream bank erosion;
  - (3) Minimize the amount of soil exposed during construction activity;
  - (4) Minimize the disturbance of steep slopes;

- (5) Minimize sediment discharges from the site. The design, installation and maintenance of erosion and sediment controls must address factors such as the amount, frequency, intensity and duration of precipitation, the nature of resulting stormwater runoff, and soil characteristics, including the range of soil particle sizes expected to be present on the site;
  - (6) Provide and maintain natural buffers around surface waters, direct stormwater to vegetated areas to increase sediment removal and maximize stormwater infiltration, unless infeasible;
  - (7) Minimize soil compaction and, unless infeasible, preserve topsoil;
  - (8) Stabilization of disturbed areas must, at a minimum, be initiated immediately whenever any clearing, grading, excavating, or other earth disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 calendar days. Stabilization must be completed within a period of time determined by the VSMP authority. In arid, semiarid, and drought-stricken areas where initiating vegetative stabilization measures immediately is infeasible, alternative stabilization measures must be employed as specified by the VSMP authority; and
  - (9) Utilize outlet structures that withdraw water from the surface, unless infeasible, when discharging from basins and impoundments.
- (c) The SWPPP shall be amended whenever there is a change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to state waters and that has not been previously addressed in the SWPPP. The SWPPP must be maintained at a central location onsite. If an onsite location is unavailable, notice of the SWPPP's location must be posted near the main entrance at the construction site.

**Sec. 82-26. Pollution Prevention Plan.**

- (a) PPP measures during construction activities shall be developed, implemented, and updated as necessary. The PPP shall detail the design, installation, implementation, and maintenance of effective pollution prevention measures to minimize the discharge of pollutants. At a minimum, such measures must be designed, installed, implemented, and maintained to:
  - (1) Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be

treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge;

(2) Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste, and other materials present on the site to precipitation and to stormwater; and

(3) Minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures.

(b) The PPP shall include effective best management practices to prohibit the following discharges:

(1) Wastewater from washout of concrete, unless managed by an appropriate control;

(2) Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction materials;

(3) Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; and

(4) Soaps or solvents used in vehicle and equipment washing.

(c) Discharges from dewatering activities, including discharges from dewatering of trenches and excavations, are prohibited unless managed by appropriate controls.

**Sec. 82-27. Applicability of and Conflicts with Other Laws and Regulations.**

(a) Nothing in this Article shall be construed as limiting the applicability of other laws, and regulations, including, but not limited to the Clean Water Act, the Virginia Stormwater Management Act, the Virginia Erosion and Sediment Control Law, and the Chesapeake Bay Preservation Act and all applicable regulations adopted in accordance with those laws with the following exception, compliance with the requirements of this Chapter shall be considered to meet the stormwater management requirements under the Chesapeake Bay Preservation Act (§10.1-2100 *et seq.*) and attendant regulations and Chapter 94 of the Code of New Kent County.

(b) Nothing in this Article shall be construed as limiting the rights of other federal agencies, state agencies, or the County to impose more stringent technical criteria or other requirements allowed by law. Whenever any provision of this Article

imposes a greater requirement or a higher standard than is required in any State or Federal statute or other County ordinance or regulation, the provision of this Article shall govern. Whenever any provision of any State or Federal statute or other County ordinance or regulation imposes a greater requirement or a higher standard than is required by the Article, the provision of such State or Federal statute or other County ordinance or regulation shall govern.

- (c) The Department of Environmental Quality shall consider any requirements imposed by this Article that are more stringent than those imposed by the Regulations and any requirements of a comprehensive stormwater management plan in its review of state agency projects.
- (d) Nothing in this Article shall be construed as authorizing the County to regulate, or to require prior approval by the County for, a state or federal project, unless authorized by separate statute.

**Sec. 82-28. Right of Entry.**

The Administrator, or any duly authorized agent of the Administrator, may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purposes of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this Article.

In order to assure compliance with the provisions of this chapter, and all applicable county ordinances, state and federal laws, orders or regulations, the Administrator or any duly authorized agent of the Administrator shall have the right to inspect any property, public, or private, within the county at any reasonable time. In the event that the Administrator or his agent shall be denied access to property, the Administrator or his agent may present sworn testimony to a magistrate or court of competent jurisdiction and if such sworn testimony establishes probable cause that a violation of this ordinance has occurred, required that the magistrate or court grant the Administrator or his agent an inspection warrant to enable the Administrator or his agent to enter the property for the purpose of determining whether a violation of this ordinance exists. The Administrator or his agent shall make a reasonable effort to obtain consent from the owner or occupant of the subject property prior to seeking the issuance of an inspection warrant under this section. It shall be a violation of this section for any person to deny the Administrator or his agent access to the property after the Administrator or his agent has obtained an inspection warrant from a magistrate or court of competent jurisdiction for the inspection of such property.

**Sec. 82-29. Long-term maintenance of permanent stormwater management facilities.**

- (a) The Administrator shall require the provision of long-term responsibility for and maintenance of stormwater management facilities and other techniques specified to manage the quality and quantity of runoff. Such requirements shall be set forth in an instrument recorded in the local land records prior to state permit termination or earlier as required by the Administrator and shall at a minimum:
- (1) Be submitted to the Administrator for review and approval prior to the approval of the stormwater management plan;
  - (2) Be stated to run with the land;
  - (3) Provide for all necessary access to the property for purposes of maintenance and regulatory inspections;
  - (4) Provide for inspections and maintenance and the submission of inspection and maintenance reports to the Administrator; and
  - (5) Be enforceable by all appropriate governmental parties.
- (b) At the discretion of the Administrator, such recorded instruments need not be required for stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot on which they are located, provided it is demonstrated to the satisfaction of the Administrator that future maintenance of such facilities will be addressed through an enforceable mechanism at the discretion of the Administrator.

**Sec. 82-30. Monitoring and Inspections.**

- (a) The Administrator shall inspect the land-disturbing activity during construction for:
- (1) Compliance with the approved ESC;
  - (2) Compliance with the approved SWMP;
  - (3) Development, updating, and implementation of a PPP; and
  - (4) Development and implementation of any additional control measures necessary to address a TMDL.

- (b) The Administrator shall establish an inspection program that ensures that stormwater management facilities are being adequately maintained as designed after completion of land-disturbing activities. Inspection programs shall:

  - (1) Be approved by the VSWCB;
  - (2) Ensure that each stormwater management facility is inspected by the Administrator or his/her designee, except as provided in subsections c and d of this section, at least once every five years; and
  - (3) Be documented by records.
- (c) The Administrator may utilize the inspection reports of the owner of a stormwater management facility as part of an inspection program established in subsection (b) of this section if the inspection is conducted by a person who:

  - (1) Is licensed as a professional engineer, architect, landscape architect, or land surveyor pursuant to Article 1 (§ 54.1-400 *et seq.*) of Chapter 4 of Title 54.1 of the Code of Virginia or any subsequent revisions thereof;
  - (2) Works under the direction and oversight of the licensed professional engineer, architect, landscape architect, or land surveyor; or
  - (3) Holds an appropriate certificate of competence from the VSWCB.
- (d) If a recorded instrument is not required pursuant to section 82-29, the Administrator shall develop a strategy for addressing maintenance of stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot on which they are located. Such a strategy may include periodic inspections, homeowner outreach and education, or other method targeted at promoting the long-term maintenance of such facilities. Such facilities shall not be subject to the requirement for an inspection to be conducted by the Administrator.

**Sec. 82-31. Enforcement.**

- (a) The Administrator may enforce the provisions of this Article as follows:

  - (1) Informal and formal administrative enforcement procedures may include:

    - (A) Verbal warnings and inspection reports;
    - (B) Notices of corrective action;

- (C) Consent special orders and civil charges in accordance with subdivision 7 of § 10.1-603.2:1 and § 10.1-603.14 D 2 of the Code of Virginia or any subsequent revisions thereof;
  - (D) Notices to comply in accordance with § 10.1-603.11 of the Code of Virginia or any subsequent revisions thereof;
  - (E) Special orders in accordance with subdivision 7 of § 10.1-603.2:1 of the Code of Virginia or any subsequent revisions thereof;
  - (F) Emergency special orders in accordance with subdivision 7 of § 10.1-603.2:1 of the Code of Virginia or any subsequent revisions thereof; and
  - (G) Public notice and comment periods for proposed settlements and consent special orders pursuant to 4 VAC 50-60-660 of the Virginia Stormwater Management Regulations or any subsequent revisions thereof.
- (2) Civil and criminal judicial enforcement procedures may include:
- (A) Schedule of civil penalties in accordance with § 10.1-603.14 of the Code of Virginia or any subsequent revisions thereof;
  - (B) Criminal penalties in accordance with § 10.1-603.14 B and C of the Code of Virginia or any subsequent revisions thereof; and
  - (C) Injunctions in accordance with §§ 10.1-603.12:4, 10.1-603.2:1 and 10.1-603.14 D 1 of the Code of Virginia or any subsequent revisions thereof.
- (b) The Administrator shall develop policies and procedures that outline the steps to be taken regarding enforcement actions under the Stormwater Management Act and this Article.
- (c) Pursuant to § 10.1-603.14 A of the Code of Virginia or any subsequent revisions thereof, the Administrator's authority shall use the following schedule of civil penalties for enforcement actions. A court of competent jurisdiction has the discretion to impose a maximum penalty of \$32,500 per violation per day in accordance with § 10.1-603.14 A of the Code of Virginia or any subsequent

revisions thereof. Such violation may reflect the degree of harm caused by the violation. The court may take into account the economic benefit to the violator from noncompliance. Such violations include, but are not limited to:

