

ARTICLE IX. CHESAPEAKE BAY PRESERVATION AREA DISTRICT

Sec. 26-512. - Findings.

The Chesapeake Bay and its tributaries ("the Bay") are one of the most important and productive estuarine systems in the world, providing economic and social benefits to the citizens of the city and the state. The health of the bay is vital to maintaining the city's economy and the welfare of its citizens.

The bay waters have been degraded significantly by many sources of pollution, including nonpoint source pollution from land uses and development. Existing high quality waters are worthy of protection from degradation to guard against further pollution. Certain lands that are proximate to the shoreline have intrinsic water quality value due to the ecological and biological processes they perform. Other lands have severe development constraints from flooding, erosion, and soil limitations. Protected from disturbance, these lands offer significant ecological benefits by providing water quality maintenance and pollution control as well as flood and shoreline erosion control. These lands together, designated by the city as the Chesapeake Bay Preservation Area District, need to be protected from destruction and damage in order to protect the quality of water in the bay and consequently, the quality of life in the city and the state.

Sec. 26-513. - Creation of the Chesapeake Bay Preservation Area District.

- (a) There is hereby created and established the Chesapeake Bay Preservation Area District ("CBPA District" or "District") of the city. This district shall replace the Chesapeake Bay Preservation Area Overlay District that was adopted by city council on January 21, 1992 as part of the city zoning ordinance. The CBPA overlay district is repealed by separate amendment to section 12-500 of the city zoning ordinance simultaneous with the adoption of this article. Unless expressly exempt herein, all properties located within the district shall be subject to the provisions set out below.
- (b) This article shall include and incorporate by reference:
 - (1) The Chesapeake Bay Preservation Area Map ("CBPA Map");
 - (2) The Chesapeake Bay Preservation Area Specifications Manual ("CBPA specifications manual"); and
 - (3) The Intensely Developed Area Map ("IDA Map").

Sec. 26-514. - Purpose and intent.

- (a) The ordinance from which this article derives was initially adopted as part of the city zoning ordinance and is hereby reordained in this chapter of the city code under the authority of section 10.1-2100 et seq. of the Code of Virginia, 1950, as amended, ("Chesapeake Bay Preservation Act").
- (b) The ordinance from which this article derives was initially adopted and is hereby reordained to implement the requirements of the Virginia Chesapeake Bay Preservation Act and the Chesapeake Bay Preservation Area Designation and Management Regulations in 9 VAC 10-20 et seq. ("CBPA regulations") promulgated thereunder by the Chesapeake Bay Local

Assistance Board (CBLAB), or any state agency succeeding or incorporating the duties of same.

- (c) The purpose of this article is to protect and improve the water quality of the bay, its tributaries, buffer areas and other state waters, by minimizing the potential adverse effects of human activity upon these areas. These provisions are intended to encourage and promote:
 - (1) Protection of existing high-quality state waters and restoration of all other state waters to a condition or quality that will permit all reasonable public uses and will support the propagation and growth of all aquatic life, including but not limited to, game fish, which might reasonably be expected to inhabit them;
 - (2) Safeguarding the clean water of the state from pollution;
 - (3) Prevention of any increase in pollution;
 - (4) Reduction of existing pollution; and
 - (5) Promotion of water resource conservation in order to provide for the health, safety and welfare of the present and future citizens of the city and region.
- (d) This article, along with other applicable city ordinances, regulations and policies, is intended to address management practices designed to protect the Chesapeake Bay Preservation Areas identified on the Comprehensive Plan, the CBPA Map and the IDA Map.
- (e) In any case where the requirements of this article conflict with any other provisions of this Code, the city zoning ordinance, the Chesapeake Public Facilities Manual or any state or federal regulation, the more stringent requirements shall apply. However, no provision herein shall be construed as a limitation on the city's planning, zoning or subdivision authority.
- (f) The provisions of this ordinance shall not affect the vested rights of any landowner under existing state law. The city attorney shall make a determination of the legal validity of any claim of vested rights under state law.

Sec. 26-515. - Definitions.

The following words and terms used in this article have the following meanings, unless the context clearly indicates otherwise. Words and terms not defined in this ordinance but defined elsewhere in this City Code or the city zoning ordinance shall be given the meanings set forth therein.

Accessory structure shall have the meaning prescribed in the city zoning ordinance, except that no more than one detached structure located within six feet of the principal building shall be permitted under this article. In the case of a swimming pool, the six-foot maximum distance of separation shall be measured from the pool wall closest to the principal building.

Agricultural lands means those lands used for the planting and harvesting of crops or plant growth of any kind in the open; pasture; horticulture; dairying; floriculture; or raising of poultry and/or livestock. The term shall not include property on which qualified silvicultural activities are conducted.

Applicant means any person submitting any application required or permitted pursuant to the provisions of this article.

Best management practices or *BMPs* means a practice or a combination of practices that is determined by the director of development and permits, or designee, to meet or exceed the water quality objectives set out below and designed in accordance with the Chesapeake Public Facilities Manual.

Board or *CBLAB* means the Chesapeake Bay Local Assistance Board or succeeding state board or commission.

Buffer or *buffer area* means an area of natural or established vegetation managed and preserved to protect other components of the resource protection area and state waters from significant degradation due to land disturbance or development.

Chesapeake Bay Preservation Area, CBPA district or *district* means those areas delineated on the CBPA map and the IDA map as one of the following:

- (a) Resource Protection Area (RPA),
- (b) Resource Management Area (RMA), and
- (c) Intensely Developed Area (IDA).

The CBPA district shall also include areas designated RPA or RMA as a result of an approved field delineation as provided in sections 26-516 and 26-517.

Chesapeake Bay Preservation Area Board or *CBPA board* means the board established or designated by city council to:

- (1) Consider appeals from administrative determinations,
- (2) Consider requests for exceptions to the provisions of this article,
- (3) Impose agreed upon civil penalties for violation of this article, and
- (4) Order correction of violations of this article through restoration of the CBPA district.

Chesapeake Bay Preservation Area map or *CBPA map* means the map adopted by city council and incorporated into this article to delineate the boundaries of the district. The boundaries of the CBPA district shown on the CBPA map shall be subject to refinement by approved field surveys as provided in this article.

Chesapeake Bay Preservation Area Review Committee or *CBPA review committee* means the administrative committee consisting of city staff appointed by the city manager's designee for the primary purpose of:

- (1) Reviewing and acting upon certain administrative approvals, exemptions and waivers, as permitted under this article, and
- (2) Making recommendations to the CBPA board on requests for exceptions to the provisions of this article.

Chesapeake Bay Preservation Area Specifications Manual or *CBPA Specifications Manual* means the documents setting out administrative procedures, specifications, guidelines, techniques and remedial actions, adopted with this article and incorporated herein. The term shall also include any and all substantive amendments approved by city council and minor amendments approved by the city manager's designee. Minor amendments are defined as those that do not substantially affect the extent or conditions of development permitted under this article and that are not

inconsistent with the purpose and intent of such ordinance. Examples are set forth in subsection 26-518(e).

City manager's designee means any officer, department head or other employee designated by the city manager to interpret, administer or enforce this article. There may be one or more designees. This term shall also include designees of the city manager's designee, which may include the CBPA review committee or one or more members of city staff. The city manager's designee shall also:

- (1) Resolve CBPA district boundary disputes;
- (2) Approve delineations, including determinations of perennial flow and perennial water body;
- (3) Act on requests for development in the RMA, including RMAs located wholly or partially in the IDA;
- (4) Act on requests for construction access points under subsection 26-520(b)(7) below;
- (5) Act on requests to remove vegetation from the RPA buffer under subsection 26-520(b)(7);
- (6) Act on requests for exemptions, waivers and other administrative approvals not expressly delegated to the CBPA review committee or the CBPA board;
- (7) Modify requirements for water quality impact assessments;
- (8) Act on requests for approval of water dependent facilities as defined herein; and
- (9) Make minor amendments to the CBPA Specifications Manual.

Construction footprint means the area of all impervious surface, including but not limited to, areas to be improved with buildings, roads, drives, parking areas, sidewalks, pools, decks, porches, sheds, and other structures and improvements, other than fences, subject to the CBPA regulations promulgated by CBLAB.

Development means the construction or substantial alteration of residential, commercial, industrial, institutional, recreational, transportation or utility facilities, buildings or structures, other than fences.

Diameter at breast height or DBH means the diameter of a tree measured outside the bark at a point four and one-half feet above the ground, as determined by the director of development and permits, or designee.

