

Town of Cape Charles Zoning Ordinance
Article VII – Chesapeake Bay Preservation Area Overlay District

Article VII - Chesapeake Bay Preservation Area Overlay District

Section 32-180: Title

This ordinance shall be known and referenced as the Chesapeake Bay Preservation Area Overlay District of the Town of Cape Charles.

Section 32.181: Findings of Fact

The Chesapeake Bay and its tributaries is one of the most important and productive estuarine systems in the world, providing economic and social benefits to the citizens of Cape Charles and the Commonwealth of Virginia. The health of the Bay is vital to maintaining the Town of Cape Charles' economy and the welfare of its citizens.

The Chesapeake Bay has been degraded significantly by many sources of pollution, including non-point 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 shorelines 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. With proper management, they offer significant ecological benefits by providing water quality maintenance and pollution control, as well as flood and shoreline erosion control. These lands together, designated by the Town Council of Cape Charles as Chesapeake Bay Preservation Areas (hereinafter CBPA), need to be protected from destruction and damage in order to protect the quality of life in Cape Charles and the Commonwealth of Virginia.

Section 32.182: Purpose and Intent

- (a) This ordinance is enacted to implement the requirements of [§ 62.1-44.15:67](#) et seq. of the Code of Virginia, 1988 as amended, (The Chesapeake Bay Preservation Act) and amends the Zoning Ordinance of Cape Charles. The intent of the Town Council and the purpose of the Overlay District is to: (1) protect existing high quality state waters; (2) restore all other state waters to a condition or quality that will permit all reasonable public uses and will support the propagation and growth of all aquatic life, including game fish, which might reasonably be expected to inhabit them; (3) safeguard the clean water of the Commonwealth from pollution; (4) prevent any increase in pollution; (5) reduce existing pollution; and (6) promote water resource conservation in order to provide for the health, safety, and welfare of the present and future citizens of the Town of Cape Charles.
- (b) This district shall be in addition to and shall overlay all other zoning districts where they are applied so that any parcel of land lying in the Chesapeake Bay Preservation Area Overlay District shall also lie in one or more of the other zoning districts provided for by the Zoning Ordinance. Unless otherwise stated in the Overlay District, the review and approval procedures provided for in other applicable ordinances shall be followed in reviewing and approving

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development, redevelopment, and uses governed by this Article.

- (c) This Article is enacted under the authority of [§ 62.1-44.15:67](#) et seq., The Chesapeake Bay Preservation Act, and [§ 15.2-2283](#) of the Code of Virginia, which states that zoning ordinances may “also include reasonable provisions, not inconsistent with applicable state water quality standards, to protect surface water and groundwater as defined in [§ 62.1-255.](#)”

Section 32.183: Areas of Applicability

- (a) The Chesapeake Bay Preservation Act Overlay District shall apply to all lands identified as CBPAs as designated by the Town Council and as shown on the Zoning District Map. Such map, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this Article.
- (b) The Resource Protection Area 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) a one-hundred-foot (100') vegetated buffer area located adjacent to and landward of the components listed in subsections [a1](#) through [e 3](#) above and along both sides of any water body with perennial flow
- (c) The Resource Management Area is composed of ~~the following land categories: flood plains; highly erodible soils, including steep slopes; highly permeable soils; non-tidal wetlands not included in the RPA; other lands necessary to protect the quality of state waters or a minimum of one hundred feet (100') in width landward of the Resource Protection Area, whichever is greatest.~~
- (d) The Zoning District Map shows the general location of CBPAs and should be consulted by persons contemplating activities within Cape Charles prior to engaging in a regulated activity.
- (e) Portions of RPAs and RMAs designated by the Town Council as Intensely Developed Areas shall serve as [development and](#) redevelopment areas. Areas so designated shall comply with all erosion and sediment control requirements and the performance standards for redevelopment in Section 32-189, Performance Standards.

Section 32.184: Use Regulations

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

Section 32.185: Lot Size

Lot size shall be subject to the requirements of the underlying zoning district(s) provided

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that any lot shall have sufficient area outside the RPA to accommodate an intended development in accordance with the performance standards in Section 32.189 when such development is not otherwise allowed in the RPA.

Section 32.186: Development Criteria for Resource Protection Areas

(a) Development in RPAs may be allowed only if it: (1) is water dependent, (2) constitutes redevelopment, ~~or (3) constitutes development~~ or redevelopment within IDAs, or (34) ~~constitutes redevelopment~~ is a new use established pursuant to subsection 107(C) of this Ordinance; (5) is a road or driveway crossing satisfying the conditions set forth in subdivision 5 of this section; or (6) is a flood control or stormwater management facility. In addition, the following conditions shall apply:

(1) A water quality impact assessment shall be required for any proposed land disturbance, development or redevelopment within RPAs and for any development within RMAs when required by the Zoning Administrator because of the unique characteristics of the site or intensity of development in accordance with the provisions of Section 7.10 of this Article.

(2) A resiliency assessment as set forth in Section 7.10G of this Ordinance shall be required for any proposed land development during the plan of development or other project review process in the RPA.

(3) A new or expanded water dependent facility may be allowed, provided that the following criteria are met:

- (a) It does not conflict with the comprehensive plan;
- (b) It complies with the performance criteria set forth in Section 32.190 of this Article;
- (c) Any non-water dependent component is located outside of the RPA; and

(d) Access to the water-dependent facility will be provided with the minimum disturbance necessary. Where practicable, a single point of access will be provided.

(4) Redevelopment on isolated redevelopment sites outside of the designated IDAs shall be permitted only if there is not an increase in the amount of impervious cover and no further encroachment within the RPA and it shall conform to the Virginia Erosion and Stormwater Management Act. ~~stormwater management requirements outlined under Section 7.9 and erosion and sediment control requirements outlined under Section 7.9 of this Article.~~

(5) Roads and driveways not otherwise exempt from the provisions of this Ordinance, as per subsection 32.193 of this Ordinance, may be constructed in or across Resource Protection Areas provided each of the following conditions are met:

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- a. The Town Zoning Administrator finds that there are no reasonable alternatives to aligning the road or driveway in or across the Resource Protection Area.
 - b. The alignment and design of the road or driveway are optimized, consistent with other requirements, to minimize encroachment into the Resource Protection Area and adverse effects on water quality.
 - c. The design and construction of the road or driveway satisfy all applicable criteria of this Ordinance, including submission of a water quality impact assessment.
 - d. The Town Zoning Administrator reviews the plan for the road or driveway proposed in or across the Resource Protection Area in coordination with the Town's site plan, subdivision, and other plan of development reviews.
65. Flood control and stormwater management facilities that drain or treat water from multiple development projects or from a significant portion of a watershed may be allowed in Resource Protection Areas, provided that:
- a. Such facilities are allowed and constructed in accordance with the Virginia Stormwater Management Act and Regulations.
 - b. The Town Zoning Administrator conclusively establishes that the location of the facility within the Resource Protection Area is the optimum location.
 - c. The size of the facility is the minimum necessary to provide necessary flood control or stormwater treatment, or both.
 - d. The facility is consistent with a comprehensive stormwater management plan developed and approved in accordance with Virginia Stormwater Management Program (VSMP) regulations.
 - e. All applicable State and Federal permits are obtained from the appropriate federal and state agencies having jurisdiction, such as the U.S. Army Corps of Engineers, the Department of Environmental Quality, and the Virginia Marine Resources Commission.
 - f. Approval is received from the Town Zoning Administrator prior to construction.
 - g. Routine maintenance is performed on such facilities to assure that they continue to function as designed.

It is not the intent of this subdivision to allow a best management practice that collects and treats runoff from an individual lot or portion thereof to be located within a Resource Protection Area.

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~~(4) A water quality impact assessment shall be required for any proposed land disturbance, development, or redevelopment within RPAs and for any development within RMAs when required by the Zoning Administrator because of the unique characteristics of the site or intensity of development in accordance with the provisions of Section 7.10 of this Article.~~

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b. Buffer Area Requirements. To minimize the adverse effects of human activities on the other components of Resource Protection Areas, state waters, and aquatic life, a 100-foot buffer area of vegetation that is effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff shall be retained if present and established where it does not exist. 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 full buffer area shall be designated as the landward component of the RPA in accordance with Section 32.183, Areas of Applicability, and Section 32.191, Plan of Development Process, of this Article. The planting of trees shall be incorporated into the reestablishment of the 100-foot buffer, as appropriate to site conditions and in such a manner to maximize the buffer function. Inclusion of native species in tree planting is preferred.

a. The 100-foot buffer area shall be deemed to achieve a 75 percent reduction of sediments and a 40 percent reduction of nutrients. Notwithstanding permitted uses, encroachments, and vegetation clearing, as set forth in this section, the 100-foot wide buffer area is not reduced in width.

b. Where land uses such as agriculture or silviculture within the area of the buffer cease and the lands are proposed to be converted to other uses, the full 100-foot wide buffer shall be reestablished. In reestablishing the buffer, management measures shall be undertaken to provide woody vegetation that assures the buffer functions set forth in this chapter. The planting of trees shall be incorporated into the reestablishment of the 100-foot buffer, as appropriate to site conditions and in such a manner to maximize the buffer function. Inclusion of native species in tree planting is preferred.