- (1) No state general permit registration;
  - (2) No SWPPP;
  - (3) Incomplete SWPPP;
  - (4) SWPPP not available for review;
  - (5) No approved Erosion and Sediment Control plan;
  - (6) Failure to install stormwater BMPs or Erosion and Sediment Controls;
  - (7) Stormwater BMPs or Erosion and Sediment Controls improperly installed or maintained;
  - (8) Operational deficiencies;
  - (9) Failure to conduct required inspections; and
  - (10) Incomplete, improper, or missed inspections.
- (d) Pursuant to subdivision 2 of § 10.1-603.2:1 of the Code of Virginia or any subsequent revisions thereof, authorization to administer a VSMP program shall not remove from the VSWCB the authority to enforce the provisions of the Stormwater Management Act and attendant regulations.
- (e) DEQ may terminate state permit coverage during its term and require application for an individual state permit or deny a state permit renewal application for failure to comply with state permit conditions or on its own initiative in accordance with the Stormwater Management Act and this Chapter.
- (f) Pursuant to § 10.1-603.14 A of the Code of Virginia or any subsequent revisions thereof, civil penalties recovered by the Administrator shall be paid into the treasury of the locality in which the violation occurred and are to be used for the purpose of minimizing, preventing, managing, or mitigating pollution of the

waters of the locality and abating environmental pollution therein in such manner as the court may, by order, direct.

**Sec. 82-32. Fees.**

Fees will be assessed pursuant to the fee schedule in Appendix A of the County Code.

**Secs. 82-33—82-60. Reserved.**

**Article III Stormwater Management**

**Sec. 82-71. Purpose of article.**

~~In addition to an erosion and sediment control 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 preliminary approval. The stormwater management plan shall provide adequate water quality protection in accordance with the goals and objectives of chapter 94, article II of this Code.~~

~~(Code 1999, § 9-11)~~

**Sec. 82-72. Stormwater management criteria.**

(a)

~~The following stormwater management options shall be considered adequate to control stormwater runoff:~~

(1)

~~Incorporation on the site of best management practices that achieve the required control as detailed in section 82-73~~

(2)

~~Compliance with a locally adopted regional stormwater management program incorporating pro rata share payments pursuant to the authority provided in Code of Virginia, § 15.2-2243 that results in achievement of equivalent water quality protection.~~

(3)

~~For a redevelopment site that is completely impervious as currently developed, restoring a minimum 20 percent of the site to vegetated open space.~~

(b)

~~Any maintenance, alteration, use or improvement to an existing structure which does not degrade the quality of surface water discharge, as determined by the county director of planning, may be exempted from the below stormwater management requirements.~~

(e)

~~Stormwater management criteria for redevelopment shall apply to any redevelopment, whether or not it is located within an intensely developed area designated by the county.~~

~~(Code 1999, § 9-12)~~

~~Sec. 82-73. Minimum requirements.~~

~~For any development or redevelopment, stormwater runoff shall be controlled by the use of best management practices that achieve the following:~~

~~(1)~~

~~The post-development peak runoff rate from a two-year storm and a ten-year storm, considered individually, shall not exceed the predevelopment rates.~~

~~(2)~~

~~For development, the post-development nonpoint source pollution runoff load shall not exceed the predevelopment load, based on the calculated average land cover conditions as determined by the director of planning. This subsection shall not apply to areas not located within a Chesapeake Bay Preservation Area.~~

~~(3)~~

~~For redevelopment sites, the existing nonpoint source pollution runoff load shall be reduced by at least ten percent. The county may waive or modify this requirement for redevelopment sites that originally incorporated best management practices for stormwater runoff quality control, provided that the following provisions are satisfied:~~

~~a.~~

~~In no case may the post-development nonpoint source pollution runoff load exceed the predevelopment load.~~

~~b.~~

~~Runoff pollution loads must have been calculated and the BMPs selected for the purpose of controlling nonpoint source pollution and to provide adequate quality control.~~

~~c.~~

~~If best management practices are structural, evidence shall be provided that facilities are currently in good working order and performing at the design levels of service. The director of planning may require a review of both the original structural design and maintenance plans to verify this subsection. A maintenance agreement will be required to ensure compliance with this article on forms acceptable to the county. This subsection shall not apply to areas not located within a Chesapeake Bay Preservation Area.~~

~~(4)~~

For redevelopment, both the predevelopment and post-development loadings shall be calculated by the same procedure. However, where the design data is available, the original post-development nonpoint source pollution loadings can be substituted for the existing development loadings.

*(Code 1999, § 9-13)*

~~Sec. 82-74. Exemptions and exceptions.~~

Exemptions and exceptions to the requirements of this article are contained in chapter 94, article II, Chesapeake Bay Preservation Areas, section 94-45 and section 94-46 of this Code.

*(Code 1999, § 9-14)*

~~Sec. 82-75. Contents.~~

(a)

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

(1)

Location and design of stormwater control devices and BMPs.

(2)

Procedures for implementing nonstructural stormwater control practices and techniques.

(3)

Predevelopment and post-development and nonpoint source pollution loading with supporting documentation of all utilized coefficients and calculations.

(4)

Predevelopment and post-development peak runoff rates from the site for both a two-year storm and ten-year storm, considered individually, with supporting documentation of all utilized coefficients and calculations.

(5)

For facilities, verification of structural soundness, including a professional engineer or class III-B surveyor certification.

(b)

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. A maintenance agreement shall be executed between the responsible party and the county.

*(Code 1999, § 9-15)*

~~Sec. 82-76. Performance assurances.~~

~~Performance assurances shall be provided that all BMPs required in plans of development shall be constructed to comply with the performance criteria set forth therein. The form of agreement and type of bond, letter of credit or other security shall be to the satisfaction of and approved by the county attorney. The amount of bond, letter of credit or other security and designated length of completion time shall be set by the director of planning.~~

~~(Code 1999, § 9-16)~~

### Article III. Erosion and Sediment Control

#### Sec. 82-61. Definitions.

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

“Administrator” means the county director of planning, or his designee.

“Director” means the director of the Virginia Department of Conservation and Recreation.

“District” or “soil and water conservation district” means the Colonial Soil and Water Conservation District.

“Erosion and sediment control plan,” “conservation plan,” or “plan” means a document containing material for the conservation of soil and water resources of a unit or a group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory and management information with needed interpretations, and a record of decisions contributing to conservation treatment. The plan shall contain all major conservation decisions to assure that the entire unit or units of land will be so treated as to achieve the conservation objectives.

“Land-disturbing permit” means a permit issued by the program authority for the clearing, filling, excavating, grading, transporting of land or for any combination thereof for any purpose set forth in this Article.

“Local erosion and sediment control program” or “program” means an outline of the various methods employed by the program authority to regulate land-disturbing activities and thereby minimize erosion and sedimentation in compliance with the state program and may include such items as local ordinances, policies and guidelines, technical materials, inspection, enforcement and evaluation.

“Plan approving authority” means the planning department of the county.

“Program authority” means the county which has adopted a soil erosion and sediment control program approved by the board.

“State erosion and sediment control program” or “state program” means the program administered by the Virginia Soil and Water Conservation Board pursuant to the Code of Virginia, § 10.1-560 et seq., including regulations designed to minimize erosion and sedimentation.

**Sec. 82-62. Utility and railroad companies.**

Construction, installation or maintenance of electric and telephone utility lines and natural gas pipelines, and the tracks, rights-of-way, bridges, communication facilities and other related structures and facilities of railroad companies must be conducted pursuant to Code of Virginia, § 10.1-563(D).

*(Ord. No. O-12-01, 11-5-2001; Ord. No. O-29-02, 12-9-2002)*

**Sec. 82-63. Standards.**

Pursuant to Code of Virginia, § 10.1-562, the county hereby adopts the regulations, references, guidelines, standards and specifications promulgated by the Virginia Soil and Water Conservation Board for the effective control of soil erosion and sedimentation deposition to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources. Said regulations, references, guidelines, standards, and specifications for erosion and sedimentation control are included in, but not limited to, the "Virginia Erosion and Sediment Control Regulations," the Virginia Stormwater Management Handbook, and the Virginia Erosion and Sediment Control Handbook, as amended from time to time.

*(Ord. No. O-12-01, 11-5-2001; Ord. No. O-29-02, 12-9-2002)*

**Sec. 82-64. Application.**

All development and redevelopment exceeding 2,500 square feet of land disturbances, including construction of all single-family houses, and septic tanks and drainfields relating to construction of buildings to be served thereby, shall be subject to a plan of development process, including the approval of a site plan in accordance with the provisions of Chapter 98 a subdivision plat in accordance with Chapter 90. This section shall not apply to state agency projects except as provided for in Code of Virginia § 10.1-564.

*(Ord. No. O-12-01, 11-5-2001; Ord. No. O-29-02, 12-9-2002)*

Sec. 82-65. Erosion and sediment control plan; requirements; fees.