Dripline means a vertical projection to the ground surface from the furthest lateral extent of a tree's leaf canopy. When a tree's leaf canopy has been altered by trimming, pruning or breakage, the dripline shall be determined by the director of development and permits, or designee.

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

Highly permeable soils means soils with a given potential to transmit water through the soil profile. Highly permeable soils are identified as any soil having a permeability equal to or greater

than six inches or water movement per hour in any part of the soil profile to a depth of 72 inches (permeability groups "rapid" and "very rapid") as found in the "National Soil Survey Handbook" of November 1966 in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resources Conservation Service.

Impervious cover means a surface composed of any material that significantly impedes or prevents natural infiltration of water into the soil. Impervious surfaces include, but are not limited to, roofs, buildings, structures, other than fences, streets, roads, drives parking areas, sidewalks and any concrete, asphalt or compacted gravel surface, as well as the area of any swimming pool, as measured by water surface, decks and concrete surfaces.

Infill means utilization of vacant land in or primarily surrounded by developed areas.

Intensely developed area or *IDA* means designated redevelopment areas of the city adopted pursuant to the Chesapeake Bay Preservation Act and regulations promulgated by CBLAB thereunder, as designated on the IDA map.

Land disturbance in the CBPA district means, for purposes of this article only, any activity upon land which causes, contributes to, or results in the removal or covering of the vegetation upon such land, or the disturbance of unvegetated soils, including but not limited to, clearing, dredging, filling, grading or excavating. The term shall not include minor activities such as home gardening, individual landscaping and home maintenance, as determined by the city manager's designee; nor shall it include bona fide silvicultural activities, which are exempt from the provisions of this article. Bona fide agricultural operations on agricultural lands located within the CBPA district shall be subject to separate standards, set out below, from those applicable to other land-disturbing activities.

Lot coverage means the impervious area of any lot or parcel including, but not limited to, buildings, drives, parking areas, sidewalks, patios, decks, and similar structures, other than fences.

Mitigation means acts necessary to prevent, limit or remedy conditions that may degrade water quality. The term shall not have the same meaning as in federal and state wetlands protection laws and regulations, unless expressly stated herein.

Non-point source pollution means pollution consisting of constituents such as sediment, nutrients, and organic and toxic substances from diffuse sources, including, but not limited to, runoff from developments or operations on agricultural lands.

Nontidal wetlands means those wetlands other than tidal wetlands that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances, support a prevalence of vegetation typically adapted for life in saturated soil conditions, as defined by the U. S. Environmental Protection Agency pursuant to section 404 of the Federal Clean Water Act, as amended, and as further described in 33 CFR 328.3b, as amended, as determined by the city manager's designee in accordance with the CBPA specifications manual.

Noxious weeds means weeds that are difficult to control effectively, such as Johnson grass, kudzu and multiflora rose, as determined by the city manager's designee.

Ordinance means this article X of chapter 26; the CBPA Specifications Manual; the CBPA map and/or the IDA map.

Perennial flow means water flows continuing throughout the year without interruption, as determined by the city manager's designee.

Perennial water body means a body of water that flows in a natural or man-made channel year-round during a year of normal precipitation. This includes, but is not limited to streams, estuaries, and tidal embankments and may include drainage ditches or channels constructed in wetlands or from former natural drainageways, which convey perennial flow. Lakes and ponds, through which a perennial stream flows, are a part of the perennial stream. Generally, the water table is located above the streambed for most of the year and groundwater is the primary source for stream flow. This definition shall not include qualifying roadside drainage ditches in public rights-of-way or easements; active agricultural ditches meeting best management practices approved by the Virginia Dare Soil and Water Conservation District; or certain flood control and BMP facilities, all as described in the CBPA Specifications Manual.

Person means an individual, fiduciary, agent, corporation, firm, partnership, limited liability company, association, organization or any other entity or combination thereof.

Plan means a complete set of documents required by the city manager's designee, the CBPA review committee or the CBPA board to review applications or requests for land disturbance or for the division or development of property in the district.

Plat means a physical survey setting out in graphic form the division, or proposed division, of property. The features shown on such plat shall be those required by this City Code and the city zoning ordinance and such additional features as may be required by regulations and policies implementing such ordinances.

Principal building shall have the meaning prescribed in the city zoning ordinance, except that there shall be no more than one detached structure located within six feet of the building supporting the principal use.

Public Facilities Manual or *PFM* refers to the guidance, specifications and techniques made available to the public by the department of development and permits, including any and all updates.

Public road means a publicly owned road designed and constructed in accordance with water quality protection criteria at least as stringent as requirements applicable to the state department of transportation. This definition includes those roads where the state department of transportation exercises direct supervision over the design or construction activities, or both, and cases where secondary roads are constructed or maintained, or both, by a local government in accordance with the standards of that local government.

Redevelopment means the process of developing land which is, or has been, previously developed.

Regional stormwater management facilities or *BMPs* means stormwater management facilities that drain or treat water from multiple development projects, more than one site, or from a significant portion of a watershed.

Resource management area or *RMA* means that component of the CBPA district that is not classified as the resource protection area. The RMA includes land types that, if improperly disturbed, 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 CBPA district comprised of tidal wetlands; tidal shores; non-tidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow; a one-hundred-foot vegetation buffer and such other areas that have an intrinsic water quality value due to the ecological and biological processes they perform or are sensitive to impacts which may result in significant degradation to the quality of state waters.

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

Substantial alteration means expansion or modification of a building or structure, or any other development, that would result in a disturbance of land exceeding 2,500 square feet in the RMA.

Surface flow means the flow of water normally associated with wetlands hydrology. The term pertains to the saturation or inundation of the surface of the ground. Water must be visually observable at the top of the uppermost soil horizon, excluding organic litter or "duff," for a period of 35 consecutive days between the dates of March 3 and December 7. When saturation to the surface of the ground is in question, it shall be considered present, when the water level in an open, unlined bore hole is at or on the top of the uppermost soil horizon. Mere runoff shall not be deemed surface flow.

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

Tidal wetlands means vegetated and nonvegetated wetlands as defined in section 28.2-1300 of the Code of Virginia, as amended.

Tree group or *tree stand* means a group of two or more trees which have trunks or canopies in close proximity to one another.

Water-dependent facility means development of land that cannot exist outside of the Resource Protection Area (RPA) and must be located on the shoreline by reason of the intrinsic nature of the proposed activity or use. These facilities include, but are not limited to:

- (1) Ports;
- (2) The intake and outfall structures of power plants, water treatment plants and storm sewers;
- (3) Marinas and other boat docking structures;
- (4) Beaches and other public water-oriented recreation areas;
- (5) Public observation decks;
- (6) Fisheries or other marine resource facilities;
- (7) Shoreline protection measures; and
- (8) Wetlands restoration areas that have received preliminary or final approval from all regulating federal and state agencies, provided that the restoration area does not function as a BMP; all as approved by the city manager's designee;

Wetlands means tidal and nontidal wetlands, as defined in this chapter.

Sec. 26-516. - Designation criteria.

(a) The CBPA district is delineated on the CBPA map and/or the IDA map as one of the following:

- (1) Resource Protection Area (RPA);
- (2) Resource Management Area (RMA); or
- (3) Intensely Developed Area (IDA).

The CBPA map and the IDA map, including all notations thereon, are approved with the adoption of this article and are hereby incorporated by reference as a part of this article. The CBPA map and the IDA map may only be amended by approval of city council. Notwithstanding the foregoing, the precise delineation of the RPA shall be refined by field delineations on a case-by-case basis, provided that each such field delineation is approved by the city manager's designee.

(b) The resource protection area (RPA) includes all tidal wetlands; nontidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow; shorelines; and a 100-foot vegetated buffer around each such feature and around all water bodies with a perennial flow. The buffer area is designed to retard runoff, prevent erosion and filter non-point source pollutants from runoff. The buffer area is also designed to achieve a level of 75 percent reduction in sediments and 40 percent reduction in nutrients.

(c) The RPA, as depicted generally on the CBPA map, includes:

- (1) Tidal wetlands;
- (2) Non-tidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow;
- (3) Tidal shores;
- (4) Such other lands determined by city council to meet the provisions of this article and to be necessary to protect the quality of state waters; and
- (5) A vegetated buffer area of not less than 100 feet in width located adjacent and landward of the components listed in subsections (1) through (4) above, and along both sides of any water body with perennial flow. The buffer area shall constitute the landward component of the RPA, notwithstanding the presence of permitted uses, encroachments, or the approved clearing of vegetation in compliance with this article.