C. Permitted Encroachments into the buffer area.

1. When the application of the buffer areas would result in the loss of a buildable area on a lot or parcel recorded prior to October 1, 1989, the Zoning Administrator may allow encroachments into the buffer area in accordance with Section 32.191, Plan of Development Process, and the following criteria:

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

b. Where practicable, a vegetated area that will maximize water quality protection, mitigate the effects of the buffer encroachment, and is equal to the area of encroachment into the buffer area shall be established elsewhere on the lot or parcel. Where established, such vegetated area shall include the planting of trees as appropriate to site conditions. Inclusion of native species in tree planting is preferred.

c. The encroachment may not extend into the seaward 50 feet of the buffer area; and

d. Encroachments into the buffer area processed through an administrative review shall be subject to the findings required by Section 32.194 of this Ordinance but without the requirement for a public hearing, such findings to be made instead by the Zoning Administrator.

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D. Permitted modifications the buffer area.

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

1. In order to maintain the functional value of the buffer area, indigenous vegetation may be removed, subject to approval by the Zoning Administrator, only to provide for reasonable sight lines, access paths, general woodlot management, and best management practices including those that prevent upland erosion and concentrated flows of stormwater, shoreline erosion control projects, or adaptation measures. Such buffer modifications shall be permitted under the following conditions, and consistent with the requirements of this Ordinance:

a. In general, where the removal of trees within the buffer area is proposed, mature trees shall be preserved and trimmed or pruned in lieu of removal as site conditions permit and removal should be limited to the fewest number of trees feasible. Where tree planting for mitigation, conservation landscaping, or for buffer reestablishment is proposed, inclusion of native species in tree planting is preferred.

b. Trees may be pruned or removed as necessary to provide for sight lines and vistas provided that, where removed, they shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff.

1. When trees are proposed for removal to provide for site lines, vistas, and access paths they shall be replaced with trees as appropriate to site conditions and in such a manner as to maximize the buffer function and to protect the quality of state waters. The boundaries of this area shall be determined in a manner acceptable to the Zoning Administrator and be based on identified vantage points and the portion of the shoreline to be viewed.

2. A written request for a determination by the Zoning Administrator that the proposed removal of vegetation from the RPA buffer is in accordance with the requirements of this subsection is required. Such request shall include a plan showing the following: (i) the vantage points for the sight lines, vistas, and access paths (ii) the portion of the shoreline to be viewed or accessed, (iii) the area in which trees are to be pruned or removed, (iv) the location of all trees six inches or greater in diameter at breast height or as required by the Zoning Administrator, and (v) the location of the trees to be removed or pruned. The request shall also indicate

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the type, location and number of replacement vegetation proposed.

3. Trees may not be pruned or removed from the buffer area until a written determination is obtained from the Zoning Administrator that the proposed activity is in accordance with the requirements of this Ordinance.
- c. Any path shall be constructed and surfaced so as to effectively control erosion.
 - d. 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 allowed, pursuant to standards adopted by the Town of Cape Charles.
 - e. For shoreline erosion control projects, trees and woody vegetation may be removed, necessary control techniques employed, and appropriate vegetation established to protect or stabilize the shoreline in accordance with the best of available technical advice and applicable permit conditions or requirements.
 1. The removal of mature trees for the installation and maintenance of proposed shoreline erosion control projects shall only be permitted as necessary and consistent with the best available technical advice, approved project plans, and applicable permit conditions or requirements.
 2. Where vegetation is proposed for removal within the buffer area as part of a shoreline erosion control project, a water quality impact assessment with vegetative mitigation equal to the area of encroachment is required. Trees shall be incorporated, as appropriate to the site conditions and the project specifications. In addition, vegetation in the form of a mixture of grasses, sedges, flowers, and shrubs can be used by property owners to provide natural stabilization of shorelines. Inclusion of native species is preferred.
 3. Existing trees, proposed plantings, and clearing limits must be shown on the Joint Permit Application and/or Water Quality Impact Assessment.
 4. Shoreline erosion control within the RPA shall be consistent with the Wetlands Act (Chapter 13 Title 28.2), the Virginia Marine Resources Commission (VMRC) Tidal Wetlands Guidelines which provide for "minimum standards for the protection and

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conservation of wetlands,” and “ensure protection of shorelines and sensitive coastal habitat from sea level rise and coastal hazard.”

- a. Installation of living shorelines is the required adaptation measure for stabilizing tidal shorelines unless the best available science indicates that such approaches are not suitable for the site on which the practice is being considered, as determined by the Virginia Marine Resources Commission. Such projects should be coordinated to address the requirements of the VMRC Tidal Wetlands Guidelines current at the time of application submission in conjunction with the requirements of this Ordinance [and the local wetlands ordinance].
 - b. Approval from the VMRC is also required for adaptation measures proposing the use of sea walls, riprap, groins, or other structural means of stabilization within tidal wetlands. Such projects shall demonstrate to the satisfaction of the Zoning Administrator that vegetative techniques cannot be effectively utilized and shall incorporate elements of living shoreline approaches into permitted projects to the maximum extent possible.
 - c. If a hardened shoreline structure is allowed, the applicant shall be required to incorporate elements of living shoreline approaches into permitted projects, to the maximum extent possible.
- f. Adaptation measures proposed for location within the Resource Protection Area, shall meet the following conditions:
1. The selected adaptation measure shall be a nature-based solution that uses environmental processes, natural systems, or natural features identified as being appropriate for existing site conditions.
 2. An identified adaptation measure shall be selected from one of the following sources: Chesapeake Bay program approved BMP list, the Virginia Stormwater BMP Clearinghouse, the VMRC Tidal Wetlands Guidelines, or be a project that is eligible for funding by the Virginia Community Flood Preparedness Fund Grant.
 - a. Adaptation measures should consist of trees, vegetation, stone or enhance existing natural

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elements.

3. Adaptation measures approved for use in the RPA shall be designed, installed, and maintained in accordance with the applicable specifications for the selected adaptation measure.
4. Adaptation measures should be placed channelward of the proposed development whenever possible and should maximize the preservation of mature trees and other natural vegetation to minimize adverse impacts to the RPA and to maximize water quality benefits.
5. The use of fill as a component of an adaptation measure may be permitted, provided it meets the following conditions:
 - a. The grading and slope created by the use of fill shall be no greater than necessary based upon the project specifications and implemented in a manner that minimize the impact of run-off.
 - i. Slopes should be equal to or less than 10% to support water quality conditions, including infiltration.
 - ii. Slopes less than or equal to 5% or that convey sheet flow of velocities less than one and one-half (1.5) feet/second are preferred, to reduce runoff and tidal wave energies.
 - iii. Slopes greater or different than the above may be necessary based upon certain site conditions and adaptation measure specifications. In such instances, submittal of additional calculations and engineering plans, and assessments of the impacts of the use of fill on existing vegetation, wetland migration and water movement, both landward and channelward, in support of the proposed slope shall be required.
 - b. Fill shall have the necessary biogeochemical characteristics, including sufficient organic content, to support the growth of vegetation and adequate permeability to allow infiltration consistent with project specifications. The applicant shall:
 - i. Provide documentation

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- specifying the proposed depth, extent, and type of fill material proposed for use.
- ii. Provide documentation that the proposed soils are compliant with the requirements governing the use of lightly contaminated soil consistent with the Virginia Solid Waste Management Regulations (9 VAC 20-81 et seq.) or permitting requirements for upland placement of dredge soil, if applicable.
- iii. Provide documentation that the newly placed fill is revegetated with multi-strata vegetation inclusive of canopy and understory trees, shrubs, and ground cover consistent with the guidance found in the *Buffer Manual*. Inclusion of native species is encouraged.
- iv. Ensure that the fill area is vegetatively stabilized within seven (7) days.
- c. The use of fill shall not exacerbate stormwater run-off, and lateral flow onto adjacent properties shall be controlled.
 - i. Appropriate erosion and sediment control and stormwater management measures shall be incorporated into the design specifications, including the establishment of positive and proper drainage.
 - ii. If the adaptation measure triggers separate stormwater management requirements, then these criteria should be considered in conjunction with those requirements.
 - iii. Larger scale adaptation measures may require the use of stormwater calculations to ensure these criteria are met.
 - iv. Any impacts on the management

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of stormwater upland of the Resource Protection Area created by the use of fill shall be mitigated, as necessary.