- (a) The plan required by section 82-64 shall include an erosion and sediment control plan detailing those methods and techniques to be utilized in the control of erosion and sedimentation. Where the land-disturbing activity results from the construction of a single-family residence, an agreement in lieu of a plan may be substituted for an erosion and sediment control plan if executed by the plan approving authority. The standards contained within the "Virginia Erosion and Sediment Control Regulations," the Virginia Stormwater Management Handbook, and the Virginia Erosion and Sediment Control Handbook, and as adopted by the county pursuant to section 82-63, are to be used by the applicant when making a submittal under the provisions of this Article and in the preparation of an erosion and sediment control plan.
- (b) Pursuant to Code of Virginia § 10.1-561.1, an erosion and sediment control plan shall not be approved until it is reviewed by a certified plan reviewer.
- (c) Upon approval of an erosion and sediment control plan, a land-disturbing permit shall be issued. No such permit shall be issued until performance is secured as required by this Article and all required fees have been paid.
- (d) A plan review and inspection fee shall be charged according to the fee ordinance of the county.
- (e) Except as otherwise allowed by law, no agency authorized under law to issue grading, building or other permits for activities involving land-disturbing activities may issue any such permits until the applicant therefor submits with his application evidence of a plan approved under the provisions of this Article.
- (f) Where the land-disturbing activities involve lands under the jurisdictions of more than one local control program, an erosion and sediment control plan may, at the option of the applicant, be submitted to the state water control board for review and approval rather than to each jurisdiction concerned.
- (g) The preparation, submission and approval of an erosion and sediment control plan shall ultimately be the responsibility of the landowner.
- (h) Except as provided herein, no person may engage in any land-disturbing activities until he has submitted to the program authority an erosion and sediment control plan for the land-disturbing activity and such plan has been approved by the plan approving authority in conformance with this Chapter.

(Ord. No. O-12-01, 11-5-2001; Ord. No. O-29-02, 12-9-2002)

**Sec. 82-66. Plan submission; requirements and approval; bonding.**

- (a) Erosion and sediment control plans shall be prepared and certified by a Virginia licensed professional engineer, architect, certified landscape architect or land surveyor.
  
- (b) Five copies of the erosion and sediment control plan shall be submitted to the administrator, and be accompanied by the following information:
  - (1) Name, address and phone number of applicant.
  - (2) Name, address and phone number of landowner of record.
  - (3) Name, address and phone number of the person preparing the plan.
  - (4) Location of the site including, but not limited to, road number, tax map reference and lot number.
  - (5) Other information as determined by the administrator, which may include, but is not limited to, units of clearing and grading, wood lines, tree size, topography, soils, boundaries of areas designated as RPAs and/or RMAs pursuant to Chapter 94 of this Code.
  
- (c) Upon submission of an erosion and sediment control plan to the administrator:
  - (1) The plan approving authority shall, within 45 days, approve any such plan if it determines the plan meets the conservation standards adopted by this Article and if the person responsible for carrying out the plan certifies that he will properly perform the erosion and sediment control measures included in the plan and will conform to the provisions of this Article.
  - (2) The plan approving authority shall act on all plans submitted within 45 days from their receipt by either approving such plan in writing or by disapproving such plan in writing and giving the specific reasons for its disapproval. When a plan submitted for approval under this Article is found, upon review, to be inadequate, the plan approving authority shall specify such modifications, terms and condition as will permit approval of

the plan and communicate those requirements to the applicant within 45 days.

(3) If no action is taken by the plan approving authority within the time specified in this section, the plan shall be deemed approved and the person authorized to proceed with the proposed activity.

(d) Surety. All control measures required by this Article shall be undertaken at the expense of the owner or his agent; and pending actual compliance with the terms of this Article, the owner or his agent shall execute and file with the administrator prior to the issuance of the land-disturbing permit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the county attorney, to pay the approximate total cost of providing the erosion and sediment control improvements and a reasonable allowance for estimated administrative costs and inflation which shall not exceed 25 percent of the estimated cost of the conservation action. The surety required by this section must be in a form approved by the county attorney, guaranteeing that the required control measures will be properly and satisfactory undertaken and maintained. Should it be necessary for the county to take such conservation action and call upon the Surety to pay for the control measures undertaken, due to the owner's failure, after proper notice, within the time specified in section 82-70 to initiate or maintain appropriate conservation action, the county may also collect from the applicant any cost in excess of the amount of the surety held. The minimum performance bond with surety, cash escrow, letter of credit, or any combination thereof required under this section shall be \$500.00. Within 60 days of the adequate stabilization of the land-disturbing activity such performance bond with surety, cash escrow, or letter of credit, or the unexpended or unobligated portion thereof, shall be released or refunded to the owner or his agent or terminated as the case may be. Adequate stabilization will consist of at least 85 percent vegetative cover. The administrator shall have the sole authority to determine whether adequate vegetation exists.

(Ord. No. O-12-01, 11-5-2001; Ord. No. O-29-02, 12-9-2002; Ord. No. O-12-03, 11-3-2003)

**Sec. 82-67. Name of responsible land disturber.**

As a prerequisite to engaging in the land-disturbing activities shown on the approved plan, the person responsible for carrying out the plan shall provide the name of an responsible land disturber to the program authority as provided by Code of Virginia, § 10.1-561, who will be in charge of and responsible for carrying out the land-disturbing activity in accordance with the

approved plan. Failure to provide the name of the responsible land disturber may result in revocation of the approval of the plan and the person responsible for carrying out the plan and/or the responsible land disturber shall be subject to penalties as provided in this Chapter.

*(Ord. No. O-12-03, 11-3-2003)*

Editor's note—Ord. No. O-12-03, adopted Nov. 3, 2003, renumbered the former §§ 82-37—82-42 as §§ 82-38—82-43 and enacted a new § 82-37 as set out herein. The historical notation has been retained with the amended provisions for reference purposes.

**Sec. 82-68. Amendment of plan.**

- (a) An approved plan may be changed by the plan approving authority in the following cases:
- (1) Where inspection has revealed that the plan is inadequate to satisfy applicable regulations; or
  - (2) Where the person responsible for carrying out the approved plan finds that because of changed circumstances or for other reasons the approved plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of this Article, are agreed to by the plan approving authority and the person responsible for carrying out the plan.

*(Ord. No. O-12-01, 11-5-2001; Ord. No. O-29-02, 12-9-2002; Ord. No. O-12-03, 11-3-2003)*

State law reference— Similar provisions, Code of Virginia, 10.1-563.

Note—See the editor's note to § 82-37

**Sec. 82-69. Designation of erosion impact area.**

The program authority will require the approval of a conservation plan for any land identified as an erosion impact area in order to prevent further erosion.

*(Ord. No. O-12-01, 11-5-2001; Ord. No. O-29-02, 12-9-2002; Ord. No. O-12-03, 11-3-2003)*

State law reference— Code of Virginia, § 10.1-563(E).

Note—See the editor's note to § 82-37

**Sec. 82-70. Inspection and enforcement.**

- (a) Inspection and enforcement of this Article shall rest with the Administrator who is authorized to enter upon any property in the county when the Administrator has reasonable cause to believe that a violation exists upon the property.

- (b) The plan approving authority shall provide for periodic on-site inspections as set forth in VESCR 4 VAC 50-30-60B and require that a responsible land disturber be in charge of and responsible for carrying out the land-disturbing activity. Pursuant to Code of Virginia, § 10.1-566(A), the owner, permittee or person responsible for carrying out the plan shall be provided an opportunity to accompany the administrator. Notice of the right of inspection shall be included in all land-disturbing permits issued. The administrator shall be responsible for developing and implementing a filing system for land-disturbing projects. The responsible land disturber shall be required by the plan approving authority to periodically inspect the land-disturbing activity.
- (c) Upon determination that a violation exists or that the permittee has failed to comply with the plan, the administrator shall prepare a notice to comply which shall contain a detailed description of the conservation measures necessary for compliance. Such notice shall be served upon the permittee or person responsible for carrying out the plan by registered or certified mail to the address specified by the permittee in the permit application. If no action is taken within 48 hours of delivery of the notice to comply, the permittee shall be deemed to be in violation of this Article and shall be subject to the penalties set forth in section 82-72. If the permittee fails to comply within the 48 hours required by this section, the administrator may revoke the land-disturbing permit and may issue a stop work order requiring that all or part of the land-disturbing activities permitted on the site be stopped until the specified corrective measures have been taken or, if land-disturbing activities have commenced without an approved plan, requiring that all of the land-disturbing activities be stopped until an approved plan or any required permits are obtained. If a stop work order is issued, the administrator shall simultaneously file for appropriate relief with the circuit court. The administrator may also prepare a letter of intent to utilize the performance cash escrow or other legal arrangement to perform the conservation measures to correct the deficiency.
- (1) Except as provided in this subsection, the stop work order may be issued only after the alleged violator has failed to comply with a notice to comply. The stop work order shall be served in the same manner as a notice to comply, and shall remain in effect for seven days from the date of service pending application by the enforcing authority or alleged violator for appropriate relief to the circuit court. Where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the commonwealth, or where the land-disturbing activities have commenced without an approved plan or any required permits, a stop

work order may be issued whether or not the alleged violator has been issued a notice to comply.