(d) The resource management area (RMA) includes all lands contiguous to the inland boundary of the RPA and which, if not properly managed, have a potential for degrading water quality or diminishing the functional value of the RPA. The RMA is shown on the CBPA map and includes, but is not limited to, the following land categories: floodplains, highly erodible soils, including steep slopes, highly permeable soils; and nontidal wetlands not included in the RPA.

(e) The intensely developed area (IDA) is a designated redevelopment area of the city which incorporates portions of the RPA and RMA. The IDA as shown on the IDA map includes areas in which development was concentrated as of January 21, 1992, so that little of the

natural environment remains, and where at least one of the following conditions existed as of that date:

- (1) Development severely altered the natural state of the area such that it has more than 50 percent impervious surface;
- (2) Public sewer and water systems, or a constructed stormwater drainage system, or both, were constructed and activated to serve the area on or before January 21, 1992; or
- (3) Housing density was equal to or greater than four dwelling units per acre.

Sec. 26-517. - Interpretation of CBPA boundaries.

Any person contemplating development or land-disturbing activities within the city should consult the CBPA map prior to engaging in the proposed activity. The CBPA district boundaries are shown as approximate on the CBPA map and may vary slightly from the actual location on the ground. The precise location of the RPA and RMA as shown on an approved field delineation shall control. In any event, the applicant for any land disturbance, development or construction in the CBPA district shall have the following responsibilities:

- (1) *Delineation of the RPA:* The applicant shall delineate specific boundaries of the RPA through the performance of an environmental site assessment. In delineating the RPA, the applicant shall include the perennial water bodies designated on the U.S. Geological Survey (7 1/2 minute topographic quadrangle map). Designation on the U.S. Geological Survey may be rebutted only by use of a scientifically valid system of in-field indications of perennial flow approved by the city manager's designee. In addition, the city manager's designee may require a field survey using an approved scientifically valid system where site conditions or mapping sources indicate that an RPA feature may exist.
- (2) *Resolution of conflict of district boundaries:* Where the applicant has provided a delineation of the specific boundaries of the RPA, the city manager's designee may verify the accuracy of the boundary delineation. The city manager's designee may make adjustments to the applicant's RPA delineation where deemed necessary to correct error or to otherwise meet the intent and purposes of this article. In the event the applicant contests the adjusted RPA delineation, the applicant may seek relief from the CBPA board in accordance with the provisions of section 26-528 of this article.

Sec. 26-518. - Administrative approvals.

- (a) The city manager shall designate one or more administrators (city manager's designee) to:
 - (1) Interpret, implement and enforce this article, and
 - (2) Grant administrative approvals, waivers and exemptions not expressly delegated to the CBPA review committee or the CBPA board.
- (b) The city manager's designee may also approve land-disturbance and development activities occurring entirely within the RMA, including RMAs that are located wholly or partially in the IDA, subject to the applicable performance standards of this article.

- (c) The city manager's designee may approve RPA delineations and shall interpret CBPA district boundaries in accordance with section 26-517
- (d) The city manager's designee may approve determinations of perennial flow in accordance with the definitions of "perennial flow" and "perennial water body" in section 26-515 and the methods of determination in section 26-517
- (e) The city manager's designee may review and act upon access points during construction in accordance with section 26-520(b)(7)a.
- (f) The city manager's designee may determine whether existing vegetation can be removed from the RPA buffer under the provisions of subsection 26-520(b)(7)c.1.
- (g) The city manager's designee may evaluate and modify the requirements for a water quality impact assessment under section 26-523
- (h) The city manager's designee may review and act upon requests for water-dependent facilities as defined in this article, provided that:
 - (1) The facility is a permitted use;
 - (2) The facility complies with all performance criteria in this article;
 - (3) All non water-dependent components are located outside the RPA; and
 - (4) Access to the water-dependent facility is provided with the least amount of land disturbance necessary.
- (i) The city manager's designee may approve minor amendments to the CBPA Specifications Manual. Minor amendments shall mean changes in administrative procedure; nonbinding guidelines; methods of measurement and calculation; contents of plans and applications; delegation of approval authority; and other similar changes that do not substantially affect the extent or conditions of development under this article and that are not inconsistent with this article.
- (j) In exercising the authority granted in this article, the city manager's designee may request all information reasonably necessary to make an informed decision on a request for relief and may attach conditions or stipulations to approvals.
- (k) In exercising the authority provided in this article, the city manager's designee shall have the right to enter upon private property for any purpose relating to the administration and enforcement of this article. Reasonable notice shall be given where feasible.
- (l) In exercising the authority provided in this article, the city manager's designee may delegate his duties, in whole or in part, to the CBPA review committee or to other city staff members.
- (m) Any final decision rendered by the city manager's designee shall be in writing and shall state any conditions or stipulations of approval or reasons for denials. The applicant may appeal any final action of the city manager's designee in writing to the CBPA board within ten days of the written determination.
- (n) The CBPA review committee consists of city staff members appointed by the city manager's designee to review land-disturbance, development, and redevelopment activities conducted wholly or partially within the RPA, including portions of the RPA in the IDA. Land disturbance, development, and redevelopment plans in the RPA, including portions in the IDA, shall be submitted to the CBPA review committee for review, and depending on the

nature of the request, the committee shall make recommendations to the CBPA board or take final action. Application requirements for review by the CBPA review committee are set out in the CBPA Specifications Manual and may be amended from time to time by the city manager's designee. Each application to the CBPA review committee shall be submitted with a processing fee of \$125.00 per lot for which relief is requested, except that the fee for exception requests and appeals to the CBPA board shall be as provided in subsection 26-528(f).

- (o) The CBPA review committee shall take final action on proposed land-disturbance, development and redevelopment in the RPA where:
 - (1) Requests are made to conduct permitted development under section 26-519
 - (2) Requests for buffer encroachments are made under subsection 26-520(b)(7)b.2. or b.3.;
 - (3) Requests are made for RPA development in the IDA under subsections 26-520(b)(7) and 26-521(a)(2);
 - (4) Requests are made for nonconforming uses, buildings and structures under section 26-525; and
 - (5) Requests are made for exemptions under section 26-526

The CBPA review committee may attach conditions or stipulations to approvals. Final decisions shall be in writing and shall state conditions of approval or reasons for denial. All final action of the CBPA review committee may be appealed to the CBPA board in writing within ten days of the date of the written determination.

- (p) The CBPA review committee shall also review all requests for exceptions under section 26-528 and make recommendations to the CBPA board for action.
- (q) The CBPA review committee shall also take action on all matters delegated by the city manager's designee.
- (r) Members of the CBPA review committee shall have the right to enter upon private property for purposes of performing its duties under this article. Reasonable notice shall be given whenever feasible.

Sec. 26-519. - Permitted development in the resource protection area (RPA).

- (a) In addition to the performance standards set forth in this article, including any water quality impact assessment required by section 26-523 below, the criteria in this section are applicable in the RPA.
- (b) Land disturbance and development may be allowed in the RPA, subject to the approval of the CBPA review committee, where the applicant shows the proposed activity or development is one or more of the following:
 - (1) Redevelopment activities outside the IDA meeting the requirements in section 26-519
 - (2) Development or redevelopment activities within the IDA meeting the requirements in section 26-519
 - (3) Roads or driveways meeting the requirements set forth in section 26-519

- (4) Flood control or stormwater management facilities meeting the requirements set forth in section 26-519; or
 - (5) Bona fide agricultural activities conducted on agricultural lands meeting the requirements set forth in section 26-519
- (c) Redevelopment outside the IDA shall be permitted in the RPA only under the following conditions:
- (1) There is no increase in impervious cover;
 - (2) There is no further encroachment within the RPA than existed under the previous development;
 - (3) The development complies with the performance standards in this article, including, without limitation, buffer standards in section 26-520(b)(7);
 - (4) The development conforms to applicable erosion and sediment control and stormwater management criteria set forth in the erosion and sediment control ordinance, the stormwater management ordinance, Virginia law and regulations, and all applicable stormwater management requirements of other state and federal agencies; and
 - (5) Approval is obtained from the CBPA review committee, as provided in section 26-518
- (d) Redevelopment and development activities within the IDA shall be permitted in the RPA only under the following conditions:
- (1) The activity complies with the performance standards in section 26-521
 - (2) The development conforms to applicable erosion and sediment control and stormwater management criteria set forth in the erosion and sediment control ordinance, the stormwater management ordinance, Virginia law and regulations, and all applicable stormwater management requirements of other state and federal agencies;
 - (3) Approval is obtained from the CBPA review committee, as provided in section 26-518
- (e) Roads and driveways not otherwise exempt under section 26-526, may be constructed in or across the RPA, only if each of the conditions set out below are met. As used herein, the term "driveway" may include private commercial drive aisles and entrance improvements approved by the director of development and permits, or designee, and planter islands required by the director of development and permits, or designee. The term shall not include parking spaces, parking facilities, signs, or any other accessory building, structure or improvement requiring disturbance of the RPA.
- (1) The director of development and permits or designee makes a finding that there are no reasonable alternatives to aligning the road or driveway in or across the RPA;
 - (2) The alignment and design of the road or driveway are optimized, consistent with other applicable requirements, to minimize encroachment in the RPA and adverse effects on water quality;
 - (3) The design and construction of the road or driveway satisfy all applicable criteria of this article, including submission of a water quality impact assessment;
 - (4) The road or driveway complies with the standards in the Code and the Chesapeake Public Facilities Manual; and