- d. The use of fill for an adaptation measure shall not negatively impact septic systems and drainfields located within the RPA. Where present, the proximity of the adaptation measure using fill should be considered such that the fill will not interfere with the proper function or maintenance of either of these features.
 - e. The use of fill shall be consistent with floodplain requirements.
 - f. The placement of fill allowed by either the Living Shoreline Group 1 or Group 2 general permits to establish appropriate elevations to support required vegetation shall be consistent with the fill requirements of this subsection, in that a change in slope or land elevation may not alter water flow in contravention with the fill requirements of this subsection.
 - 6. The preservation of existing natural vegetation shall be maximized, including mature trees, and land disturbance consistent with design specifications shall be minimized.
 - 7. Adaptation measures shall comply with all federal, state and local requirements, including any required permits and conditions such as the need for a Water Quality Impact Assessment.
 - 8. Nothing in these provisions shall be construed to authorize approval or allowance of an adaptation measure in contravention of floodplain management requirements, including [the local floodplain ordinance].
2. In Intensely Developed Areas the Zoning Administrator may exercise discretion regarding whether to require establishment of vegetation in the 100-foot wide buffer area. However, while the immediate establishment of vegetation in the buffer area may be impractical, the Zoning Administrator shall give consideration to implementing measures that would establish vegetation in the buffer in these areas over time in order to maximize water quality protection, pollutant removal, and water resource conservation. When considering the reestablishment of a buffer within an Intensely Developed Area, the Zoning Administrator shall consider the planting of trees as a component of such buffer reestablishment measure. Inclusion of native species in tree planting is preferred.

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3. On agricultural lands the agricultural buffer area shall be managed to prevent concentrated flows of surface water from breaching the buffer area and appropriate measures may be taken to prevent noxious weeds from invading the buffer area. Agricultural activities may encroach into the buffer area as follows:
- a. Agricultural activities may encroach into the landward 50 feet of the 100-foot wide buffer area when at least one agricultural best management practice, which, in the opinion of the [local soil and water conservation district board], addresses the more predominant water quality issue on the adjacent land – erosion control or nutrient management – is being implemented on the adjacent land, provided that the combination of the undisturbed buffer area and the best management practice achieves water quality protection, pollutant removal, and water resource conservation at least the equivalent of the 100-foot wide buffer area. If nutrient management is identified as the predominant water quality issue, a nutrient management plan, including soil test, must be developed consistent with the “Virginia Nutrient Management Training and Certification Regulations (4 VAC 50-85 et seq.)” administered by the Virginia Soil and Water Conservation Board.
 - b. Agricultural activities may encroach within the landward 75 feet of the 100-foot-wide buffer area where agricultural best management practices which address erosion control, nutrient management, and pest chemical control, are being implemented on the adjacent land. The erosion control practices must prevent erosion from exceeding the soil loss tolerance level, referred to as “T”, as defined in the “National Soil Survey Handbook” of November 1996 in the “Field Office Technical Guide” of the U. S. Department of Agriculture Natural Resource Conservation Service. A nutrient management plan, including soil test, must be developed consistent with the “Virginia Nutrient Management Training and Certification Regulations (4 VAC 50-85 et seq). administered by the Virginia Soil and Water Conservation Board. In conjunction with the remaining buffer area, this collection of best management practices shall be presumed to achieve water quality protection at least the equivalent of that provided by the 100-foot-wide buffer area.
 - c. The buffer area is not required to be designated adjacent to agricultural drainage ditches if the adjacent agricultural land has in place at least one best management practices as considered by the Eastern Shore Soil and Water Conservation District to address the more predominant water quality issue on the adjacent land – either erosion control or nutrient management
 - d. If specific problems are identified pertaining to agricultural activities that are causing pollution of the nearby water body with perennial flow or violate performance standards pertaining to the vegetated buffer area, the town, in cooperation with soil and water conservation district, shall recommend a compliance schedule to the landowner and require the problems to be corrected consistent with that schedule. This schedule shall expedite environmental protection while taking into account the seasons and other temporal considerations so that the probability for successfully implementing the corrective measures is greatest.
 - e. In cases where the landowner or the landowner's agent or operator has

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refused assistance from the local soil and water conservation district in complying with or documenting compliance with the agricultural requirements of this chapter, the district shall report the noncompliance to the Town. The Town shall require the landowner to correct the problems within a specified period of time not to exceed 18 months from their initial notification of the deficiencies to the landowner. The local government, in cooperation with the district, shall recommend a compliance schedule to the landowner. This schedule shall expedite environmental protection while taking into account the seasons and other temporal considerations so that the probability for successfully implementing the corrective measures is greatest.

Section 32.187: Conflict With Other Regulations

In any case where the requirements of this Article conflict with any other provision of the Cape Charles Zoning Ordinance and other regulations or existing state or federal regulations, whichever imposes the more stringent restrictions shall apply.

Section 32.188: Interpretation of Resource Protection Area Boundaries

- (a) *Delineation by the Applicant.* The site-specific boundaries of the Resource Protection Area shall be determined by the applicant through the performance of an environmental site assessment, subject to approval by the Zoning Administrator and in accordance with Section 32.191, Plan of Development Process, or Section 32.190 Water Quality Impact Assessment, of this Article. The Zoning District Map may be used as a guide to the general location of Resource Protection Areas.
- (b) *Where Conflict Arises Over Delineation.* When the applicant provides a site-specific delineation of the RPA, the Zoning Administrator will verify the accuracy of the boundary delineation. In determining the site-specific RPA boundary, the Zoning Administrator may render adjustments to the applicant's boundary delineation in accordance with Section 32.191, Plan of Development Process, of this Article. In the event the adjusted boundary delineation is contested by the applicant, the applicant may seek relief in accordance with the provisions of Section 32.191 of this ordinance.

Section 32.189: Performance Standards

- (a) *Purpose and Intent.* The performance standards establish the means to minimize erosion and sedimentation potential, reduce land application of nutrients and toxins, and maximize rainwater infiltration. Natural ground cover, especially woody vegetation, is most effective in holding soil in place and preventing site erosion. Indigenous vegetation, within its adaptability to local conditions without the use of harmful fertilizers or pesticides, filters stormwater runoff. Minimizing impervious cover enhances rainwater infiltration and effectively reduces stormwater runoff potential.

The purpose and intent of these requirements are also to implement the

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following objectives: prevent a net increase in nonpoint source pollution from new development; achieve a ten percent (10%) reduction in nonpoint source pollution from redevelopment; and achieve a forty percent (40%) reduction in nonpoint source pollution from agricultural uses.

- (b) General Performance Standards for Development and Redevelopment
- (1) Land disturbance shall be limited to the area necessary to provide for the proposed use or development.
 - a. Ingress and egress during construction shall be limited to one access point unless otherwise approved by the Zoning Administrator.
 - (2) Indigenous vegetation shall be preserved to the maximum extent practicable consistent with the use or development proposed and in accordance with the Virginia Erosion and ~~Sediment Control~~ [Stormwater Management Handbook, Version 1.1](#).
 - a. [Mature trees shall be protected during development and only removed where necessary, including to provide for the proposed use or development.](#)
 - a.b. Site clearing for construction activities shall be allowed as approved by the Zoning Administrator through the plan of development review process.
 - b.c. Prior to clearing or grading, suitable protective barriers, such as safety fencing, shall be erected five feet outside of the drip line of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
 - (3) Land development shall minimize impervious cover to promote infiltration of stormwater into the ground consistent with the proposed use or development.
 - a. Grid and modular pavements may be used for any required parking area, alley, or other low-traffic driveway unless otherwise approved by the Zoning Administrator.
 - (4) Notwithstanding any other provision of this Article or exceptions or exemptions thereto, any land-disturbing activity exceeding twenty thousand five hundred square feet (2,500 SF), including construction of all single-family houses, shall comply with the requirements of Cape Charles' Erosion and Sediment Control Ordinance.
 - ~~(5)~~ All development and redevelopment exceeding two thousand five hundred square feet (2,500 SF) of land disturbance shall be subject to a plan of development process, including the approval of a site plan in accordance with the provisions of the Site Plan Ordinance.
 6. All on-site sewage disposal systems not requiring a VPDES permit shall be pumped out at least once every five years (5 yrs) in accordance with the provisions of the State Health Code. [Effective July 1, 2023](#).