- (2) If the administrator sends a letter of intent to utilize the performance guarantee to the permittee, it shall be sent by registered or certified mail. If no action is taken to correct the deficiencies within five days of the sending of the letter of intent to utilize the security, then the administrator shall proceed to authorize the corrective measures to be made and to recover the cost from the security.
- (3) If the alleged violator has not obtained an approved plan or any required permits within seven days from the date of service of the stop work order, the administrator may issue a second stop work order to the owner requiring that all construction and any other work on the site, other than corrective measures, be stopped until an approved plan and any required permits have been obtained.

*(Ord. No. O-12-01, 11-5-2001; Ord. No. O-29-02, 12-9-2002; Ord. No. O-12-03, 11-3-2003)*

*Note—See the editor's note to § 82-37*

**Sec. 82-71. Liability for land-disturbing activities.**

Compliance with the provisions of this Article shall be prima facie evidence in any legal or equitable proceeding for damages caused by erosion or sedimentation that all requirements of law have been met and the complaining party must show negligence in order to recover any damages.

*(Ord. No. O-12-01, 11-5-2001; Ord. No. O-29-02, 12-9-2002; Ord. No. O-12-03, 11-3-2003)*

*Note—See the editor's note to § 82-37*

**Sec. 82-72. Civil penalties for violation of Article.**

- (a) Any violations of any regulation or order of the administrator, any provision of the program, any condition of a permit or any provision of this Article shall upon a finding of an appropriate general district court or circuit court be subject to a civil penalty as set forth in subsection (b) of this section, except that the civil penalty for commencement of land-disturbing activities without an approved plan shall be \$1,000.00. Each day during which the violation is found to exist shall constitute a separate offence. In no event shall a series of specified violations arising from the same operative set of facts result in civil penalties which exceed a total of \$3,000.00, except that a series of violations arising from the

commencement of land-disturbing activities without an approved plan for any site shall not result in civil penalties which exceed a total of \$10,000.00.

- (b) A civil penalty is hereby established for the violation of any state erosion and sediment control minimum standards as set forth in the Erosion and Sediment Control Handbook, in the amount of \$100.00 for any one violation.
- (c) Nothing in this section shall be deemed to limit the authority of the county to apply to the county circuit court for injunctive relief to enjoin a violation or threatened violation of this Article, or to seek damages in a civil action, including but not limited to the recovery of any cost(s) incurred for conservation efforts undertaken by the county.
- (d) Without limiting the remedies which may be obtained in this section, any person violating or failing, neglecting or refusing to obey any injunction, mandamus or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to exceed \$2,000.00 for each violation. A civil action for such violation or failure may be brought by the locality wherein the land lies. Any civil penalties assessed by a court shall be paid into the treasury of the locality wherein the land lies, except that where the violator is the locality itself, or its agent, the court shall direct the penalty to be paid into the state treasury.
- (e) Any person who has violated or failed, neglected or refused to obey any regulation or order of the administrator or the plan approving authority, or any condition of a permit or any provision of this Article, may consent to the payment of civil charges for violations in specific sums, as set forth in subsection (b) not to exceed the limit specified in subsection (d) of this section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under subsection (a) or (d).

*(Ord. No. O-12-01, 11-5-2001; Ord. No. O-29-02, 12-9-2002; Ord. No. O-12-03, 11-3-2003)*

*State law reference— Penalties, injunctions and other legal actions, Code of Virginia, § 10.1-562(J) and § 10.1-569.*

*Note—See the editor's note to § 82-37*

Secs. 82-73—82-90. Reserved.

## Article IV. Stormwater Management

### Sec. 82-91. Purpose of Article.

This Article shall be known as the Stormwater Management Ordinance of New Kent. This purpose of this Article is to promote and protect the general health, safety, and welfare of the citizens of New Kent and to protect property, state waters, stream channels, and other natural resources from the potential harm of unmanaged stormwater, and to establish procedures whereby stormwater requirements related to water quality and quantity shall be administered and enforced.

### Sec. 82-92. Stormwater management criteria.

- (a) The following stormwater management options shall be considered adequate to control stormwater runoff:
- (1) Incorporation on the site of best management practices that achieve the required control as detailed in section 82-93;
  - (2) Compliance with a locally adopted regional stormwater management program incorporating pro rata share payments pursuant to the authority provided in Code of Virginia, § 15.2-2243 or any subsequent revisions thereof, that results in achievement of equivalent water quality protection; and
  - (3) For a redevelopment site that is completely impervious as currently developed, restoring a minimum 20 percent of the site to vegetated open space.
- (b) Any maintenance, alteration, use or improvement to an existing structure which does not degrade the quality of surface water discharge, as determined by the Administrator, may be exempted from the below stormwater management requirements.
- (c) Stormwater management criteria for redevelopment shall apply to any redevelopment, whether or not it is located within an intensely developed area designated by the County.

*(Code 1999, § 9-12)*

### Sec. 82-93. Technical requirements.

- (a) Except as provided in subsection (b), New Kent County hereby adopts the technical criteria for regulated land-disturbing activities set forth in Part II B of the Virginia Stormwater Management Regulations, as amended, expressly to include 4 VAC 50-60-62 et seq. or any subsequent revisions thereof.
- (b) Notwithstanding any other provisions of this Chapter, New Kent County hereby adopts the technical criteria for regulated land-disturbing activities set forth in Part II C of the Virginia Stormwater Management Regulations, as amended, expressly to include 4 VAC 50-60-93.1 et seq. or any subsequent revisions thereof, for the following regulated-land disturbing activities:
- (1) Until June 30, 2019, any land-disturbing activity for which a currently valid proffered or conditional zoning plan, preliminary or final subdivision plat, preliminary or final site plan or zoning with a plan of development, or any document determined by the locality as being equivalent thereto, was approved by a locality prior to July 1, 2012, and for which no coverage under the General Permit for Discharges of Stormwater from Construction Activities has been issued prior to July 1, 2014, shall be considered grandfathered by the VSMP authority and shall not be subject to the technical criteria of Part II B, but shall be subject to the technical criteria of Part II C for those areas that were included in the approval, provided that the VSMP authority finds that such proffered or conditional zoning plan, preliminary or final subdivision plat, preliminary or final site plan or zoning with a plan of development, or any document determined by the locality as being equivalent thereto, (i) provides for a layout and (ii) the resulting land-disturbing activity will be compliant with the requirements of Part II C. In the event that the locality-approved document is subsequently modified or amended in a manner such that there is no increase over the previously approved plat or plan in the amount of phosphorus leaving each point of discharge of the land-disturbing activity through stormwater runoff, and such that there is no increase over the previously approved plat or plan in the volume or rate of runoff, the grandfathering shall continue as before.
- (2) Until June 30, 2019, for locality, state, and federal projects for which there has been an obligation of locality, state, or federal funding, in whole or in part, prior to July 1, 2012, or for which the department has approved a stormwater management plan prior to July 1, 2012, such projects shall be considered grandfathered by the VSMP authority and shall not be subject to the technical criteria of Part II B, but shall be subject to the technical criteria of Part II C for those areas that were included in the approval.

- (3) For land-disturbing activities grandfathered under section 82-93(b) (1) and (2), construction must be completed by June 30, 2019, or portions of the project not under construction shall become subject to the technical criteria of Part II B.
  - (4) In cases where governmental bonding or public debt financing has been issued for a project prior to July 1, 2012, such project shall be subject to the technical criteria of Part II C.
  - (5) The Administrator may grant exceptions to the technical requirements of Part II B or Part II C of the Regulations, provided that:
    - (A) the exception is the minimum necessary to afford relief;
    - (B) reasonable and appropriate conditions are imposed so that the intent of the Act, the Regulations, and this Ordinance are preserved;
    - (C) granting the exception will not confer any special privileges that are denied in other similar circumstances; and
    - (D) exception requests are not based upon conditions or circumstances that are self-imposed or self-created. Economic hardship alone is not sufficient reason to grant an exception from the requirements of this Ordinance.
- (c) Nothing in this section shall preclude an operator from constructing to a more stringent standard at his discretion.

**Sec. 82-94. Exemptions and exceptions.**

Exemptions and exceptions to the requirements of this Article are contained in Chapter 94, Article II, Chesapeake Bay Preservation Areas, section 94-45 and section 94-46 of the County Code.