- (5) Approval is obtained from the CBPA review committee, as provided in section 26-518
- (f) Flood control and BMPs that drain or treat water from multiple developments or from a significant portion of a CBPA watershed may be permitted in the RPA, provided that:
 - (1) The administrator has approved a storm water management plan consistent with section 26-348 and 9 VAC 25-870-51;
 - (2) The director of development and permits or designee has conclusively established that the location of the facility within the RPA is the optimum location;
 - (3) The size of the facility is the minimum necessary to provide necessary flood control, stormwater treatment or both;
 - (4) The facility complies with this Code, including without limitation, the stormwater management ordinance and regulations adopted thereunder, and the Chesapeake Public Facilities Manual;
 - (5) The facility meets the performance standards set forth in this article; and
 - (6) Approval is obtained from the CBPA review committee, as provided in section 26-518. If all requirements set out in subsections (1) through (5) are not satisfied, an exception in accordance with section 26-528 shall be required.

Notwithstanding the foregoing, it is not the intent of this article to permit flood control or BMPs in the RPA where such facilities only collect and treat runoff from an individual lot or a portion of an individual lot. Any maintenance, alteration, use or improvement to an existing stormwater facility, including man-made drainage facilities existing at the time of the effective date of this article, that does not degrade the quality of surface water discharge, as determined by the director of development and permits or designee, may be exempted from the requirements of this subsection.

- (g) Property upon which bona fide agricultural activities are being conducted, including but not limited to, crop production, pasture, and dairy and feedlot operations, or property otherwise defined as agricultural lands in this article, shall be permitted in the RPA subject to the following conditions:
 - (1) Such activities shall meet the applicable performance standards set out in section 26-520
 - (2) Such activities shall be conducted in accordance with a soil and water quality conservation assessment conducted and approved by the Virginia Dare Soil and Water Conservation District; and
 - (3) Where the permitted agricultural land uses, including any exempt silvicultural activities, within the buffer cease, a full 100-foot vegetated buffer shall be established. The established buffer shall be subject to the buffer performance standards set forth in subsection 26-520(b)(7) below.

Sec. 26-520. - General performance standards for the RPA, RMA and IDA.

- (a) The city council has determined that natural ground cover, especially woody vegetation, is most effective in holding soil in place and preventing site erosion. Natural vegetation, with its adaptability to local conditions without the use of harmful fertilizers or pesticides, serves the

important function of filtering stormwater runoff. Additionally, minimizing impervious cover enhances rainwater infiltration and effectively reduces stormwater runoff. In order to minimize the potential for erosion and sedimentation, reduce nutrients and toxics, and increase rainwater infiltration, the following performance standards are hereby established and shall apply to all land disturbance, development and redevelopment activity in the CBPA district (RMA, RPA and IDA). The purpose and intent of the following standards is to set forth minimum requirements for all such activities and prevent a net increase in nonpoint source pollution from new development; reduce nonpoint source pollution from existing development; and reduce nonpoint source pollution from the use of agricultural lands.

(b) General performance standards for land disturbance, development and redevelopment in the CBPA district are as follows:

(1) *Limitations on land disturbance.* Land disturbance shall be limited to the area necessary to provide for the proposed use, building, structure or development, as determined by the appropriate approval authority. At a minimum, the following shall apply:

- a. All developments equal to or exceeding 2,500 square feet of development area shall include an approved erosion and sediment control plan in the plan of development submitted under section 26-524 and an approved stormwater plan submitted under section 26-348
- b. The limits of land disturbance, including clearing or grading, shall be defined by a construction footprint shown on an approved plan. These limits shall also be physically delineated on the development site by fencing or other device required by the designated approval authority.
- c. Ingress and egress during construction shall be limited to one access point shown on the approved plan, unless otherwise approved by the city manager's designee based on a clear showing of necessity.

(2) *Preservation of existing vegetation.* Existing vegetation shall be preserved in the CBPA district to the maximum extent practicable. The following minimum standards apply:

- a. Existing woody vegetation, including, but not limited to, trees over one and a half (1½) inches in diameter at breast height (DBH), shall be preserved outside the construction footprint. Diseased trees or trees weakened by age, storm, fire or other injury may be removed, after approval by the director of development and permits, or designee, subject to the minimum canopy coverage requirements in section 26-520(b)(3).
- b. Clearing shall be allowed only to provide approved and necessary access, positive site drainage, water quality best management practices (BMPs), and the installation of utilities subject to approval of the city manager's designee and meeting the minimum canopy coverage requirements in subsection 26-520(b)(3).
- c. Prior to clearing or grading, approved protective barriers shall be erected five feet outside of the dripline of any tree or stand of trees to be preserved. These protective barriers shall remain in place throughout all phases of construction. The storage of equipment, materials, debris or fill shall not be allowed within the areas protected by the barrier.

- (3) *Canopy requirements.* In order to meet CBLAB requirements for a woody vegetated 100-foot wide RPA buffer and to satisfy CBLAB general performance standards for the RMA, the following minimum landscaping requirements shall apply:
- a. The RPA landscaping requirement is a minimum 50 percent tree canopy coverage, calculated in accordance with the CBPA Specifications Manual.
 - b. The RMA landscaping requirement is a minimum 20 percent tree canopy coverage for single-family residential lots, with a cap of 20 large canopy trees per lot, and 15 percent for townhomes and multifamily residential, calculated in accordance with the CBPA Specifications Manual.
 - c. Landscaping requirements for commercial or industrial sites within the RMA is a minimum ten percent tree canopy coverage, calculated in accordance with the CBPA Specifications Manual and PFM.
 - d. Removal of existing vegetation in the CBPA shall be limited to the approvals permitted in subsections 26-520(b)(2) and 26-520(b)(7)c.
- (4) *Limitation on impervious covers.* All land disturbance, development and redevelopment shall minimize impervious cover so as to promote infiltration of stormwater into the ground. Techniques for minimizing impervious cover and implementing low impact design are included in the CBPA Specifications Manual and PFM.
- (5) *On-site sewage treatment system requirements.*
- a. All on-site sewage treatment systems not requiring a Virginia Pollutant Discharge Elimination System (VPDES) permit shall:
 1. Install and maintain a plastic filter in the outflow pipe from the septic tank to filter solid material from the effluent while sustaining adequate flow to the drainfield to permit normal use of the septic system. Such a filter must comply with standards established in the Sewage Handling and Disposal Regulations administered by the state department of health; or
 2. Submit documentation every five years to the city department of health, certified by an operator or on-site soil evaluator licensed or certified under Chapter 23 (§ 54.1-2300 et seq.) of Title 54.1 of the Virginia Code as being qualified to operate, maintain or design on-site sewage systems, that the system has been inspected, is functioning properly, and the tank does not need to have the effluent pumped. Such certification shall indicate the date by which pump out must be accomplished in the future.
 - b. For new construction, on-site sewage treatment systems not requiring a VPDES permit shall also provide a reserve sewage disposal site with a capacity at least equal to that of the primary sewage disposal site. This reserve sewage disposal site requirement shall not apply to any lot or parcel recorded prior to October 1, 1989, if the lot or parcel is not sufficient in area to accommodate a reserve sewage disposal site, as determined by the city department of health.
- (6) *Stormwater runoff requirements.*
- a. For any land disturbance, development or redevelopment, stormwater runoff shall be controlled by the use of best management practices (BMPs) that meet the technical

criteria and administrative requirements for land-disturbing activities in accordance with the requirements set forth in the PFM, and the requirements for long-term maintenance of control measures outlined under section 26-349

- b. The approved BMPs are designed, constructed and maintained to prevent any increase in the non-point source pollution run-off.
- c. Runoff pollution loads must have been calculated and BMPs selected for the express purpose of controlling non-point source pollution. All pollution loading calculations must be in accordance with the City Code and the PFM and approved by the director of development and permits, or designee.
- d. Except as provided in section 26-346, the subdivider or developer must prepare a stormwater management plan in accordance with the section 26-348 and the requirements set forth in the PFM.