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requirements of this section directly related to compliance with onsite sewage system pump-outs shall be managed and enforced by the Virginia Department of Health in Accomack, Essex, Gloucester, King and Queen, King William, Lancaster, Mathews, Middlesex, Northampton, Northumberland, Richmond, and Westmoreland Counties, and the incorporated towns within those counties.

- a. Subject to conditions established by the local Health District of the Virginia Department of Health (VDH), the owners of such systems may, in lieu of pumping out such systems every five (5) years, have a plastic filter installed and maintained in the outflow pipe from the septic tank to filter solid material from the effluent while sustaining adequate flow to the drainfield to permit normal use of the septic system. Such a filter shall satisfy standards established in the Sewage Handling and Disposal Regulations (12 VAC 5-610) administered by VDH; and
- b. In lieu of requiring proof of septic tank pump out every five (5) years, the Town may allow owners of on-site sewage treatment systems to submit documentation every five (5) years, certified by a an operator or onsite soil evaluator licensed or certified under Chapter 23 (§ 54.1-2300 et seq.) of Title 54.1 of the Code of Virginia as being qualified to operate, maintain, or design onsite sewage systems, that the septic system has been inspected, is functioning properly, and that – as of the date of inspection – pump-out of the effluent was not deemed necessary.
- c. For new construction not served by public sewer or other system requiring a VPDES permit, a reserve sewage disposal site with a capacity at least equal to that of the primary sewage disposal site shall be provided. This requirement shall not apply to any lot or parcel recorded prior to October 1, 1989 if such lot or parcel is not sufficient in capacity to accommodate a reserve sewage disposal site, as determined by the local Health District. Building or construction of any impervious cover shall be prohibited on the area of all sewage disposal sites, including reserve sewage disposal sites, until the property is served by public sewer or an on-site sewage treatment system operating under a VPDES permit. All sewage disposal site records shall be administered to provide adequate notice and enforcement. As an alternative to the reserve sewage disposal site, the owners of such systems may install an alternative drainfield system meeting the following conditions:
 - 1. Each of the two (2) alternating drainfields in the system shall have at a minimum, an area not less than fifty (50) percent of the area that would otherwise be required if a single primary drainfield were constructed.
 - 2. An area equal to fifty (50) percent of the area that would otherwise be required for the primary drainfield site shall be reserved for subsurface absorption systems that utilize a flow diversion device, to provide for future replacement or repair to meet the requirements for a sewage disposal system.

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Expansion of the primary system shall require an expansion of the reserve system.

3. The two (2) alternating drainfields shall be connected by a diversion valve, approved by the local Health District, located in the pipe between the septic tank and the distribution boxes. The diversion valve shall be used to alternate the direction of effluent flow to one (1) drainfield or the other at a time. Diversion valves shall not be used for the following types of treatment systems:

(a). Sand mounds.

(b). Low pressure distribution systems.

(c). Repair situations when installation of a valve is not feasible.

(d). Any other approved system for which the use of a valve would adversely affect the design of the system, as determined by the local Health District.

d. The diversion valve shall be a three-port, two-way valve of approved materials (i.e., resistant to sewage, leak-proof and designed so that the effluent from the tank can be directed to flow into either one (1) of the two (2) distribution boxes).

e. There shall be a conduit from the top of the valve to the ground surface with an appropriate cover to be level with or above the ground surface.

f. The valve shall not be located in driveways, recreational courts, parking lots, or beneath sheds or other structures.

g. In lieu of a diversion valve, any device that can be designed and constructed to direct the flow of effluent from the tank into either one (1) of the two (2) distribution boxes may be approved if plans are submitted to the local Health District and determined to be satisfactory.

h. Owners shall alternate using the drainfields every 12 months to permit the yearly resting of half of the absorption system.

i. The Zoning Administrator shall ensure that the owners are notified annually of the requirement to switch the valve to the opposite drainfield.

~~(6) 7. For any development or redevelopment, stormwater runoff shall be controlled by the use of best management practices that achieve the following:~~

~~a. For development, the post-development nonpoint source pollution runoff load shall not exceed the pre-development load based on the calculated average land cover condition of the Town of Cape Charles.~~

~~b. For sites within IDAs or other isolated redevelopment sites, the non-point source pollution load shall be reduced by at least ten percent (10%). The Zoning Administrator may waive or modify this requirement for redevelopment sites that originally incorporated best management~~

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~~practices for storm water runoff quality control provided the following provisions are satisfied:~~

- ~~i. — In no case may the post-development non-point source pollution runoff load exceed the pre-development load.~~
- ~~ii. — Runoff pollution loads must have been calculated and the BMPs selected for the expressed purpose of controlling non-point source pollution.~~
- ~~iii. — If best management practices are structural, evidence shall be provided that the facilities are currently in good working order and performing at the design levels of service. The Zoning Administrator may require a review of both the original structural design and maintenance plans to verify this provision. A new maintenance agreement may be required to ensure compliance with this Article.~~

~~_____ For redevelopment, both the pre- and the post-development loadings shall be calculated by the same procedures. However, where the design data is available, the original post-development non-point source pollution loadings can be substituted for the existing development loadings.~~

8. Prior to initiating grading or other on-site activities on any portion of a lot or parcel, all wetlands permits required by federal, state, and local laws and regulations shall be obtained and evidence of such submitted to the Zoning Administrator in accordance with Section 32.191 of this Article.
9. Land upon which agricultural activities are being conducted shall have a soil and water quality conservation assessment. Such assessments shall evaluate the effectiveness of existing practices pertaining to soil erosion and sediment control, nutrient management, and management of pesticides, and, where necessary, results in a plan that outlines additional practices needed to ensure that water quality protection is accomplished consistent with the Article.

 - a. Recommendations for additional conservation practices need address only those conservation issues applicable to the tract or field being assessed. Any soil and water quality conservation practices that are recommended as a result of such an assessment and are subsequently implemented with financial assistance from federal or state cost-share programs must be designed, consistent with cost-share practice standards effective in January 1999 in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resource Conservation Service or the June 2000 edition of the "Virginia Agricultural BMP Manual" of the Virginia Department of Conservation and Recreation, respectively. Unless otherwise specified in this section, general standards pertaining to the various agricultural conservation practices being assessed shall be as follows:

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- (1) For erosion and sediment control recommendations, the goal shall be, where feasible, to prevent erosion from exceeding the soil loss tolerance level, referred to as "T," as defined in the "National Soil Survey Handbook" of November 1996 in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resource Conservation Service. However, in no case shall erosion exceed the soil loss consistent with an Alternative Conservation System, referred to as an "ACS", as defined in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resource Conservation Service.
- (2) For nutrient management, whenever nutrient management plans are developed, the operator or landowner must provide soil test information, consistent with the Virginia Nutrient Management Training and Certification Regulations (4VAC50-85).
- (3) For pest chemical control, referrals shall be made to the local cooperative extension agent or an Integrated Pest Management Specialist of the Virginia Cooperative Extension Service. Recommendations shall include copies of applicable information from the "Virginia Pest Management Guide" or other Extension materials related to pest control.

b. A higher priority shall be placed on conducting assessments of agricultural fields and tracts adjacent to Resource Protection Areas. However, if the landowner or operator of such a tract also has Resource Management Area fields or tracts in his operation, the assessment for that landowner or operator may be conducted for all fields or tracts in the operation. When such an expanded assessment is completed, priority must return to Resource Protection Area fields and tracts.