**Sec. 82-95. Contents.**

- (a) A SWMP shall be developed and submitted to the Administrator. The SWMP shall be implemented as approved or modified by the Administrator and shall be developed in accordance with the following:

- (1) A SWMP for a land-disturbing activity shall apply the stormwater management technical criteria set forth in section 82-93 to the entire land-disturbing activity.
  - (2) A SWMP shall consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to surface runoff.
- (b) A complete SWMP shall include the following elements:
- (1) Information on the type of and location of stormwater discharges, information on the features to which stormwater is being discharged including surface waters or karst features if present, and predevelopment and post development drainage areas;
  - (2) Contact information including the name, address, and telephone number of the owner and the tax reference number and parcel number of the property or properties affected;
  - (3) A narrative that includes a description of current site conditions and final site conditions or if allowed by the Administrator, the information provided and documented during the review process that addresses the current and final site conditions;
  - (4) A general description of the proposed stormwater management facilities and the mechanism through which the facilities will be operated and maintained after construction is complete;
  - (5) Information on the proposed stormwater management facilities, including (i) the type of facilities; (ii) location, including geographic coordinates; (iii) acres treated; and (iv) the surface waters or karst features into which the facility will discharge;
  - (6) Hydrologic and hydraulic computations, including runoff characteristics;
  - (7) Documentation and calculations verifying compliance with the water quality and quantity requirements of these regulations;
  - (8) A map or maps of the site that depicts the topography of the site and includes:
    - (A) All contributing drainage areas;

- (B) Existing streams, ponds, culverts, ditches, wetlands, other water bodies, and floodplains;
  - (C) Soil types, geologic formations if karst features are present in the area, forest cover, and other vegetative areas;
  - (D) Current land use including existing structures, roads, and locations of known utilities and easements;
  - (E) Sufficient information on adjoining parcels to assess the impacts of stormwater from the site on these parcels;
  - (F) The limits of clearing and grading, and the proposed drainage patterns on the site;
  - (G) Proposed buildings, roads, parking areas, utilities, and stormwater management facilities; and
  - (H) Proposed land use with tabulation of the percentage of surface area to be adapted to various uses, including but not limited to planned locations of utilities, roads, and easements;
- (9) If an operator intends to meet the requirements established in 4 VAC 50-60-63 or 4 VAC 50-60-66 through the use of off-site compliance options, where applicable, then a letter of availability from the off-site provider must be included; and
- (10) If payment of a fee is required with the SWMP submission by the Administrator pursuant to the fee schedule in Appendix A, the fee and the required fee form must have been submitted.
- (c) Elements of the SWMP that include activities regulated under Chapter 4 (§ 54.1-400 *et seq.*) of Title 54.1 of the Code of Virginia shall be appropriately sealed and signed by a professional registered in the Commonwealth of Virginia pursuant to Article 1 (§ 54.1-400 *et seq.*) of Chapter 4 of Title 54.1 of the or any subsequent revisions thereof.
- (d) A construction record drawing for permanent stormwater management facilities shall be submitted to the Administrator in accordance with the Virginia Stormwater Management Regulations of 4 VAC 50-60-108 and 4 VAC 50-60-112 or any subsequent revisions thereof. The construction record drawing shall be appropriately sealed and signed by a professional registered in the

Commonwealth of Virginia, certifying that the stormwater management facilities have been constructed in accordance with the approved plan.

(Code 1999, § 9-15)

**Sec. 82-96. Performance assurances.**

Performance assurances shall be provided that all BMPs required in plans of development shall be constructed to comply with the performance criteria set forth therein. The form of agreement and type of bond, letter of credit or other security shall be to the satisfaction of and approved by the county attorney. The amount of bond, letter of credit or other security and designated length of completion time shall be set by the Administrator.

(Code 1999, § 9-16)

**Sec. 82-97. Stormwater Management Plan Review.**

- (a) The Administrator shall review and approve stormwater management plans.
- (b) The Administrator shall approve or disapprove a stormwater management plan according to the following:
  - (1) The Administrator shall determine the completeness of a plan in accordance with section 82-95 and shall notify the applicant of any determination within 15 calendar days of receipt. Where available to the applicant, email or equivalent electronic communication may be considered communication in writing.
    - (A) If within those 15 calendar days the plan is deemed to be incomplete, the applicant shall be notified in writing of the reasons the plan is deemed incomplete.
    - (B) If a determination of completeness is made and communicated to the applicant within the 15 calendar days, an additional 60 calendar days from the date of the communication will be allowed for the review of the plan.
    - (C) If a determination of completeness is not made and communicated to the applicant within the 15 calendar days, the plan shall be deemed complete as of the date of submission and a total of 60

calendar days from the date of submission will be allowed for the review of the plan.

(D) The Administrator shall review any plan that has been previously disapproved within 45 calendar days of the date of resubmission.

(2) During the review period, the plan shall be approved or disapproved and the decision communicated in writing to the person responsible for the land-disturbing activity or his designated agent. If the plan is not approved, the reasons for not approving the plan shall be provided in writing. Approval or denial shall be based on the plan's compliance with the requirements of this Chapter and of the Administrator. Where available to the applicant, email or equivalent electronic communication may be considered communication in writing.

(3) If a plan meeting all requirements of this Chapter and of the Administrator is submitted and no action is taken within the time specified above, the plan shall be deemed approved.

(c) Each approved plan may be modified in accordance with the following:

(1) Modifications to an approved stormwater management plan shall be allowed only after review and written approval the Administrator. The Administrator shall have 60 calendar days to respond in writing either approving or disapproving such requests.

(2) Based upon an inspection, the Administrator may require amendments to the approved stormwater management plan to address any deficiencies within a time frame set by the stormwater program administrative authority.

(d) The Administrator shall be required to obtain evidence of state permit coverage, where it is required, prior to providing approval to begin land disturbance.

(e) The Administrator shall require the submission of a construction record drawing for permanent stormwater management facilities in accordance with 4 VAC 50-60-55 of the Virginia Stormwater Management Regulations. The Administrator may elect not to require construction record drawings for stormwater management facilities for which maintenance agreements are not required pursuant to 4 VAC 50-60-112.

Secs. 82-98—82-110. Reserved.

~~Article IV. Wetlands.~~

Article V. Wetlands (only renumbered, no text changes)

Sec. 82-111. Wetlands board.

(a)

There is hereby created a wetlands board in the county which shall consist of five residents of the county appointed by the board of supervisors. All board members' terms of office shall be for five years, and the term of one board member shall expire each year. The chairman of the wetlands board shall notify the board of supervisors at least 30 days in advance of the expiration of any term of office, and shall also notify the board of supervisors promptly if any vacancy occurs. Such vacancy shall be filled by the board of supervisors without delay upon receipt of such notice. Appointments to fill vacancies shall be only for the unexpired portion of the term. Members may serve successive terms. Members of the wetlands board shall hold no other public office in the county except that they may be members of the planning commission, director of soil and water conservation boards, or members of the board of zoning appeals. A member whose term expires shall continue to serve until his successor is appointed and qualified. When members of the wetlands board are also members of the planning commission, directors of soil and water conservation boards, or members of the board of zoning appeals, their terms of appointment to the wetlands board shall be coterminous with their membership on such other boards.

(b)

The wetlands board shall elect from its membership a chairman and such other officers as it deems necessary who shall serve one-year terms as such and may succeed themselves. For the conduct of any hearing and the taking of any action, a quorum shall not be less than three members of the board. The board may make, alter and rescind rules and forms for its procedures consistent with the ordinances of the county and the general laws of the commonwealth. The board shall keep a full public record of its proceedings and shall submit a report of its activities to the board of supervisors at least once a year and a copy of its report to the state marine resources commission.

(c)

The board of supervisors shall supply reasonable meeting space and such reasonable secretarial, clerical, legal and consulting services as may be needed by the wetlands board. Any wetlands board member may be removed for malfeasance, misfeasance or nonfeasance

in office, or for other just causes by the board of supervisors after a hearing held after at least 15 days' notice to such board member.

*(Code 1999, § 9-20)*

*Cross reference— Boards and commissions, § 2-111 et seq.*

**Secs. 82-112—82-130. Reserved.**

**Sec. 82-131. Adoption of division.**

The county board of supervisors acting pursuant to Code of Virginia, § 28.2-1300 et seq., adopts this division regulating the use and development of wetlands.

*State law reference— Similar provisions, Code of Virginia, § 28.2-1302(1).*

**Sec. 82-132. Definitions.**

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Back Bay and its tributaries* means the following, as shown on the United States Geological Survey Quadrangle Sheets for Virginia Beach, North Bay and Knotts Island: Back Bay north of the Virginia-North Carolina state line; Capsies Creek north of the Virginia-North Carolina state line; Deal Creek; Devil Creek; Nawney Creek; Redhead Bay, Sand Bay, Shipp's Bay, North Bay, and the waters connecting them; Beggars Bridge Creek; Muddy Creek; Ashville Bridge Creek; Hells Point Creek; Black Gut; and all coves, ponds and natural waterways adjacent to or connecting with the above-named bodies of water.

*Commission* means the state marine resources commission.

*Commissioner* means the state commissioner of marine resources.

*Governmental activity* means any of the services provided by this county to its citizens for the purpose of maintaining this county including, but not limited to, such services as constructing, repairing and maintaining roads; providing sewage facilities and streetlights; supplying and treating water; and constructing public buildings.

*Nonvegetated wetlands* means unvegetated lands lying contiguous to mean low water and between mean low water and mean high water, including those unvegetated areas of Back Bay and its tributaries and the North Landing River and its tributaries subject to flooding by normal and wind tides but not hurricane or tropical storm tides.

*North Landing River and its tributaries* means the following, as shown on the United States Geological Survey Quadrangle Sheets for Pleasant Ridge, Creeds, and Fentress: the North Landing River from the Virginia-North Carolina line to Virginia Highway 165 at North Landing Bridge; the

Chesapeake and Albemarle Canal from Virginia Highway 165 at North Landing Bridge to the locks at Great Bridge; and all named and unnamed streams, creeks and rivers flowing into the North Landing River and the Chesapeake and Albemarle Canal except West Neck Creek north of Indian River Road, Pocatoy River west of Blackwater Road, Blackwater River west of its forks located at a point approximately 6,400 feet due west of the point where Blackwater Road crosses the Blackwater River at the Village of Blackwater, and Millbank Creek west of Blackwater Road.

