

MEMORANDUM

TO: Bowling Green Town Council
FROM: Jeff Gore, Town Attorney
DATE: October 2, 2026
RE: Proposed Replacement of Article 10.24 – Chesapeake Bay Preservation Area

Purpose and Background

The proposed ordinance repeals and replaces the Town’s existing Article 10.24 governing Chesapeake Bay Preservation Areas (“CBPAs”). The principal purpose is to bring the Town’s ordinance into conformity with the Chesapeake Bay Preservation Act, Va. Code § 62.1-44.15:67 et seq., and the Chesapeake Bay Preservation Area Designation and Management Regulations, 9VAC25-830-10 et seq., while directly addressing the ordinance deficiencies identified by the Virginia Department of Environmental Quality (“DEQ”) in the Town’s Corrective Action Agreement. Virginia law requires Tidewater localities to designate CBPAs and incorporate water-quality protections into local zoning, subdivision, and land-development regulations. Bowling Green is included a “Tidewater” locality for Chesapeake Bay Act purposes, due to being in Caroline County, which is specifically named in statute. Va. Code § 62.1-44.15:74; 9VAC25-830-190.

The proposed ordinance is a comprehensive replacement rather than a series of amendments. It retains the Town’s local program but provides clearer standards for identifying protected areas, reviewing development, protecting the 100-foot Resource Protection Area (“RPA”) buffer, processing exceptions, and documenting and enforcing compliance.

Key Provisions of the Proposed Ordinance

- CBPA designation and mapping. Expressly designates the Resource Management Area (“RMA”) jurisdiction-wide—all Town land outside the RPA—and requires an official CBPA map, site-specific RPA determinations, perennial-flow evaluation, and depiction of RPA/RMA boundaries on plats and site plans. (§§ 10.24.050-.060; 9VAC25-830-80, -90, -110, -190.)
- Performance and buffer standards. Incorporates current requirements to minimize land disturbance and impervious cover, preserve indigenous vegetation and mature trees, maintain the 100-foot vegetated RPA buffer, and reestablish woody vegetation when agricultural or silvicultural use within the buffer is converted to another use. (§§ 10.24.070-.080; 9VAC25-830-130, -140.)
- Agricultural compliance. Adds specific agricultural buffer/BMP requirements and an enforcement process coordinated with the local Soil and Water Conservation District, including a corrective schedule when noncompliance is reported. (§ 10.24.085; 9VAC25-830-140(5)(b).)
- Plan of Development (“POD”) review. Establishes a defined review process before final development approval for projects exceeding 2,500 square feet of land disturbance. Depending on the project, submissions include a site-specific RPA determination, environmental site assessment, WQIA, resiliency assessment, site/landscape or buffer plan, and applicable erosion/stormwater and wetlands information. (§ 10.24.090; 9VAC25-830-190.)
- Water Quality Impact Assessments. Separately defines minor and major WQIAs and requires mitigation proportionate to the approved impact, including buffer restoration, woody vegetation, BMPs, or other water-quality measures. (§ 10.24.100; 9VAC25-830-140(6).)

- Exceptions and enforcement. Distinguishes administrative buffer encroachments/limited administrative exceptions from formal exceptions requiring notice, a public hearing, and written findings. The draft also adds recordkeeping, annual-report tracking, restoration authority, civil penalties, and civil charges authorized by state law. (§§ 10.24.120-.170; Va. Code § 62.1-44.15:74(E)-(F); 9VAC25-830-150, -260.)

DEQ Corrective Action Agreement

The draft is structured to respond directly to the ordinance-consistency items in DEQ’s action plan. The principal correlations are summarized below:

DEQ Requirement	Proposed Ordinance Response	Draft Section(s)
RMA designation	Makes the RMA jurisdiction-wide and requires consistency between the ordinance, map, and site-specific review.	10.24.050
Agricultural enforcement	Adds SWCD-coordinated BMP requirements and corrective/compliance procedures.	10.24.085
Defined POD process	Expressly requires site-specific RPA review, environmental assessment, WQIA, resiliency review, and site/landscape information as applicable.	10.24.090
Major/minor WQIA; mitigation	Creates separate minor and major WQIA standards and express mitigation requirements.	10.24.100
Administrative/formal exceptions	Separates administrative approvals from formal exceptions and states notice, hearing, findings, and conditions.	10.24.120-.130
Woody buffer reestablishment	Requires full buffer reestablishment with woody vegetation when agricultural or silvicultural buffer use is converted.	10.24.080(D)

The proposed ordinance also supports related action-plan items by directing the Town Manager to update administrative forms/checklists, website materials, septic-system notification/tracking, and annual-report tracking tools, and by directing review of the official CBPA map. As the Corrective Action Agreement separately requires comprehensive-plan amendments and other programmatic work; adoption of this ordinance alone will not complete those separate tasks.

Key Differences from Current Town Code Article 10.24

The principal change is not the creation of a new Bay Act program, but replacement of the current ordinance with a more complete and administrable framework tied directly to current state requirements and DEQ’s findings. The most significant differences are:

- RMA/RPA identification is made explicit and internally consistent: the RMA is jurisdiction-wide, while the RPA remains subject to site-specific delineation rather than reliance solely on the Town’s generalized map.
- The current ordinance’s general performance provisions are expanded into a defined POD workflow with specified review materials and an express 2,500-square-foot land-disturbance threshold.

- WQIA requirements are substantially clarified by distinguishing minor from major assessments and expressly addressing mitigation and buffer restoration.
- Agricultural and silvicultural provisions are strengthened, particularly the Town/SWCD enforcement process and the requirement to restore woody buffer vegetation when those uses cease.
- Exception procedures are reorganized to eliminate ambiguity between matters that may be handled administratively and formal exceptions requiring public notice and hearing.
- The draft ordinance adds clearer program-administration provisions for mapping, website publication, plat/site-plan notations, records, annual reporting, inspections, restoration, enforcement, civil remedies, and appeals.

Council Considerations / Next Steps

The draft ordinance should be transmitted to DEQ for consistency review before final adoption or, at minimum, before the ordinance is finalized for public hearing. DEQ's Corrective Action Agreement specifically contemplates DEQ review of the Town's draft ordinance amendments. Following DEQ comments, the Town can make any technical revisions, advertise and conduct the required public hearing, and adopt the replacement Article 10.24. In parallel, staff should continue the separate CBPA map, comprehensive-plan, website, POD-form/checklist, septic-system tracking, and annual-report corrective actions identified by DEQ.