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

(7)

~~B. Buffer Area Requirements. To minimize the adverse effects of human activities on the other components of Resource Protection Areas, state waters, and aquatic life, a one hundred foot (100') buffer area of vegetation that is effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff shall be retained if present and established where it does not exist. The buffer area shall be located adjacent to and landward of other RPA~~

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~~components and along both sides of any water body with perennial flow. The full buffer area shall be designated as the landward component of the RPA in accordance with Section 7.3, Areas of Applicability, and Section 7.11, Plan of Development Process, of this Article.~~

~~The one hundred-foot (100') buffer area shall be deemed to achieve a seventy five percent (75%) reduction of sediments and a forty percent (40%) reduction of nutrients.~~

~~The buffer area shall be maintained to meet the following additional performance standards:~~

- ~~(1) In order to maintain the functional value of the buffer area, indigenous vegetation may be removed, subject to approval by the Zoning Administrator, only to provide for reasonable sight lines, access paths, general woodlot management, and best management practices including those that prevent upland erosion and concentrated flows of stormwater, as follows:

 - ~~a. Trees may be pruned or removed as necessary to provide for sight lines and vistas provided that, where removed, they shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff.~~
 - ~~b. Any path 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 allowed, pursuant to standards adopted by the Town of Cape Charles.~~
 - ~~d. For shoreline erosion control projects, trees and woody vegetation may be removed, necessary control techniques employed, and appropriate vegetation established to protect or stabilize the shoreline in accordance with the best of available technical advice and applicable permit conditions or requirements.~~~~
- ~~(2) When the application of the buffer areas would result in the loss of a buildable area on a lot or parcel recorded prior to October 1, 1989, the Zoning Administrator may allow encroachments into the buffer area in accordance with Section 7.11, Plan of Development Process, and the following criteria:

 - ~~a. Encroachments into the buffer areas shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities.~~
 - ~~b. Where practicable, a vegetated area that will maximize water quality protection, mitigate the effects of the buffer encroachment, and is equal to the area of encroachment into the buffer area shall be established elsewhere on the lot or parcel;~~~~

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and

~~e. The encroachment may not extend into the seaward 50 feet of the buffer area.~~

~~(3) Redevelopment within IDAs may be exempt from establishing vegetation within the buffer area in accordance with Section 7.11, Plan of Development Process, of this Article.~~

~~(4) On agricultural lands the agricultural buffer area shall be managed to prevent concentrated flows of surface water from breaching the buffer area and appropriate measures may be taken to prevent noxious weeds from invading the buffer area. Agricultural activities may encroach into the buffer area as follows:~~

~~a. Agricultural activities may encroach into the landward 50 feet of the one hundred foot (100') wide buffer area when at least one agricultural best management practice, which, in the opinion of the [local soil and water conservation district board], addresses the more predominant water quality issue on the adjacent land — erosion control or nutrient management — is being implemented on the adjacent land, provided that the combination of the undisturbed buffer area and the best management practice achieves water quality protection, pollutant removal, and water resource conservation at least the equivalent of the one hundred foot (100') wide buffer area. If nutrient management is identified as the predominant water quality issue, a nutrient management plan, including soil test, must be developed consistent with the "Virginia Nutrient Management Training and Certification Regulations (4 VAC 5-15 et seq.," administered by the Virginia Department of Conservation and Recreation.~~

~~b. Agricultural activities may encroach within the landward seventy five feet (75') of the one hundred foot (100') wide buffer area where agricultural best management practices which address erosion control, nutrient management, and pest chemical control, are being implemented on the adjacent land. The erosion control practices must prevent erosion from exceeding the soil loss tolerance level, referred to as "T", as defined in the "National Soil Survey Handbook" of November 1996 in the "Field Office Technical Guide" of the U. S. Department of Agriculture Natural Resource Conservation Service. A nutrient management plan, including soil test, must be developed consistent with the "Virginia Nutrient Management Training and Certification Regulations (4 VAC 5-15 et seq.) administered by the Virginia Department of Conservation and Recreation. In conjunction with the remaining buffer area, this collection of best management practices shall be presumed to achieve water quality protection at least the equivalent of that provided by the one hundred foot (100') wide buffer area.~~

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- e. ~~The buffer area is not required to be designated adjacent to agricultural drainage ditches if the adjacent agricultural land has in place at least one best management practices as considered by the local Soil and Water Conservation District to address the more predominant water quality issue on the adjacent land— either erosion control or nutrient management~~
- (5) ~~When agricultural or silvicultural uses within the buffer area cease, and the lands are proposed to be converted to other uses, the full one-hundred-foot (100') wide buffer area shall be reestablished. In reestablishing the buffer, management measures shall be undertaken to provide woody vegetation that assures the buffer functions are maintained or established.~~

Section 32.190: Water Quality Impact Assessment and Resiliency Assessment

- (a) Purpose and Intent. The purpose of the water quality impact assessment is to:
 - (1) identify the impact of proposed development on water quality and lands within RPAs and other environmentally sensitive lands; (2) ensure that, where development does take place within RPAs and other sensitive lands, it will be located on those portions of a site and in a manner that will be least disruptive to the natural functions of RPAs and other sensitive lands; (3) to protect individuals from investing funds for improvements proposed for location on lands unsuited for such development because of high ground water, erosion, or vulnerability to flood and storm damage; and (4) specify mitigation and to demonstrate compliance with the local program which will address water quality protection.
- (b) Water Quality Impact Assessment Required. A water quality impact assessment is required for (1) any proposed land disturbance, redevelopment or development within an RPA, including any buffer area modification or encroachment as provided in Section 32.190 of this Article; (2) any development in an RMA as deemed necessary by the Zoning Administrator due to the unique characteristics of the site or intensity of the proposed development; and (3) if living shorelines are being installed. There shall be two levels of water quality impact assessments--a minor assessment and a major assessment.
- (c) Minor Water Quality Impact Assessment. A minor water quality impact assessment pertains only to a development within CBPAs which causes no more than five thousand square feet (5,000 SF) of land disturbance and requires any modification or encroachment into the landward fifty feet (50') of the one-hundred-foot (100') buffer area. A minor assessment must demonstrate that the undisturbed buffer area, enhanced vegetative plantings, and any required best management practices will result in removal of no less than seventy-five percent (75%) of sediments and forty percent (40%) of nutrients from post-development stormwater runoff and that the remaining buffer area will retard runoff, prevent erosion and filter nonpoint source

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pollution the equivalent of the full undisturbed one-hundred-foot (100') buffer area. A minor assessment shall include a site drawing to scale which shows the following:

- (1) Location of the components of the RPA, including the one-hundred-foot (100') buffer area;
- ~~(1)(2)~~ RPA and RMA boundaries.
- (3) Location and nature of the proposed encroachment into the buffer area if ~~needed~~ necessary; including type of paving material; areas/limits of clearing or grading; location of any structures, drives, or other impervious cover;
- ~~(2)(4)~~ Area of land disturbance and impervious coverage proposed within the RPA;
- ~~(3)(5)~~ Type and location of proposed best management practices to mitigate the proposed encroachment.
- ~~(4)(6)~~ Location of existing vegetation onsite, including the number and type of trees and other vegetation to be removed in the buffer to accommodate the encroachment or modification;
- (7) Revegetation plan that supplements the existing buffer vegetation in a manner that provides for pollutant removal, erosion and runoff control and mitigates for the removal of vegetation in the buffer;
- ~~(5)(8)~~ Limits of land disturbance and the area of land disturbance within the RPA.

- (d) Major Water Quality Impact Assessment. A major water quality impact assessment shall be required for any development which (1) exceeds five thousand square feet (5,000 SF) of land disturbance within CBPA and requires any modifications or encroachment into the landward seaward fifty feet (50') of the one-hundred-foot (100') buffer area; (2) proposes to disturb any portion of any other component of an RPA or proposes to disturbs any portion of the buffer area within fifty feet (50') of any other component of any RPA; or (3) is located in an RMA and is deemed necessary by the Zoning Administrator. The information required in this section shall be considered a minimum unless the Zoning Administrator determines that some of the elements are unnecessary due to the scope and nature of the proposed use and development of land.