*Person* means any individual, corporation, partnership, association, company, business, trust, joint venture, or other legal entity.

*Vegetated wetlands* means lands lying between and contiguous to mean low water and an elevation above mean low water equal to the factor 1½ times the mean tide range at the site of the proposed project in the county, and upon which is growing any of the following species: saltmarsh cordgrass (*Spartina alterniflora*), saltmeadow hay (*Spartina patens*), saltgrass (*Distichlis spicata*), black needlerush (*Juncus roemerianus*), saltwort (*Salicornia* spp.), sea lavender (*Limonium* spp.), marsh elder (*Iva frutescens*), groundsel bush (*Baccharis halimifolia*), wax myrtle (*Myrica* sp.), sea oxeye (*Borrichia frutescens*), arrow arum (*Peltandra virginica*), pickerelweed (*Pontederia cordata*), big cordgrass (*Spartina cynosuroides*), rice cutgrass (*Leersia oryzoides*), wildrice (*Zizania aquatica*), bulrush (*Scirpus validus*), spikerush (*Eleocharis* sp.), sea rocket (*Cakile edentula*), southern wildrice (*Zizaniopsis miliacea*), cattail (*Typha* spp.), three-square (*Scirpus* spp.), buttonbush (*Cephalanthus occidentalis*), bald cypress (*Taxodium distichum*), black gum (*Nyssa sylvatica*), tupelo (*Nyssa aquatica*), dock (*Rumex* spp.), yellow pond lily (*Nuphar* sp.), marsh fleabane (*Pluchea purpurascens*), royal fern (*Osmunda regalis*), marsh hibiscus (*Hibiscus moscheutos*), beggar's tick (*Bidens* sp.), smartweed (*Polygonum* sp.), arrowhead (*Sagittaria* spp.), sweet flag (*Acorus calamus*), water hemp (*Amaranthus cannabinus*), reed grass (*Phragmites communis*), or switch grass (*Panicum virgatum*).

*Vegetated wetlands of Back Bay and its tributaries* and *vegetated wetlands of the North Landing River and its tributaries* mean all marshes subject to flooding by normal and wind tides but not hurricane or tropical storm tides, and upon which is growing any of the following species: saltmarsh cordgrass (*Spartina alterniflora*), saltmeadow hay (*Spartina patens*), black needlerush (*Juncus roemerianus*), marsh elder (*Iva frutescens*), groundsel bush (*Baccharis halimifolia*), wax myrtle (*Myrica* sp.), arrow arum (*Peltandra virginica*), pickerelweed (*Pontederia cordata*), big cordgrass (*Spartina cynosuroides*), rice cutgrass (*Leersia oryzoides*), wildrice (*Zizania aquatica*), bulrush (*Scirpus validus*), spikerush (*Eleocharis* sp.), cattail (*Typha* spp.), three-square (*Scirpus* spp.), dock (*Rumex* sp.), smartweed (*Polygonum* sp.), yellow pond lily (*Nuphar* sp.), royal fern (*Osmunda regalis*), marsh hibiscus (*Hibiscus moscheutos*), beggar's tick (*Bidens* sp.), arrowhead (*Sagittaria* sp.), water hemp (*Amaranthus cannabinus*), reed grass (*Phragmites communis*), or switch grass (*Panicum virgatum*).

*Wetlands* means both vegetated and nonvegetated wetlands.

*Wetlands board and board* mean the New Kent Wetlands Board, created pursuant to Code of Virginia, § 28.2-1303.

*(Code 1999, § 9-21)*

*Cross reference— Definitions generally, § 1-2.*

*State law reference— Similar provisions, Code of Virginia, § 28.2-1302(2).*

### **Sec. 82-133. Authorized uses and activities.**

The following uses of and activities in wetlands are authorized if otherwise permitted by law:

- (1)  
The construction and maintenance of noncommercial catwalks, piers, boathouses, boat shelters, fences, duckblinds, wildlife management shelters, footbridges, observation decks and shelters and other similar structures, provided that such structures are so constructed on pilings as to permit the reasonably unobstructed flow of the tide and preserve the natural contour of the wetlands;
- (2)  
The cultivation and harvesting of shellfish and worms for bait;
- (3)  
Noncommercial outdoor recreational activities, including hiking, boating, trapping, hunting, fishing, shellfishing, horseback riding, swimming, skeet and trap shooting, and shooting on shooting preserves, provided that no structure shall be constructed except as permitted in subsection (1) of this section;
- (4)  
Other outdoor recreational activities provided that they do not impair the natural functions or alter the natural contour of the wetlands;
- (5)  
Grazing, haying and cultivating and harvesting agricultural, forestry or horticultural products;
- (6)  
Conservation, repletion and research activities of the commission, the Virginia Institute of Marine Science, the state department of game and inland fisheries and other conservation-related agencies;
- (7)  
The construction or maintenance of aids to navigation which are authorized by governmental authority;
- (8)  
Emergency measures decreed by any duly appointed health officer of a governmental subdivision acting to protect the public health;

(9)

The normal maintenance and repair of, or addition to, presently existing roads, highways, railroad beds or facilities abutting on or crossing wetlands, provided that no waterway is altered and no additional wetlands are covered;

(10)

Governmental activity in wetlands owned or leased by the commonwealth or a political subdivision thereof; and

(11)

The normal maintenance of manmade drainage ditches, provided that no additional wetlands are covered. This subsection does not authorize the construction of any drainage ditch.

*(Code 1999, § 9-22)*

*State law reference— Similar provisions, Code of Virginia, § 28.2-1302(3).*

#### **Sec. 82-134. Applications, maps and documents are public records.**

All applications, maps and documents submitted under this division shall be open for public inspection at the office of the county director of planning.

*(Code 1999, § 9-24)*

*State law reference— Similar provisions, Code of Virginia, § 28.2-1302(5).*

#### **Sec. 82-135. Fulfillment of responsibilities of the board.**

In fulfilling its responsibilities under this division, the board shall preserve and prevent the despoliation and destruction of wetlands within its jurisdiction while accommodating necessary economic development in a manner consistent with wetlands preservation.

*State law reference— Similar provisions, Code of Virginia, § 28.2-1302(9).*

#### **Sec. 82-136. Violations; penalties.**

(a)

No person shall conduct any activity which would require a permit under this division unless such person has a permit therefor.

(b)

Any person who knowingly, intentionally, negligently or continually violates any order, rule or regulation of the wetlands board, or violates any provision of this division, or any provision of a permit granted by the wetlands board, shall be guilty of a class 1 misdemeanor.

(c)

Upon the petition of the commission or the wetlands board to the county circuit court, when any act is done or threatened which is unlawful under this division, the court may enjoin the

unlawful act and order the defendant to take any steps necessary to restore, protect and preserve the wetlands involved. This remedy shall be exclusive of and in addition to any criminal penalty which may be imposed under subsection (b) of this section.

*(Code 1999, § 9-30)*

*State law reference— Similar provisions, Code of Virginia, §§ 28.2-1318, 28.2-1319.*

**Secs. 82-137—82-160. Reserved.**

**Sec. 82-161. Required; application.**

(a)

Any person who desires to use or develop any wetland within this county, other than for the purpose of conducting the activities specified in section 82-133, shall first file an application for a permit directly with the wetlands board or with the commission.

(b)

The permit application shall include the following: the name and address of the applicant; a detailed description of the proposed activities; a map, drawn to an appropriate and uniform scale, showing the area of wetlands directly affected, the location of the proposed work thereon, the area of existing and proposed fill and excavation, the location, width, depth and length of any proposed channel and disposal area, and the location of all existing and proposed structures, sewage collection and treatment facilities, utility installations, roadways, and other related appurtenances or facilities, including those on adjacent uplands; a description of the type of equipment to be used and the means of equipment access to the activity site; the names and addresses of owners of record of adjacent land and known claimants of water rights in or adjacent to the wetland of whom the applicant has notice; an estimate of cost; the primary purpose of the project; any secondary purposes of the project, including further projects; the public benefit to be derived from the proposed project; a complete description of measures to be taken during and after the alteration to reduce detrimental off-site effects; the completion date of the proposed work, project or structure; and such additional materials and documentation as the wetlands board may require.

(c)

A nonrefundable processing fee as provided in appendix A to this Code shall accompany each permit application. The fee is set by the board of supervisors with due regard for the services to be rendered, including the time, skill and administrator's expense involved.

*(Code 1999, § 9-23; Ord. No. O-09-00, 12-11-2000)*

*State law reference— Similar provisions, Code of Virginia, § 28.2-1302(4).*

**Sec. 82-162. Notice and hearing.**

Not later than 60 days after receipt of a complete application, the wetlands board shall hold a public hearing on the application. The applicant, board of supervisors, commissioner, owner of record of any land adjacent to the wetlands in question, known claimants of water rights in or adjacent to the wetlands in question, the Virginia Institute of Marine Science, the state department of game and inland fisheries, the state water control board, the state department of transportation, and any governmental agency expressing an interest in the application shall be notified of the hearing. The board shall mail these notices not less than 20 days prior to the date set for the hearing. The wetlands board shall also cause notice of the hearing to be published at least once a week for two weeks prior to such hearing in a newspaper of general circulation in the county. The published notice shall specify the place or places within the county where copies of the application may be examined. The costs of publication shall be paid by the applicant.