(7) *RPA buffer area requirements.*

- a. To minimize the adverse effects of land-disturbance, development and redevelopment activities on the RPA, state waters and aquatic life, a 100-foot wide buffer area of woody vegetation shall be retained if present or established if it does not exist with a minimum tree canopy coverage of 50 percent, calculated in accordance with the CBPA Specifications Manual.
- b. The buffer area shall be located adjacent to and landward of other RPA components and along both sides of any water body with perennial flow. The 100-foot buffer area shall be designated as the landward component of the RPA. The 100-foot buffer area shall be deemed to achieve a 75 percent reduction of sediments and a 40 percent reduction of nutrients. The 100-foot buffer area shall not be subject to encroachment except as follows:
 - 1. Agricultural lands as provided in subsection 26-520(b)(7)d.
 - 2. When the preservation of the 100-foot buffer area will result in the loss of a reasonable buildable area on a lot or parcel recorded prior to January 21, 1992, the CBPA review committee may permit encroachments in the buffer area in accordance with the following criteria:
 - A. Encroachments into the buffer area shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities, as determined by the CBPA review committee;
 - B. Where practicable, a vegetated area that will maximize water quality protection, mitigate the effects of the buffer encroachment, and equal the area of encroachment into the buffer area shall be established elsewhere on the lot or parcel; and
 - C. The encroachment may not extend into the seaward 50 feet of the buffer area.
 - 3. Encroachment into the landward 50 feet of the 100-foot buffer area for lots created by recordation of a valid subdivision plat after January 21, 1992 and prior to March 1, 2002, may be permitted through approval by the CBPA review committee, provided that the landowner is able to show:

- A. The encroachment into the landward 50 feet of the 100-foot buffer has been approved by the director of development and permits, or designee, as part of a valid final site plan or a final subdivision plan approved prior to March 1, 2002;
 - B. If the prior approval of the encroachment included the use of a best management practice (BMP), the BMP continues to function effectively or will be re-established, repaired, and maintained as necessary to ensure that it will function effectively, as determined by the director of development and permits, or designee;
 - C. The encroachment is the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities, as determined by the CBPA review committee;
 - D. Where practicable, a vegetated area greater than or equal to the area of encroachment will be established elsewhere on the lot to maximize water quality protection and mitigate the effects of the encroachment, and
 - E. The encroachment does not extend into the seaward 50 feet of the buffer area.
 - F. The criteria in A. and B. above may be satisfied by a written memorandum from the director of development and permits, or designee, that prior approval of the buffer encroachment has been given based on the location of appropriate best management practices landward of the 100-foot buffer area as necessary to collectively achieve water quality protection, pollutant removal and water resource conservation at least the equivalent of the full 100-foot buffer area and that where established, the approved BMP continues to function effectively.
- 4. Encroachment into the 100-foot buffer area in the IDA to the extent permitted under section 26-521
 - 5. Exceptions, exemptions and nonconforming waivers granted under sections 26-524 through 26-526
- c. The 100-foot vegetated buffer area shall be continuously maintained to meet each of the following additional performance standards:
 - 1. In order to maintain the functional value of the 100-foot buffer area, existing vegetation shall be retained. The city manager's designee may authorize removal of existing vegetation in the RPA only to provide for reasonable sightlines, access paths, general wood lot management, and best management practices, including those that prevent upland erosion and concentrated flows of storm water, pursuant to the following:
 - A. Trees may be pruned or removed as necessary to provide for sightlines and vistas, provided that any trees removed are replaced to provide 50 percent tree canopy coverage as required in section 26-520(b)(3)a.
 - B. Access paths shall be constructed and surfaced so as to effectively control erosion.

- C. Dead, diseased or dying trees or shrubbery and noxious weeds (such as Johnson grass, kudzu, and multiflora rose), may be removed and thinning of trees may be allowed with the approval of the director of development and permits, or designee, provided that any trees removed shall be replaced to provide 50 percent tree canopy coverage as required in subsection 26-520(b)(3)a.
 - D. For shoreline erosion control projects, trees and woody vegetation may be removed, provided that necessary control techniques are employed, and appropriate vegetation established to protect or stabilize the shoreline in accordance with the best available practices and applicable permit conditions or requirements.
2. Prior to any land disturbing activity, a protective barrier, consisting of TP-1 safety fencing, shall be installed around the perimeter of the required 100-foot buffer area and shall remain in place during the entire construction period. Perimeter protective barriers shall only be required if the limits of land disturbance are entirely within the RMA. If RPA disturbance is approved, protective barriers shall be placed in designated locations to protect the portions of the RPA that are not to be disturbed.
 3. Natural growth of understory and groundcover shall also be preserved to form tropic layers of vegetation.
- d. On agricultural lands, the 100-foot buffer area shall be managed to prevent runoff and appropriate measures taken to prevent noxious weeds from invading the vegetation. Encroachments into the agricultural 100-foot buffer area may be permitted by the city manager's designee only as follows:
1. Agricultural activities may encroach into the landward 50 feet of the 100-foot buffer when at least one agricultural best management practice which, in the opinion of the Virginia Dare Soil and Water Conservation District Board, addresses the more predominant water quality issue on the adjacent land erosion control or nutrient management is being implemented on the land adjacent to the buffer, provided that the combination of the undisturbed buffer area and the BMP achieves water quality protection, pollutant removal, and water resource conservation at least the equivalent of the 100-foot buffer area. If nutrient management is identified as the predominant water quality issue, a nutrient management plan, including soil tests, must be developed consistent with the Virginia Nutrient Management Training and Certification Regulations administered by the state department of conservation and recreation.
 2. Agricultural activities may encroach within the landward 75 feet of the 100-foot buffer area when agricultural BMPs which address erosion control, nutrient management, and pest chemical control, are being implemented on the land adjacent to the buffer. The erosion control practices must be sufficient to prevent erosion from exceeding the soil loss tolerance level, referred to as "T," as defined in the "National Soil Survey Handbook" of November 1996, in the "Field Office Technical Guide" of the U. S. Department of Agriculture Natural Resource Conservation Service. A nutrient management plan, including soil tests, must be

developed, consistent with the Virginia Nutrient Management Training and Certification Regulations administered by the state department of conservation and recreation. In conjunction with the remaining buffer area, this collection of BMPs shall be presumed to achieve water quality protection at least the equivalent of that provided by the 100-foot buffer area.

- (3) The 100-foot buffer area is not required adjacent to agricultural drainage ditches having perennial flow if at least one best management practice (BMP) is installed which, in the opinion of the Virginia Dare Soil and Water Conservation District Board, addresses the more predominant water quality issue on the land adjacent to the ditch, either by erosion control or nutrient management.

Sec. 26-521. - Special provisions for the IDA.

- (a) All land disturbance, development and redevelopment in the IDA shall be subject to approval by the city manager's designee for developments within the RMA and by the CBPA review committee for developments, or portions thereof, encroaching in the RPA, in accordance with the following:
 - (1) All performance standards in section 26-520 shall apply to the IDA, except that 100-foot buffer requirements may be modified or waived as set out in subsection (2) below.
 - (2) Wherever possible, a full 100-foot buffer area shall be retained or established with a minimum tree canopy coverage of 20 percent, calculated in accordance with the CBPA specifications manual and the PFM. Where preservation or establishment of the full 100-foot buffer is determined by the CBPA review committee to be impracticable in the IDA, all land disturbance, development and redevelopment in the IDA shall incorporate the design standards set out in the CBPA specifications manual and the PFM.
 - (3) Techniques for low impact design set out in the CBPA specifications manual are followed unless waived or modified by the city manager's designee or for RPA encroachment, by the CBPA review committee.
- (b) All other restrictions and requirements in this article shall apply to the IDA unless expressly exempted therefrom.

Sec. 26-522. - Relationship of CBPA standards to other ordinances.