- (1) The following elements shall be included in the preparation and submission of a major water quality assessment:
- a. All of the information required in a minor water quality impact assessment as specified in Section 32.190 (c);
 - b. A hydro-ecological element that:
 - 1. Describes the existing topography, soils, hydrology, and geology of the site and adjacent lands
 - 2. indicates the following:
 - i. disturbance or destruction of wetlands and justification for such action.
 - ii. disruptions or reductions in the supply of water to

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- wetlands, streams, or other water bodies.
- iii. disruptions to existing hydrology including wetlands and stream circulation patterns.
- iv. source location and description of proposed fill material.
- v. location of dredge material and location of dumping area for such material.
- vi. location of and impacts on shellfish beds or submerged aquatic vegetation.
- vii. estimation of pre- and post- development pollutant loads in runoff.
- viii. estimation of percent increase in impervious surface on site and type(s) of surfacing materials used.
- ix. percent of site to be cleared for project.
- x. anticipated duration and phasing schedule of construction project.
- xi. listing of all requisite permits from all applicable agencies necessary to develop project
- 3. describes the proposed mitigation measures for the potential hydroecological impacts. Potential mitigation measures include:
 - i. proposed erosion and sediment control concepts; concepts should include minimizing the extent of the cleared area, perimeter controls, reduction of runoff velocities, measures to stabilize disturbed areas, schedule and personnel for site inspection
 - ii. proposed water quality and quantity stormwater management system
 - iii. creation of wetlands to replace those lost
 - iv. minimizing cut and fill
- c. A landscape element that:
 - 1. identifies and delineates the location of plant material on site, including all trees two inches or greater diameter at breast height. Where there are groups of trees, stands may be outlined.
 - 2. describes the impacts the development or use will have on the existing vegetation. Information should include:
 - i. limits of clearing based on all anticipated improvements including buildings, drives, and utilities
 - ii. clear delineation of all trees and other woody vegetation proposed to be removed
 - iii. description of plant species to be disturbed or removed
 - 3. describes the potential measures for mitigation.

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Possible mitigation measures should include:

- i. replanting schedule for trees and other significant vegetation removed for construction including a list of possible plants and trees to be used
- ii. demonstration that the design of the plan will preserve to the greatest extent possible any significant trees and vegetation on the site and will provide maximum erosion control and overland flow benefits from such vegetation
- iii. demonstration that native plants are to be used to the greatest extent possible

(e) Submission and Review Requirements

- (1) ~~Eight (8)~~ Four (4) copies of all site drawings and other applicable information as required by subsections C and D above shall be submitted to the Zoning Administrator for review.
- (2) All information required in this section shall be certified as complete and accurate by a professional engineer or certified land surveyor.
- (3) A minor water quality impact assessment shall be prepared and submitted to and reviewed by the Zoning Administrator in conjunction with Section 32.191, Plan of Development Process, of this Article.
- (4) A major water quality impact assessment shall be prepared and submitted to and reviewed by the Zoning Administrator in conjunction with a request for rezoning, special use permit, or in conjunction with Section 32.191 of this Article as deemed necessary by the Zoning Administrator.
- (5) As part of any major quality impact assessment submittal, the Zoning Administrator may require review by the ~~Chesapeake Bay Local Assistance Department (CBLAD)~~ Department of Environmental Quality. Upon receipt of a major water quality impact assessment, the Zoning Administrator will determine if such review is warranted and may request ~~CBLAD-DEQ~~ to review the assessment and respond with written comments. Any comments by such ~~CBLAD-DEQ~~ will be incorporated into the final review by the Zoning Administrator provided that such comments are provided by ~~CBLAD-DEQ~~ within ninety (90) days of the request.

(f) Evaluation Procedure

- (1) Upon the completed review of a minor water quality impact assessment, the Zoning Administrator will determine if any proposed encroachment into the buffer area is consistent with the provisions of this Article and make a finding based upon the following criteria:
 - a. the necessity of the proposed encroachment and the ability to place improvements elsewhere on the site to avoid disturbance of the buffer area;
 - b. impervious surface is minimized;

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- c. proposed best management practices, where required, achieve the requisite reductions in pollutant loadings;
 - d. the development, as proposed, meets the purpose and intent of this Article;
 - e. the cumulative impact of the proposed development, when considered in relation to other development in the vicinity both existing and proposed, will not result in a significant degradation of water quality.
- (2) Upon the completed review of a major water quality impact assessment, the Zoning Administrator will determine if the proposed development is consistent with the purpose and intent of this Article and make a finding based upon the following criteria in conjunction with Section 32.191.
- a. Within an RPA, the proposed development is water dependent.
 - b. The disturbance of any wetlands will be minimized.
 - c. The development will not result in significant disruption of the hydrology of the site.
 - d. The development will not result in significant degradation to aquatic vegetation or life.
 - e. The development will not result in unnecessary destruction of plant materials on site.
 - f. Proposed erosion and sediment control concepts are adequate to achieve the reductions in runoff and prevent off-site sedimentations.
 - g. Proposed storm water management concepts are adequate to control the storm water runoff to achieve the required performance standard for pollutant control.
 - h. Proposed re-vegetation of disturbed areas will provide optimum erosion and sediment control benefits.
 - i. The development as proposed is consistent with the purpose and intent of the Overlay District.
- (3) The Zoning Administrator shall require additional mitigation where potential impacts have not been adequately addressed. Evaluation of mitigation measures will be made by the Zoning Administrator based on the criteria listed above in subsections 1 and 2.
- (4) The Zoning Administrator shall find the proposal to be inconsistent with the purpose and intent of this Article when the impacts created by the proposal cannot be mitigated. Evaluation of the impacts will be made by the Zoning Administrator based on the criteria listed in subsections 1 and 2.

G. Resiliency assessment.

- (A) Submittal of a resiliency assessment that considers the potential impacts of sea level rise, storm surge, and flooding on buffer function in light of a proposed RPA encroachment is required during the review of a plan of development or other review process. Such an assessment is to be based upon the RPA as delineated at the time of the proposed land

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development and is required in addition to all other requirements of this and other local ordinances. At a minimum the resiliency assessment should contain the following information:

- (1) A scaled drawing or aerial image of the proposed project that includes the RPA and RMA boundary, required setbacks, existing topography, and a graphic depiction of the anticipated impacts of sea level rise, flooding, and storm surge on the parcel and the proposed project, based upon a review of approved models and forecasts, to include the following:
 - a. For sea level rise, use the 2017 National Oceanographic and Atmospheric Administration (NOAA) Intermediate-High scenario projection curve [or any subsequently updated version thereof on the project site. Sea level rise data can be accessed on the AdaptVA website, maintained by the Virginia Institute of Marine Science (VIMS). When determining potential sea-level rise impacts, the applicant should use the model to identify both the extent of anticipated inland migration, as well as the water depth.
 - b. For storm surge, use the most up to date NOAA hydrodynamic Sea, Lake, and Overland Surges Hurricanes (SLOSH) model on the project site. Storm surge data can be accessed on the AdaptVA website. Selection of a default storm category is determined by the locality based upon historical frequency and specified for use in conducting resiliency assessments by the applicant.
 - c. For flooding, use the most up to date Special Flood Hazard Area and the Limit of Moderate Wave Action (LiMWA) model on the project site according to the Virginia Flood Risk Information System (VFRIS) model in conjunction with the requirements and application of the [local] floodplain management ordinance. VFRIS includes the Flood Insurance Rate Maps, flood insurance studies, and associated models produced by the Federal Emergency Management Agency, and is available on the Virginia Department of Conservation and Recreation (DCR) website. When identifying flooding impacts, the applicant may rely on existing use and application of the relevant Special Flood Hazard Area. This data is also accessible on the AdaptVA website.
 - d. The anticipated impacts shall be based upon a thirty (30) year timeframe, unless the applicant demonstrates that the lifespan of the project proposed for development is less than thirty (30) years based upon the information in 2(b) as approved by the Planning Commission. Where a lifespan of less than 30 years is proposed, the applicant shall provide documentation of proposed building materials, anticipated quality of construction, design specifications, and other materials or information in support of a predicted lifespan of less than 30 years for the project.
- (2) A narrative report that analyzes the results of the data and graphic research, and provides the following information:
 - (a) Define the intended service life of the proposed structure(s).
 - (b) Identification of any proposed impact directly from proposed impervious cover or structures in the RPA and the extent of such impact.
 - (c) Identification of extent of impact on the current buffer area including impacts to existing vegetation from the landward movement of water and vegetative migration.