*(Code 1999, § 9-25)*

*State law reference— Similar provisions, Code of Virginia, § 28.2-1302(6).*

### **Sec. 82-163. Hearing procedures.**

- (a) Approval of a permit application shall require the affirmative vote of three members of the five-member board.
- (b) The chairman of the board, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. Any person may testify at the public hearing. Each witness at the hearing may submit a concise written statement of his testimony. The board shall make a record of the proceeding, which shall include the application, any written statements of witnesses, a summary of statements of all witnesses, the findings and decision of the board, and the rationale for the decision.
- (c) The board shall make its determination within 30 days of the hearing. If the board fails to act within that time, the application shall be deemed approved. Within 48 hours of its determination, the board shall notify the applicant and the commissioner of its determination. If the board fails to make a determination within the 30-day period, it shall promptly notify the applicant and the commission that the application is deemed approved. For purposes of this section, the term "act" means taking a vote on the application. If the application receives less than three affirmative votes from the five-member board, the permit shall be denied.
- (d) If the board's decision is reviewed or appealed, the board shall transmit the record of its bearing to the commissioner. Upon a final determination by the commission, the record shall be returned to the board. The record shall be open for public inspection at the same office as was designated under section 82-134

*(Code 1999, § 9-26)*

*State law reference— Similar provisions, Code of Virginia, § 28.2-1302(7).*

**Sec. 82-164. Compliance guarantees; suspension or revocation of permit.**

The board may require a reasonable bond or letter of credit in an amount and with surety and conditions satisfactory to it, securing to the commonwealth compliance with the conditions and limitations set forth in the permit. The board may, after a hearing held pursuant to this division, suspend or revoke a permit if the applicant has failed to comply with any of the conditions or limitations set forth in the permit or has exceeded the scope of the work described in the application. The board may, after a hearing, suspend a permit if the applicant fails to comply with the terms and conditions set forth in the application.

*(Code 1999, § 9-27)*

*State law reference— Similar provisions, Code of Virginia, § 28.2-1302(8).*

**Sec. 82-165. Standards for review.**

(a)

In deciding whether to grant, grant in modified form or deny a permit, the board shall consider the following:

(1)

The testimony of any person in support of or in opposition to the permit application;

(2)

The impact of the proposed development on the public health, safety and welfare;  
and

(3)

The proposed development's conformance with standards prescribed in Code of Virginia, § 28.2-1308 and guidelines promulgated pursuant to Code of Virginia, § 28.2-1301.

(b)

The board shall grant the permit if all of the following criteria are met:

(1)

The anticipated public and private benefit of the proposed activity exceeds its anticipated public and private detriment.

(2)

The proposed development conforms to the standards prescribed in Code of Virginia, § 28.2-1308 and guidelines promulgated pursuant to Code of Virginia, § 28.2-1301.

(3)

The proposed activity does not violate the purposes and intent of this division or Code of Virginia, § 28.2-1300 et seq.

(c)

If the board finds that any of the criteria listed in subsection (b) of this section are not met, the board shall deny the permit application but allow the applicant to resubmit the application in modified form.

*(Code 1999, § 9-28)*

*State law reference— Similar provisions, Code of Virginia, § 28.2-1302(10).*

#### **Sec. 82-166. Permits generally.**

(a)

The permit shall be in writing, signed by the chairman of the board or his authorized representative, and notarized. A copy of the permit shall be transmitted to the commissioner.

(b)

No permit shall be granted without an expiration date established by the board. Upon proper application, the board may extend the permit expiration date.

(c)

No permit granted by the wetlands board shall in any way affect the applicable zoning and land use ordinances of the county or the right of any person to seek compensation for any injury in fact incurred by him because of the proposed activity.

*(Code 1999, § 9-29)*

*State law reference— Similar provisions, Code of Virginia, § 28.2-1302(11)–(13).*

#### **Secs. 82-167—82-180. Reserved.**

### **~~Article V. Sand Dunes and Beaches.~~**

### **Article VI. Sand Dunes and Beaches (only renumbered no text changes)**

#### **Sec. 82-181. Adoption of article.**

The board of supervisors, acting pursuant to Code of Virginia § 28.2-1400 et seq., adopts this article regulating the use and development of coastal primary sand dunes. Whenever coastal primary sand dunes are referred to in this article, such references shall also include beaches.

*(Ord. No. O-08-09, 8-10-2009)*

#### **Sec. 82-182. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Beach* means the shoreline zone comprised of unconsolidated sandy material upon which there is a mutual interaction of the forces of erosion, sediment transport and deposition that extends from the low water line landward to where there is a marked change in either material composition or physiographic form such as a dune, bluff, or marsh, or where no such change can be identified, to the line of woody vegetation (usually the effective limit of storm waves), or the nearest impermeable man-made structure, such as a bulkhead, revetment, or paved road.

*Coastal primary sand dune or dune* means a mound of unconsolidated sandy soil which is contiguous to mean high water, whose landward and lateral limits are marked by a change in grade from ten percent or greater to less than ten percent, and upon which is growing any of the following species: American beach grass (*Ammophila breviligulata*); beach heather (*Hudsonia tomentosa*); dune bean (*Strophostyles* spp.); dusty miller (*Artemisia stelleriana*); saltmeadow hay (*Spartina patens*); seabeach sandwort (*Honckenya peploides*); sea oats (*Uniola paniculata*); sea rocket (*Cakile edentula*); seaside goldenrod (*Solidago sempervirens*); Japanese sedge or Asiatic sand sedge (*Carex kobomugi*); Virginia pine (*Pinus virginiana*); broom sedge (*Andropogon virginicus*); and short dune grass (*Panicum amarum*). For purposes of this article, "coastal primary sand dune" shall not include any mound of sand, sandy soil, or dredge spoil deposited by any person for the purpose of temporary storage, beach replenishment, or beach nourishment, nor shall the slopes of any such mound be used to determine the landward or lateral limits of a coastal primary sand dune.

*Commission* means the Virginia Marine Resources Commission.

*Commissioner* means the commissioner of marine resources.

*Governmental activity* means any of the services provided by the commonwealth or a county, city or town to its citizens for the purpose of maintaining public facilities, including but not limited to, such services as constructing, repairing, and maintaining roads; providing streetlights and sewage facilities; supplying and treating water; and constructing public buildings.

*Wetlands board or board* means the board created pursuant to Code of Virginia § 28.2-1303.

(Ord. No. O-08-09, 8-10-2009)

### **Sec. 82-183. Authorized uses and activities.**

The following uses of and activities in dunes are authorized if otherwise permitted by law:

- (1)  
The construction and maintenance of noncommercial walkways which do not alter the contour of the coastal primary sand dune;
- (2)

- The construction and maintenance of observation platforms which are not an integral part of any dwelling and which do not alter the contour of the coastal primary sand dune;
- (3)
- The planting of beach grasses or other vegetation for the purpose of stabilizing coastal primary sand dunes;
- (4)
- The placement of sand fences or other material on or adjacent to coastal primary sand dunes for the purpose of stabilizing such features, except that this provision shall not be interpreted to authorize the placement of any material which presents a public health or safety hazard;
- (5)
- Sand replenishment activities of any private or public concern, provided no sand shall be removed from any coastal primary sand dune unless authorized by lawful permit;
- (6)
- The normal maintenance of any groin, jetty, riprap, bulkhead, or other structure designed to control beach erosion which may abut a coastal primary sand dune;
- (7)
- The normal maintenance or repair of existing roads, highways, railroad beds, and facilities of the United States, this commonwealth or any of its counties or cities, or of any person, provided no coastal primary sand dunes are altered;
- (8)
- Outdoor recreational activities, provided the activities do not alter the natural contour of the coastal primary sand dune or destroy the vegetation growing thereon;
- (9)
- The conservation and research activities of the commission, Virginia Institute of Marine Science, Department of Game and Inland Fisheries, and other conservation-related agencies;
- (10)
- The construction and maintenance of aids to navigation which are authorized by governmental authority;
- (11)
- Activities pursuant to any emergency declaration by the governing body of any local government or the governor of the commonwealth or any public health officer for the purposes of protecting the public health and safety; and
- (12)
- Governmental activity in coastal primary sand dunes owned or leased by the commonwealth or a political subdivision thereof.

*(Ord. No. O-08-09, 8-10-2009)*

**Sec. 82-184. Applications, maps, and documents are public records.**

All applications, maps, and documents submitted under this article shall be open for public inspection at the office of the county director of planning

*(Ord. No. O-08-09, 8-10-2009)*

**Sec. 82-185. Fulfillment of responsibilities of the board.**

In fulfilling its responsibilities under this article, the board shall preserve and protect coastal primary sand dunes and beaches and prevent their despoliation and destruction. However, whenever practical, the board shall accommodate necessary economic development in a manner consistent with the protection of these features.

*(Ord. No. O-08-09, 8-10-2009)*

**Sec. 82-186. Violations; penalties.**

(a)

No person shall conduct any activity which would require a permit under this article unless such person has a permit therefore

(b)

Any person who knowingly, intentionally, negligently, or continually violates any order, rule, or regulation of the wetlands board, or violates any provision of this article, or any provision of a permit granted by the wetlands board, shall be guilty of a class 1 misdemeanor.