- (a) This article shall supplement, and where more stringent, supersede other applicable ordinances, regulations and policies of the city. The following shall apply to all land disturbance, development and redevelopment in the CBPA district, notwithstanding anything to the contrary in the other portions of the City Code and city zoning ordinance.
 - (1) Lot size shall be subject to the requirements of the underlying zoning district, provided that all lots shall have sufficient area outside the RPA to accommodate an intended development in accordance with the performance standards set out in this article. For purposes of this section, all lots greater than 12,000 square feet in total lot area created by recordation of a subdivision plat on or after March 1, 2002, shall have at least 75 percent of the required lot area located landward of the 100-foot RPA buffer. All lots 12,000 square feet or less in total lot area created by recordation of a valid subdivision

plat on or after March 1, 2002, shall have at least 80 percent of the required lot area located landward of the 100-foot RPA buffer. The lot area outside the 100-foot RPA buffer shall be delineated on the final site plan and/or final subdivision plat. In no event shall lot area reductions given for open space dedication under section 19-700 et seq. of the zoning ordinance be applied to lots located wholly or partially in the RPA.

- (2) The following notes shall be included on all final subdivision plats and final site plans for property in the CBPA district:
 - a. All land disturbance, uses, development and redevelopment in the Chesapeake Bay Preservation Area District are required to retain an undisturbed vegetated 100-foot buffer area around RPA features, such as wetlands, shorelines and along waterbodies with perennial flow;
 - b. On-site sewage treatment systems with one drainfield shall be pumped out at least once every five years, subject to the provisions in subsection 26-520(b)(5);
 - c. Only certain specified activities may be permitted in the RPA, such as approved water-dependent facilities; redevelopment; roads and driveways; flood control and stormwater management facilities; bona fide agricultural activities; and wetlands restoration activities, as approved by the CBPA review committee pursuant to section 26-519
 - d. Canopy coverage as required by subsection 26-520(b)(3) including the natural growth of understory and groundcover, shall be continuously preserved and maintained. Dead, diseased and dying trees may be removed and replaced as approved by the director of development and permits, or designee, subject to the canopy coverage requirements.
 - e. Any stipulations attached to a CBPA approval by the city manager's designee, the CBPA review committee or the CBPA board. In the event the stipulations appear to be inconsistent with one or more of the notes required above, the language used in the notes shall be harmonized in order that the more stringent requirement will control.
- (3) Prior to initiating grading, clearing, construction or other on-site activities on any portion of a lot or parcel in the district, all required wetlands permits required by federal, state, and local laws and regulations shall be obtained and evidence of such submitted to the zoning administrator or director of development and permits, or designee, as applicable, prior to the issuance of a building permit or land-disturbing permit.
- (4) All clearing or grading activities disturbing 2,500 square feet or more in the CBPA shall require an erosion and sediment control plan in accordance with the erosion and sediment control ordinance in chapter 26 and all regulations adopted thereunder.
- (5) All land disturbance, development or redevelopment in the CBPA shall comply with the stormwater management ordinance in chapter 26 and all regulations adopted thereunder.
- (6) No building permits or land-disturbing permits may be issued for land disturbance, construction, development or redevelopment in the CBPA district without evidence of approval by the designated approval authority.

- (b) The performance criteria set out in this ordinance shall apply to all divisions of land in the CBPA under chapter 70; land disturbance activities in the CBPA under chapter 26; and all development uses, and construction, other than fences, under the city zoning ordinance.

Sec. 26-523. - Water quality impact assessments.

- (a) The purpose of the water quality impact assessment (WQIA) is to:
 - (1) Identify the impacts of the proposed land disturbance, construction, development or redevelopment on water quality and lands within the RPA;
 - (2) Ensure that where development takes place within the RPA or other sensitive lands, buildings, structures and other impervious areas will be located on those portions of a site in a manner that will be least disruptive to the natural functions of the RPA and other sensitive lands;
 - (3) Protect individuals from making improvements proposed for location on lands unsuited for such development due to high ground water, erosion, or vulnerability to flood and storm damage;
 - (4) Provide the basis for relief from the terms of this article when warranted; and
 - (5) Specify mitigation which will address water quality protection.
- (b) A WQIA is required for:
 - (1) Any proposed land disturbance, development or redevelopment within the RPA, including any buffer area encroachment approved under section 26-520(b)(7);
 - (2) A WQIA may be required for any other land disturbance, development or redevelopment in the CBPA district that warrants such assessment because of the unique characteristics of the site or intensity of the proposed activity. The determination of whether a proposed activity warrants a WQIA shall be made by the city manager's designee upon consideration of the following factors:
 - a. The existing state of the site, including topography, hydrology, soils, vegetative ground cover, wetlands, or manmade features of the site;
 - b. The proposed activity including the total amount of land disturbance and impervious surface; and
 - c. Such other factors related to the proposed activity, use or development as may be deemed relevant to water quality.
- (c) The requirement for a WQIA may be modified by the city manager's Designee for conditionally permitted development in the RPA meeting the requirements in section 26-519 of this article and for land disturbance of less than 5,000 square feet. The city manager's designee may also elect to modify the WQIA requirements if warranted by the factors listed in subsection (b).
- (d) No WQIA is required for bona fide agricultural activities conducted on agricultural lands meeting the criteria in subsection 26-519

- (e) A WQIA must demonstrate through acceptable calculations that the undisturbed positions of the 100-foot RPA buffer area and proposed or existing BMPs will result in removal of no less than 75 percent of sediments and 40 percent of nutrients from post-development stormwater runoff, as determined by the director of development and permits, or designee.
- (f) A WQIA shall include a plan, survey or plat drawn to scale which shows the following:
 - (1) Location of the components of the RPA, including the 100-foot RPA buffer area. The applicant shall provide an accurate, site-specific delineation of each RPA feature.
 - (2) Location and nature of the proposed encroachment into the RPA buffer area, including, but not limited to, areas of clearing, filling or grading; location of any buildings, structures, roads, drives, or other impervious cover; location of buffer and tree protection fencing; and sewage disposal systems or reserve drainfield sites;
 - (3) Type and location of proposed BMPs and other measures to mitigate the impact of the encroachment; and
 - (4) Trees to be preserved or installed to meet tree canopy coverage requirements in section 26-520(b)(3).
- (g) The WQIA will be used by the designated approval authority to determine if the proposed encroachment in the 100-foot buffer area or other component of the RPA is consistent with the provisions of this article based on the following criteria:
 - (1) The purpose and necessity of the proposed encroachment;
 - (2) The ability to locate improvements elsewhere on the site to avoid disturbance of the 100-foot buffer area or other RPA component;
 - (3) The ability to minimize impervious surface;
 - (4) The extent to which best management practices are to be installed and maintained to achieve the requisite reductions in pollutant loadings;
 - (5) The extent to which the proposed land disturbance, use, development or redevelopment meets the purpose and intent of this article; and
 - (6) The cumulative impact of the proposed land disturbance, use, development, or redevelopment when considered in relation to other development in the vicinity, both existing and proposed, will not result in a significant degradation of water quality.
- (h) The WQIA will also be used by the designated approval authority to determine whether the proposed land disturbance, use, development or redevelopment is consistent with the provisions of section 26-520 of this article based upon the following criteria:
 - (1) Whether the proposed activity is water-dependent;
 - (2) Whether the disturbance of any wetlands will be minimized;
 - (3) Whether the proposed activity will not result in significant degradation of the hydrology of the site;
 - (4) Whether the proposed activity will not result in significant degradation to aquatic vegetation or life;

- (5) Whether the proposed activity will not result in unnecessary destruction of existing plant materials on site;
 - (6) Whether proposed erosion and sediment control concepts will be adequate to achieve reductions in runoff and prevent off-site sedimentation;
 - (7) Whether the proposed stormwater management facilities and BMPs will be adequate to control the stormwater runoff to achieve the required performance standard for pollutant control;
 - (8) Whether the proposed revegetation of disturbed areas will provide optimum erosion and sediment control benefits;
 - (9) Whether the design and location of any proposed drainfield will be in accordance with the requirements of this article;
 - (10) Whether the proposed land disturbance, use, development or redevelopment is consistent with the purpose and intent of the CBPA district;
 - (11) Whether the cumulative impact of the proposed land disturbance, use, development or redevelopment, when considered in relation to other development in the vicinity, both existing and proposed, will not result in a significant degradation of water quality.
- (i) The designated approval agent shall require additional mitigation where potential adverse impacts have not been adequately addressed in the WQIA. Evaluation of mitigation measures shall be made based on the criteria listed in subsections (g) and (h).
 - (j) All activities in the CBPA district shall comply with accepted protective and mitigative techniques set out in an approved WQIA.

Sec. 26-524. - Plan of development requirements.