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- (d) Describe the extent to which anticipated impacts can be or have been mitigated by altering the location design, size, or orientation of proposed structures or impervious cover, by preserving and/or supplementing existing buffer areas as provided for in Section 32-188 of this Ordinance, and/or by considering other limiting site conditions including required setbacks and parcel size, and/or by proposing an adaptation measure in accordance with the provisions of Section 32-188.
- (e) Identification of the utilization of existing local programs that already take potential impacts into account through the building permit or site design review processes, such as freeboard requirements enacted through the local floodplain ordinance.
- (3) Apply the results of the resiliency assessment to the proposed development. The Zoning Administrator will review the narrative report along with the water quality impact assessment and determine whether the anticipated impacts necessitate an alteration or conditions to the proposed project or implementation of an adaptation measure for approval.
- (a) In considering whether a requirement for project alteration or adaptation measure is appropriate, the Zoning Administrator will ensure that the proposed alteration or adaptation measure is practical, achievable, and necessary to mitigate the identified impact.
- (b) Where possible, consideration will be given to modifying the proposed development size or location, such that the extent of land disturbance or impervious cover can be reduced to avoid or minimize the area or areas of the parcel that the assessment indicates will be impacted.
- (c) If the resiliency assessment reveals that impacts on the parcel can be addressed by structural design or siting alterations, then supplemental information on the potential alterations shall be provided for consideration by the Zoning Administrator. Supplemental information may include additional sketches or plans, including plan and section views, building specifications, and other supporting materials.
- (d) Approval may be conditioned on the implementation of the proposed alterations, conditions, or adaptation measure.
- (e) The resiliency assessment may also indicate that no alterations, conditions, or adaptation measures are required, in which case the applicant may proceed through the remainder of the approval process.
- (4) Identify conditions, alterations, or adaptation measures for the proposed development. Should an impact from sea-level rise, storm surge, or flooding be identified that exceeds available design alterations, approval of the proposed project should then be conditioned with the requirement for an adaptation measure and the following information provided:
- (a) Describe the proposed adaptation measure(s) for the site as selected from one of the sources listed in subsection 32.190(G) of this Ordinance and submit documentation of the proposed adaptation measure and its suitability for use on the site, such as design specifications, construction methods and materials that will provide shoreline stabilization until vegetation is established, and a proposed maintenance plan.

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(b) Describe how the selected adaptation measure meets the requirement for being a nature-based solution.

(c) Describe how the selected adaptation measure(s) comply with applicable regulatory or permitting requirements. Submit a water quality impact assessment pursuant to Section 32.190 of this Ordinance and a site plan pursuant to Appendix C of this Ordinance detailing the proposed placement of the adaptation measure, existing and proposed topography and vegetation, proposed limits of clearing and grading, and mitigation for the area of land disturbance within the RPA. Additionally, provide documentation of as-built documentation of the final design and installation, including photographs, and final inspection is required upon completion of installation.

(5) The resiliency assessment may be submitted as a standalone document as part of the plan of development process or it may be submitted as part of a water quality impact assessment pursuant to Section 32.190 of this Ordinance for those projects disturbing less than 2,500 square feet.

Section 32.191: Plan of Development Process

Any development or redevelopment within the Chesapeake Bay Preservation Areas exceeding two thousand five hundred square feet (2,500 SF) of land disturbance shall be accomplished through a plan of development process prior to any clearing or grading of the site or the issuance of any building permit to assure compliance with all applicable requirements of this Article.

(1) Required Information. In addition to the requirements of this Ordinance or the requirements of the Cape Charles Subdivision Ordinance, the plan of development process shall consist of the plans and studies identified below. These required plans and studies may be coordinated or combined as deemed appropriate by the Zoning Administrator. The Zoning Administrator may determine that some of the following information is unnecessary due to the scope and nature of the proposed development.

a. Except as otherwise provided herein, the plan of development process for any development or redevelopment in a CBPA shall consist of the plans and information identified below: ~~The following plans or studies shall be submitted unless otherwise provided for:~~

1. A site plan in accordance with the provisions of this ordinance; or a subdivision plat in accordance with the provisions of the Subdivision Ordinance of Cape Charles;
2. An environmental site assessment;
3. A landscaping plan;
4. A water quality impact assessment, according to Section 32.190 of this Ordinance;
- 3.5. A resiliency assessment, according to Section 32.190 of this Ordinance;
- 4.6. A storm water management plan;
- 5.7. An erosion and sediment control plan in accordance with the

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provisions of the Cape Charles Erosion and Sediment Control Ordinance.

- (2) Environmental Site Assessment. An environmental site assessment shall be submitted in conjunction with preliminary site plan or preliminary subdivision plan approval.
- a. The environmental site assessment shall be drawn to scale and clearly delineate the following environmental features:
 1. tidal wetlands
 2. tidal shores
 3. non-tidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow
 4. a one-hundred-foot (100') buffer area located adjacent to and landward of the components listed in Subsections a through c above, and along both sides of any water body with perennial flow
 5. other sensitive environmental features as determined by the Zoning Administrator
 - b. Wetlands delineations shall be performed consistent with the methods and procedures used and accepted from time to time by the U.S. Army Corps of Engineers.
 - c. The environmental site assessment shall delineate the site-specific geographic extent of the RPA [and RMA, as necessary](#).
 - d. The environmental site assessment shall be drawn at the same scale as the preliminary site plan or subdivision plat and shall be certified as complete and accurate by a professional engineer or a certified land surveyor. This requirement may be waived by the Zoning Administrator when the proposed use or development would result in less than five thousand square feet (5,000 SF) of disturbed area; ~~however, this requirement may not be waived for projects located on parcels impacted by the Chesapeake Bay Preservation Areas.~~
- (3) Landscaping Plan. A landscape plan shall be submitted in conjunction with site plan approval or as part of subdivision plat approval. No clearing or grading of any lot or parcel shall be permitted without an approved landscaping plan.
- a. Landscaping plans when required shall be prepared and/or certified by design professionals practicing within their areas of competence as prescribed by the Code of Virginia and must meet the following requirements:
 1. The landscaping plan shall be drawn to scale and clearly delineate the location, size, and description of existing and proposed plant material [within the RPA and the RMA](#). All [existing mature](#) trees on the site ~~two-four~~ [24"](#) or greater DBH shall be shown on the landscaping plan. Where there are groups of trees, stands may be outlined instead, [except for mature trees, which shall be individually identified. Mature](#)

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trees shall be protected during development and only removed where necessary, including to provide for the proposed use or development. The location and specific number ~~of trees two inches (2") or greater DBH~~ to be preserved outside of this construction footprint shall be indicated on the plan. Trees to be removed to create a desired construction footprint shall be clearly delineated on the landscaping plan.

2. Any required buffer area shall be clearly delineated and any plant material to be added to establish or supplement the buffer area, as required by this Article, shall be shown on the landscaping plan.

— Within the buffer area, trees to be removed for sight lines, vistas, access paths, shoreline erosion control projects, and best management practices, as provided for in this Article, shall be shown on the plan. Vegetation required by this Article to replace any existing trees within the buffer area shall also be shown on the landscaping plan. Mature trees shall be preserved and trimmed or pruned in lieu of removal as site conditions permit. Any removal of mature trees should be limited to the fewest number of trees feasible. When mature trees are removed in the RPA to provide for sight lines and vistas, access paths or BMPs, they shall be replaced with trees as appropriate to site conditions.

~~3.~~

- ~~4.3.~~ Trees to be removed for shoreline stabilization projects and any replacement vegetation required by this Article shall be shown on the landscaping plan.
- ~~5.4.~~ The plan shall depict grade changes or other work adjacent to trees which would affect them adversely. Specifications shall be provided as to how grade, drainage, and aeration would be maintained around trees to be preserved.
- ~~6.5.~~ The landscaping plan will include specifications for the protection of existing trees during clearing, grading, and all phases of construction.

b. Plant specifications

1. All plant materials necessary to supplement the buffer area or vegetated areas outside the construction footprint shall be installed according to standard planting practices and procedures.
2. All supplementary or replacement plant materials shall be living and in a healthy condition. Plant materials shall conform to the standards of the most recent edition of the American Standard for Nursery Stock, published by the American Association of Nurserymen.
- ~~2.3.~~ The landscaping plan should include a demonstration that where the planting of new trees or vegetation is required, native species will be used to the greatest extent

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- c. Maintenance
1. The applicant shall be responsible for the maintenance and replacement of all vegetation as may be required by the provision of the Article.
 2. In buffer areas and areas outside the construction footprint, plant material shall be tended and maintained in a healthy growing condition and free from refuse and debris. Unhealthy, dying, or dead plant materials shall be replaced during the next planting season as required by the provisions of this Article.