(c)

Upon the petition of the commission or the wetlands board to the county circuit court, when any act occurs or is threatened which is unlawful under this article, the court may enjoin the unlawful act and order the defendant to take any steps necessary to restore, protect, and preserve the wetlands involved. This remedy shall be exclusive of and in addition to any criminal penalty which may be imposed under subsection (b) of this section.

*(Ord. No. O-08-09, 8-10-2009)*

**Secs. 82-187—82-200. Reserved.**

**Sec. 82-201. Required; application.**

(a)

Any person who desires to use or alter any coastal primary sand dune within this county, other than for the purpose of conducting the activities specified in section 82-183, shall first file an application directly with the wetlands board or with the commission.

(b)

The permit application shall include the following: the name and address of the applicant; a detailed description of the proposed activities and a map, drawn to an appropriate and uniform scale, showing the area of dunes directly affected, the location of the proposed work thereon, the area of any proposed fill and excavation, the location, width, depth and length of any disposal area, and the location of all existing and proposed structures, sewage collection and treatment facilities, utility installations, roadways, and other related appurtenances or facilities, including those on adjacent uplands; a description of the type of equipment to be used and the means of equipment access to the activity site; the names and addresses of owners of record of adjacent land; an estimate of cost; the primary purpose of the project; any secondary purposes of the project, including further projects; the public benefit to be derived from the proposed project; a complete description of measures to be taken during and after the alteration to reduce detrimental offsite effects; the completion date of the proposed work, project, or structure; and such additional materials and documentation as the wetlands board may require.

(c)

A nonrefundable processing fee shall as provided in Appendix A to this Code shall accompany each permit application. The fee shall be set by the board of supervisors with due regard for the services to be rendered, including the time, skill, and administrator's expense. No person shall be required to file two separate applications for permits if the proposed project will require permits under section 82-161 and Code of Virginia § 28.2-1300 et seq. Under those circumstances, the fee shall be established pursuant to section 82-161

*(Ord. No. O-08-09, 8-10-2009)*

#### **Sec. 82-202. Notice and hearing.**

Not later than 60 days after receipt of a complete application, the wetlands board shall hold a public hearing on the application. The applicant, local governing body, commissioner, owner of record of any land adjacent to the coastal primary sand dunes in question, the Virginia Institute of Marine Science, the department of game and inland fisheries, the state water control board, the department of transportation, and any governmental agency expressing an interest in the application shall be notified of the hearing. The board shall mail these notices not less than 20 days prior to the date set for the hearing. The wetlands board shall also cause notice of the hearing to be published at least once a week for two weeks prior to such hearing in a newspaper of general circulation in this county. The costs of publication shall be paid by the applicant.

*(Ord. No. O-08-09, 8-10-2009)*

#### **Sec. 82-203. Hearing procedures.**

(a)

Approval of a permit application shall require the affirmative vote of three members of a five-member board.

(b)

The chairman of the board, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. Any person may appear and be heard at the public hearing. Each witness at the hearing may submit a concise written statement of his testimony. The board shall make a record of the proceeding, which shall include the application, any written statements of witnesses, a summary of statements of all witnesses, the findings, and decision of the board, and the rationale for the decision.

(c)

The board shall make its determination within 30 days of the hearing. If the board fails to act within that time, the application shall be deemed approved. Within 48 hours of its determination, the board shall notify the applicant and the commissioner of its determination. If the board fails to make a determination within the 30-day period, it shall promptly notify the applicant and the commission that the application is deemed approved.

(d)

If the board's decision is reviewed or appealed, the board shall transmit the record of its hearing to the commissioner. Upon a final determination by the commission, the record shall be returned to the board. The record shall be open for public inspection at the same office as was designated under section 82-184

*(Ord. No. O-08-09, 8-10-2009)*

#### **Sec. 82-204. Compliance guarantees; suspension or revocation of permit.**

The board may require a reasonable bond or letter of credit in an amount and with surety and conditions satisfactory to it, securing to the commonwealth compliance with the conditions and limitations set forth in the permit. The board may, after a hearing held pursuant to this article, suspend or revoke a permit if the applicant has failed to comply with any of the conditions or limitations set forth in the permit or has exceeded the scope of the work described in the application. The board may, after a hearing, suspend a permit if the applicant fails to comply with the terms and conditions set forth in the application.

*(Ord. No. O-08-09, 8-10-2009)*

#### **Sec. 82-205. Standards for review.**

(a)

In deciding whether to grant, grant in modified form, or deny a permit, the board shall consider the following:

(1)

The testimony of any person in support of or in opposition to the permit application;

(2)

The impact of the proposed development on the public health, safety, and welfare;  
and

(3)

The proposed development's conformance with standards prescribed in Code of Virginia § 28.2-1408 and guidelines promulgated pursuant to Code of Virginia § 28.2-1401.

(b)

The board shall grant the permit if all of the following criteria are met:

(1)

The anticipated public and private benefit of the proposed activity exceeds its anticipated public and private detriment.

(2)

The proposed development conforms to the standards prescribed in Code of Virginia § 28.2-1408 and guidelines promulgated pursuant to Code of Virginia § 28.2-1401.

(3)

The proposed activity does not violate the purposes and intent of this article or Code of Virginia § 28.2-1400 et seq.

(c)

If the board finds that any of the criteria listed in subsection (b) of this section are not met, the board shall deny the permit application but allow the applicant to resubmit the application in modified form.

*(Ord. No. O-08-09, 8-10-2009)*

#### **Sec. 82-206. Permits generally.**

(a)

The permit shall be in writing, signed by the chairman of the board, and notarized. A copy of the permit shall be transmitted to the commissioner.

(b)

No permit shall be granted without an expiration date established by the board. Upon proper application, the board may extend the permit expiration date.

(c)

No permit granted by a wetlands board shall in any way affect the right of any person to seek compensation for any injury in fact incurred by him because of the permitted activity.

*(Ord. No. O-08-09, 8-10-2009)*

## Acronyms Glossary

BMP – Best Management Practice

CDA – Contributing Drainage Area

CGP – Construction General Permit or State General Permit for Discharges from Construction Activities

VDCR – Virginia Department of Conservation and Recreation

VDEQ – Virginia Department of Environmental Quality

VESC – Virginia Erosion and Sediment Control Program

ERI – Environmental Resources Inventory

EW – Exceptional Waters as defined in the Stormwater regulations

HUC – Hydrologic Unit Code

LDP – Land Disturbance Permit

MS4 - Municipal Separate Storm Sewer System

NOAA – U.S. National Oceanic and Atmospheric Administration

NRCS – U.S. Department of Agriculture’s Natural Resources Conservation Service

PPP – Pollution Prevention Plan

SWM – Stormwater Management

VSMH – Virginia Stormwater Management Handbook

SWPPP – Stormwater Pollution Prevention Plan

TMDL – Total Maximum Daily Load

VAC – Virginia Administrative Code

VESCP – Virginia Erosion and Sediment Control Program

VESCH – Virginia Erosion and Sediment Control Handbook

VESCR – Virginia Erosion and Sediment Control Regulations

VRRM – Virginia Runoff Reduction Method

VSMR – Virginia Stormwater Management Regulations

VSMP – Virginia Stormwater Management Program

WLA – Waste Load Allocation

PLANNING COMMISSION  
COUNTY OF NEW KENT  
VIRGINIA

PC-11-13

At the regular meeting of the Planning Commission of the County of New Kent, in the Boardroom of the Administration Building in New Kent, Virginia, on the 21<sup>st</sup> day of October, 2013:

Present:

Katherine Butler  
Jack Chalmers  
Howard Gammon  
Roger Gregory  
Charna Moss - Gregory  
Richard Kontny, Jr.  
Michael Lane  
Edward Pollard  
Tommy Tiller  
Patricia Townsend  
Joyce Williams

Vote:

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Motion was made by \_\_\_\_\_, which carried \_\_\_\_\_, to adopt the following resolution:

**A RESOLUTION TO RECOMMEND APPROVAL OF  
AN ORDINANCE REPEALING, AMENDING, RESTATING AND READOPTING  
STORMWATER MANAGEMENT TO THE NEW KENT COUNTY CODE**

WHEREAS, the Commonwealth of Virginia is integrating stormwater management and erosion and sediment control into a unified stormwater management program; and

WHEREAS, said localities are tasked with administering the unified stormwater management program; and

WHEREAS, subsequent to receiving a draft proposed ordinance and within the timeframes established by Code, the New Kent County Planning Commission scheduled and conducted a formal and duly advertised public hearing, carefully considering the public comment received; and

WHEREAS, the New Kent County Planning Commission finds that this proposed ordinance is in compliance with the Virginia State Code and Regulations; and

WHEREAS, the Commission finds that this proposed ordinance is appropriate to address, protect, and promote public convenience, necessity, general welfare, and good zoning practices in the County and the health, safety, and general welfare of the Citizens in the County; and

NOW THEREFORE, BE IT RESOLVED that on this, the 21<sup>st</sup> day of October, 2013, by the New Kent County Planning Commission, that the Proposed Ordinance submitted to the Planning Commission be forwarded to the New Kent County Board of Supervisors with a recommendation of approval.

Attested:

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Jonathan Stanger  
Assistant County Administrator and  
Director of Community Development