- (a) An approved plan of development shall be required for all activities in the RPA and RMA. For the purpose of compliance with this article, the processing of proposals for land disturbance, use, development or redevelopment under the city zoning ordinance or chapter 70 of this Code, as the case may be, may constitute the required plan of development. In any case, all plans of development shall include:
 - (1) A site plan in accordance with the requirements of article 18 of the zoning ordinance or a plan for division of land in accordance with chapter 70
 - (2) A water quality impact assessment (WQIA) if required by section 26-523
 - (3) A landscaping plan in accordance with the city's landscaping requirements in article 19 of the zoning ordinance and the canopy coverage requirements in this article.
 - (4) An approved stormwater management plan in accordance with this Code, and the city public facilities manual.
 - (5) An approved erosion and sediment control plan for any land disturbance over 2,500 square feet in the CBPA. Such erosion and sediment control plan shall conform with the requirements of chapter 26, article III (section 26-51 et seq.), of this Code and all

regulations adopted thereunder. The approved erosion and sediment control plan shall also conform with the performance standards herein.

- (b) All wetlands delineations required under this article shall be performed consistent with the procedures specified in the 1987 Federal Manual for Identifying and Delineating Jurisdictional Wetlands.

Sec. 26-525. - Nonconforming uses, buildings and structures.

- (a) The permitted use of any lawfully nonconforming building or structure which existed on January 21, 1992 and which is not in compliance with the provisions of the CBPA district may be continued, provided that there is no change in use, expansion of the lawfully nonconforming building or structure, or alteration of lot lines.
- (b) Notwithstanding the foregoing, the CBPA review committee may grant a waiver for lawfully nonconforming buildings or structures, other than accessory structures, on lawfully nonconforming lots or parcels to provide for remodeling, alterations or additions to such nonconforming buildings or structures provided that:
 - (1) There will be no increase in nonpoint source pollution load;
 - (2) Any land disturbance equal to or exceeding an area of 2,500 square feet complies with all erosion and sediment control and stormwater management requirements of the City Code and regulations adopted thereunder and with the PFM;
 - (3) The request for the waiver is the minimum necessary to afford relief;
 - (4) Granting the waiver will not confer upon the applicant any special privileges that are denied to other property owners in similar situations;
 - (5) The waiver is in harmony with the purpose and intent of this article and does not result in water quality degradation;
 - (6) The waiver is not based on conditions or circumstances that are self-created or self-imposed;
 - (7) The waiver is granted only for principal buildings, as defined in the city zoning ordinance, with the exception that no more than one detached structure located within six feet of the principal building shall be entitled to a waiver under this subsection. In the case of a swimming pool, the six-foot maximum distance of separation shall be measured from the pool wall closet to the principal building.
 - (8) Reasonable and appropriate conditions are imposed, as warranted, that will prevent the waiver from causing a degradation of water quality; and
 - (9) Other findings and conditions, as appropriate and required by the CBPA review committee, are met.
- (c) For purposes of this section, a lawfully nonconforming lot is one shown on an approved subdivision plat that was recorded in the clerk's office for the Chesapeake Circuit Court prior to inclusion of any portion of the lot in the CBPA district.

- (d) The CBPA review committee may also grant a waiver for new construction on unimproved nonconforming lots or parcels, provided that a final construction plan has been approved for the development of the lot prior to December 31, 2003 and further provided that the criteria in this section are met. In no event shall a waiver be granted for encroachment by any building or structure other than the principal building, as defined in this article; nor shall a waiver be granted for encroachment beyond the landward 50 feet of the 100-foot wide RPA buffer.
- (e) An application for a nonconforming waiver under this section shall be made with forms furnished by the CBPA review committee and shall include the information listed in the CBPA Specifications Manual, as well as other requested information.
- (f) Notwithstanding anything to the contrary in this article, any nonconforming waiver issued under this section shall expire if the enlargement or alteration of the nonconforming building or structure is not completed within two years of the date the approval was issued.
- (g) In no case shall this provision apply to accessory structures, as defined in this article.

Sec. 26-526. - Exemptions.

- (a) Exemptions may be granted administratively by the city manager's designee upon submittal of a complete application and a determination that all conditions listed herein or otherwise imposed will be met.
- (b) Exemptions for public utilities, railroads, public roads and other facilities may be granted from the requirements of this article for the following:
 - (1) Construction, installation, operation, and maintenance of public roads; electric, natural gas, fiber-optic, cable and telephone transmission lines; and railroads, including appurtenant structures, in accordance with the following requirements:
 - a. A water quality impact assessment is submitted and meets the evaluation criteria in section 26-523
 - b. Appurtenant structures shall include, but are not limited to, bridges, culverts, guard rails, drainage facilities, lighting and traffic control devices, fences and berms, as approved by the CBPA review committee.
 - (2) Construction, installation and maintenance of water, sewer, outfall structures, natural gas, underground telecommunications, and cable television lines owned or permitted by a local government or regional service authority shall be exempt without meeting the requirements in subsection 26-526(b)(1), provided that:
 - a. To the degree possible, such utilities and facilities are located outside the RPA;
 - b. No more land is disturbed than necessary to provide for the proposed utility installation;
 - c. All construction, installation, and maintenance of such utilities and facilities are in compliance with applicable state and federal requirements and permits and designed and conducted in a manner that protects water quality; and

- d. Any land disturbance that exceeds an area of 2,500 square feet complies with the erosion and sediment control ordinance in chapter 26, including regulations adopted thereunder, and with the Chesapeake Public Facilities Manual.
- (c) Exemptions for qualifying silvicultural activities may be granted from the requirements of this article, provided that such activities adhere to water quality protection procedures prescribed by the Virginia Department of Forestry in the January 1997 Edition of "Forestry Best Management Practices for Water Quality in Virginia."
- (d) The following land disturbances may also be exempt from the requirements of this article: water wells; passive recreation facilities such as boardwalks, trails and pathways; and historic preservation and archaeological activities, provided that the applicant demonstrates to the satisfaction of the CBPA review committee that:
 - (1) Any required permits, except those to which the requested exemption specifically applies, have been issued;
 - (2) Sufficient and reasonable proof is submitted that the intended use or development will not degrade water quality;
 - (3) The intended land disturbance, use, development or redevelopment does not conflict with adjacent and nearby planned, approved or existing developments or uses;
 - (4) Any land disturbance exceeding an area of 2,500 square feet complies with the city's erosion and sediment control plan in chapter 26, article III, including regulations adopted thereunder and with the Chesapeake Public Facilities Manual; and
 - (5) Review and approval has been given by the CBPA review committee.

Sec. 26-527. - Chesapeake Bay Preservation Area Board: Composition; terms; rules of procedure.

- (a) There is created a Chesapeake Bay Preservation Area Board ("CBPA board"), which shall consist of seven residents of the city, who shall be appointed by the city council. There shall also be two alternate members of the Chesapeake Bay Preservation Area Board appointed by the city council, each of whom shall be a resident of the city.
- (b) The terms of office of members and alternate members shall be for five years each. The chairman of the board shall notify the council at least 30 days in advance of the expiration of any term of office and shall also notify the council if any vacancy occurs. Appointments to fill vacancies shall be for the unexpired portion of the term.
- (c) Members and alternate members of the board shall hold no other public office in the city, except that they may be members of the planning commission, local erosion commission, directors of soil and water conservation boards or of the board of zoning appeals.
- (d) A member or alternate member whose term expires shall continue to serve until his successor is appointed and qualified.
- (e) The 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.

- (f) For the conduct of any hearing and the taking of any action, a quorum shall be not less than four members or alternate members of the board.
- (g) The board may make, alter and rescind rules and forms for its procedures consistent with ordinances of the city and general laws of the state.
- (h) The board shall keep a full public record of its proceedings and shall submit a report of its activities to the council at least once each year.
- (i) The council shall supply a reasonable meeting space for the use of the board and such other reasonable services as may be needed by the board.
- (j) Any board member or alternate member may be removed for malfeasance, misfeasance or nonfeasance in office or for other just cause by the council after a hearing held after at least 15 days' notice.
- (k) Any member who knows that he will not be able to attend a board meeting shall notify the chairman at least 24 hours in advance of such meeting. The chairman shall select an alternate member to serve in place of the absent member at the board meeting, which shall be noted in the records of the board.

Sec. 26-528. - Exceptions and appeals.

- (a) When an applicant can demonstrate that the application of this article to a lot or parcel located within the CBPA district would unreasonably restrict the utilization of the property under its existing zoning classification, the applicant may submit a CBPA exception application to the CBPA review committee. The CBPA review committee shall refer the application to the CBPA Board with recommendations based on the criteria in subsection (c).
- (b) All prohibited development within the RPA shall require a CBPA exception. The exception application shall identify the impacts of the proposed development on water quality and on lands within the RPA through the performance of a water quality impact assessment (WQIA), conforming with the provisions of section 26-523
- (c) An exception shall not be granted by the CBPA board unless each of the following specific findings are made:
 - (1) The requested exception to the criteria is the minimum necessary to afford relief;
 - (2) Granting the exception will not confer upon the applicant any special privileges that are denied by this article to other property owners who are subject to its provisions and who are similarly situated;
 - (3) The exception is in harmony with the purpose and intent of this article and is not of substantial detriment to water quality;
 - (4) The exception request is not based upon conditions or circumstances that are self-created or self-imposed;
 - (5) Reasonable and appropriate conditions are imposed, as warranted, to prevent the proposed activity from causing degradation of water quality; and
 - (6) Other findings and conditions, as appropriate and required by the CBPA board, are met.

- (d) The CBPA review committee shall review the exception request and make a recommendation to the CBPA board whether to grant the request as submitted, grant the request with conditions, or deny the request. The CBPA review committee will make written recommendations to the CBPA board for all exception requests involving building permits, preliminary subdivision plans, preliminary site plans, conditional use permits and rezoning requests.
- (e) The CBPA board shall also hear appeals from final decisions of the city manager's designee or the CBPA review committee. Appeals to the CBPA board shall be filed on forms provided by the city. Procedures and submittal requirements may be supplemented in the CBPA Specifications Manual.
- (f) All applications for exceptions and appeals shall be submitted with a processing fee of \$200.00 per lot for which relief is requested. The applicant shall also be responsible for all advertising costs, including without limitation, the cost of newspaper publications and mailings to adjacent property owners.
- (g) In performing its duties, the CBPA board shall:
 - (1) Conduct a duly-advertised public hearing for all requests for exceptions and appeals. Such advertising and notice to adjacent property owners shall conform with § 15.2-2204 of the Code of Virginia, 1950, as amended, with the exception that a short summary of the requested exception shall be sufficient for notice purposes.
 - (2) In the case of exception requests, consider the recommendations of the CBPA review committee.
 - (3) In the case of exception requests, render a final decision based on the criteria in subsection 26-528(c).
 - (4) In the case of appeals from administrative decisions, apply the requisite criteria and render a final decision consistent with the intent and purpose of this article.
- (h) Any denial of an exception request or appeal shall be made in writing and shall state the reasons for the denial. Such denial shall be considered a denial of a preliminary site plan, and the applicant shall have a right of appeal to the circuit court for the city as provided in § 15.2-2260 of the Code of Virginia, 1950, as amended.
- (i) No exception request or appeal that is denied or approved with conditions shall be refiled with the city for one year after such denial or conditional approval, unless the city manager's designee determines that the new application significantly reduces the extent of encroachment.
- (j) All exceptions granted by the CBPA board shall expire two years from the date of issuance unless the use, building or structure is completed within the two-year period or unless extended by the CBPA board.

Sec. 26-529. - Hearing; decision of board.

- (a) Not later than 60 days after receipt of a completed application for appeal or exception, the CBPA board shall hold a public hearing on such application.

- (b) In acting on any appeal or exception request, the board may grant, grant in modified form or deny such appeal or exception request. The appeal or exception request shall be granted upon the concurring vote of four members. The chairman of the board or, in his or her absence, the acting chairman may administer oaths and compel the attendance of witnesses.
- (c) Any person may appear and be heard at the public hearing. Each witness at the hearing may submit a concise written statement of his or her testimony.
- (d) The board shall make a record of the proceeding, which shall include the application, any written statements of members, a summary of statements of all witnesses, the findings and the decision of the board and the rationale for the decision.
- (e) The board shall make its determination within 30 days from the final hearing. Within 48 hours of its determination, the board shall notify the applicant of such a determination.
- (f) The record shall be open for public inspection at the department of planning.

Sec. 26-530. - Enforcement, violations, penalties.

- (a) The city manager shall designate an enforcement agent ("city manager's designee") to enforce the provisions of this article. Any person causing or permitting a violation of this article, including without limitation, violation of the CBPA specifications manual or any order or condition of approval, exception or waiver granted hereunder, shall constitute a Class 1 misdemeanor punishable by a fine in an amount not exceeding \$1,000.00. Each day the violation continues shall be deemed a separate offense.
- (b) No permits or approvals shall be given for any land disturbance, building, structure, use, development or redevelopment of any property in violation of the provisions of this article.
- (c) Upon notice from the city manager's designee charged with enforcement that any activity is being conducted in violation of this article, all persons causing or permitting the violation shall immediately cease the violation. The city manager's designee charged with enforcement of this article shall issue a written stop-work order to all persons causing or permitting the violation and shall require the immediate cessation and correction of the violation. No such stop-work order shall be effective until it shall have been delivered to the owner or occupant of the property upon which the activity is conducted, or agent thereof, or to such person conducting such activity. Any person who shall continue an activity ordered to be stopped shall be guilty of a violation of this article and shall be subject to all enforcement procedures hereunder.
- (d) If specific problems are identified pertaining to agricultural activities on agricultural lands which are causing pollution of a nearby RPA feature or violating performance standards pertaining to the 100-foot vegetated buffer area, the enforcement agent, in cooperation with the Virginia Dare Soil and Water Conservation District, shall implement a compliance schedule binding on the landowner and shall require corrective action consistent with that schedule. This schedule shall ensure environmental protection while taking into account the seasons and other temporal considerations so that the probability for successfully implementing the corrective measures is the greatest.
- (e) Without limiting the remedies under this article, the city manager's designee charged with enforcement shall have the authority to order correction of the violation by restoration of the

property as necessary to protect water quality. Failure to comply with any order of correction or restoration shall be punishable as a violation of this article.

- (f) Without limiting the remedies under this article, the circuit court may assess a civil penalty on any person who violates any provision of this article, including without limitation, violating any order or any condition of an approval, exception or waiver granted under this article. The civil penalty shall not exceed \$5,000.00 for each day of violation. Such penalties shall be directed to be paid to the treasurer of the city for the purpose of abating environmental damage to or restoring the Chesapeake Bay Preservation Area within the city. Failure to pay the fine in a timely manner shall be punishable as a violation of this article or by contempt proceedings.
- (g) Without limiting the remedies under this article, and with the consent of any person who has violated any provision of this article, including, without limitation, violation of any order or any condition of an approval, exception or waiver issued under this article, the CBPA board may issue a consent order against such person for the one-time payment of civil charges for each violation in specific sums, not to exceed \$10,000.00 for each violation. Findings of violation shall be made by the CBPA board after notice and hearing to the person or persons charged with causing or permitting the violation. Such civil charges shall be paid to the treasurer of the city for the purpose of abating environmental damage or restoring the Chesapeake Bay Preservation Area in the city. Civil charges shall be in lieu of any appropriate civil penalty that could be imposed by the circuit court under subsection (f). Civil charges may be in addition to the costs of any restoration required by the city manager's designee or the CBPA board under this section. Failure to pay the fine in a timely manner shall be punishable as a violation of this article.
- (h) In addition to civil charges, the CBPA board may order the violator to restore the property in such a manner as deemed appropriate to protect water quality. Failure to comply with such order in a timely manner shall be punishable as a violation of this article.
- (i) In addition to, and not in lieu of, the penalties prescribed above, the city may apply to the circuit court for an injunction against the continuing violation of any of the provisions of this article, including without limitation, failure to comply with any order or condition of an approval, exception or waiver issued hereunder, and may seek any other remedy authorized by law.

DECEMBER 9, 2003: Original ordinance adopted by the City Council

DECEMBER 31, 2003: Emergency effective date

JULY 26, 2005: Amendments adopted by the City Council

AUGUST 26, 2005: Effective date of Amendments

AUGUST 12, 2008: Amendments adopted by City Council
Ord. No. 08-O-110

AUGUST 8, 2009: Amendments adopted by City Council
Ord. No. 09-O-098

JULY 27, 2010: Amendments adopted by City Council
Ord. No. 10-O-098 Replace Public Works Director with
Director of Development and Permits due to reorganization

JULY 24, 2012: Amendments adopted by City Council:
Ord. No. 12-O-077 Deleting Wetlands Board and replacing
with Chesapeake Bay Preservation Area Board

MAY 27, 2014: Amendments adopted by City Council:
Ord. No. 12-O-077 Aligning Chesapeake Bay Preservation
Area Ordinance with updated Stormwater Regulations