~~(4) Stormwater Management Plan. A stormwater management plan shall be submitted in accordance with the requirements of the Virginia Erosion and Stormwater Management Regulations, as part of the plan of development process required by this Article and in conjunction with site plan or subdivision plan approval.~~

- ~~a. Contents of the plan. The storm water management plan shall contain maps, charts, graphs, tables, photographs, narrative descriptions, explanations, and citations to supporting references as appropriate to communicate the information required by this Article. At a minimum, the storm water management plan must contain the following:~~
- ~~1. location and design of all planned storm water control devices;~~
 - ~~2. procedures for implementing non-structural storm water control practices and techniques;~~
 - ~~3. pre and post-development non-point source pollutant loadings with supporting documentation of all utilized coefficients and calculations;~~
 - ~~4. for facilities, verification of structural soundness, including a professional engineer or Class HIB surveyor certification.~~
- ~~b. Site specific facilities shall be designed for the ultimate development of the contributing watershed based on zoning, comprehensive plans, local public facility master plans, or other similar planning documents.~~
- ~~c. All engineering calculations must be performed in accordance with procedures outlined in the current edition of the Virginia Storm water Management Handbook.~~
- ~~d. The plan shall establish a long-term schedule for inspection and maintenance of storm water management facilities that includes all maintenance requirements and persons responsible for performing maintenance. If the designated maintenance responsibility is with a party other than the Town of Cape Charles, then a maintenance agreement shall be executed between the responsible party and the Town of Cape Charles.~~

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(5)(4) Erosion and Sediment Control Plan. An erosion and sediment control plan shall be submitted that satisfies the requirements of this Article and in accordance with the Cape Charles Erosion and Sediment Control Ordinance in conjunction with site plan or subdivision plan approval.

(6)(5) Final Plan. Final plan for property within CBPAs shall be final plats for land to be subdivided or site plans for land not to be subdivided as required in the Cape Charles Subdivision Ordinance and this Ordinance.

a. Final plans for all lands within CBPAs shall include the following additional information:

1. Evidence of the site-specific RPA boundary determination, inclusive of perennial flow determination and wetland delineation studies, as appropriate to the site conditions, the delineation of the Resource Protection Area boundary.
2. the delineation of required buffer areas
3. Evidence that all applicable wetland permits required by law have been obtained prior to authorization of grading or other on-site activities shall be provided, all wetlands permits required by law
- d. Limits of land disturbance and all areas of clearing, grading, access ways and staging areas and the total area of land disturbance, as well as total area of land disturbance proposed within the RPA.
- e. Location of all approved existing and proposed septic tanks and drainfield areas, including reserve areas, and the location of all existing and proposed wells and utilities.
- f. A statement that excavation material and debris from construction shall be disposed of in a lawful manner.
- g. Existing and proposed impervious cover and the total amount of impervious cover proposed for the site, as well as total amount of impervious cover proposed within the RPA.
4. h. A maintenance agreement as deemed necessary and appropriate by the Zoning Administrator to ensure proper maintenance of best management practices in order to continue their functions,

b. The following notations are required on plats:

1. the requirement to retain an undisturbed and vegetated 100-foot wide buffer area
2. the requirement for pump-out and 100% reserve drainfield sites for onsite sewage treatment systems, when applicable
3. the permissibility of only water dependent facilities or redevelopment in Resource Protection Areas, including the 100-foot wide buffer area

b.c. Installation and bonding requirements

1. Where buffer areas, landscaping, storm water management

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- facilities, or other specifications of an approved plan are required, no certificate of occupancy shall be issued until the installation of required plant materials or facilities is completed in accordance with the approved site plan.
2. When the occupancy of a structure is desired prior to the completion of the required landscaping, storm water management facilities, or other specifications of an approved plan, a certificate of occupancy may be issued only if the applicant provides Cape Charles a form of surety satisfactory to the Zoning Administrator in an amount equal to the remaining plant materials, related materials, and installation costs of the required landscaping or facilities and/or maintenance costs for any required storm water management facilities during the construction period.
 3. All required landscaping shall be installed and approved by the first planting season following the issuance of a certificate of occupancy or the surety may be forfeited to the Town of Cape Charles.
 4. All required storm water management facilities or other specifications shall be installed and approved within eighteen months (18 mos) of project commencement. Should the applicant fail, after proper notice, to initiate, complete, or maintain appropriate actions required by the approved plan, the surety may be forfeited to the Town of Cape Charles. Cape Charles may collect from the applicant the amount by which the reasonable cost of required actions exceed the amount of the surety held.
 5. After all required actions of the approved site plan have been completed the applicant must submit a written request for a final inspection. If the requirements of the approved plan have been completed to the satisfaction of the Zoning Administrator, such unexpended or un-obligated portion of the surety held shall be refunded to the applicant or terminated within sixty (60) days following the receipt of the applicant's request for the final inspection. The Zoning Administrator may require a certificate of substantial from a professional engineer or Class IIIB surveyor before making the final inspection.

~~(7)~~(6) Administrative Responsibility. Administration of the plan of development process shall be in accordance with this ordinance or the Cape Charles Subdivision Ordinance.

~~(8)~~(7) Denial of Plan, Appeal of Conditions or Modifications. In the event the final plan or any component of the plan of development process is disapproved and recommended conditions or modifications are unacceptable to the applicant, the applicant may appeal such administrative decision to the

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Planning Commission. In granting an appeal the Planning Commission must find such plan to be in accordance with all applicable ordinances and include necessary elements to mitigate any detrimental impact on water quality and upon adjacent property and the surrounding area or such plan meets the purposes and intent of the performance standards in this Article. If the Planning Commission finds that the applicant's plan does not meet the above-stated criteria, they shall deny approval of the plan. In the event of a denial of appeal to the Planning Commission, the applicant may appeal such decision to the Cape Charles Town Council. Said appeal shall be made within fifteen (15) days of the negative decision. Further appeals by the applicant shall be established by law.

Section 32.192: Non-Conforming Use and Development Waivers

- (a) The lawful use of a building or structure which existed on September 11, 1990, or which exists at the time of any amendment to this Article, and which is not in conformity with the provisions of the Overlay District may be continued in accordance article II division 4 of this chapter. No change or expansion of use shall be allowed with the exception that:
- (1) The Zoning Administrator may grant a non-conforming use and development waiver for structures on legal non-conforming lots or parcels to provide for remodeling and alterations to such non-conforming structures provided that:
 - a. there will be no increase in non-point source pollution load;
 - b. any development or land disturbance exceeding an area of two thousand five hundred square feet (2,500 SF) complies with all erosion and sediment control requirements of this Article;
 - c. the intent of article ii, division 4, Non-Conforming Uses, is upheld.
 - (2) An application for a non-conforming use and development waiver shall be made to and upon forms furnished by the Zoning Administrator and shall include, for the purpose of proper enforcement of this Article, the following information:
 - a. name and address of applicant and property owner;
 - b. legal description of the property and type of proposed use and development;
 - c. a sketch of the dimensions of the lot or parcel, location of buildings and proposed additions relative to the lot lines, and boundary of the Resource Protection Area;
 - d. location and description of any existing private water supply or sewerage system.
 - (3) A non-conforming use and development waiver shall become null and void 12 months from the date issued if no substantial work has commenced.
 - (4) An application for the expansion of a nonconforming structure may be approved by the Zoning Administrator through an administrative review process provided that the following findings are made:
 - a. The request for the waiver is the minimum necessary to afford

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- relief;
 - b. Granting the waiver will not confer upon the applicant any specific privileges that are denied by this Article to other property owners in similar situations;
 - c. The waiver is in harmony with the purpose and intent of this Article and does not result in water quality degradation;
 - d. The waiver is not based on conditions or circumstances that are self- created or self-imposed;
 - e. Reasonable and appropriate conditions are imposed, as warranted, that will prevent the waiver from causing a degradation of water quality;
 - f. Other findings, as appropriate and required by the Town of Cape Charles are met; and
 - g. In no case shall this provision apply to accessory structures.
- (5) In accordance with Code of Virginia [§ 15.2-2283](#), additions to nonconforming structures for the purpose of providing reasonable modifications in accordance with the American with Disabilities Act of 1990 shall not be considered an expansion of a nonconforming structure.
- ~~(6)~~ In accordance with the Code of Virginia [§ 15.2-2307.H](#), nothing in this ordinance shall be construed to prevent the owner of a valid nonconforming mobile or manufactured home from replacing that home with a newer manufactured home, either single- or multisection, that meets the current HUD manufactured housing code. Any such replacement home shall retain the valid nonconforming status of the prior home.
- ~~(6)~~~~(7)~~ [This chapter shall not be construed to prevent the reconstruction of pre-existing structures within Chesapeake Bay Preservation Areas from occurring as a result of casualty loss unless otherwise restricted by this Ordinance.](#)

Section 32.193: Exemptions

- (a) Exemptions for Utilities, Railroads, and Public Roads.
- (1) Construction, installation, operation, and maintenance of electric, natural gas, fiber-optic, and telephone transmission lines, railroads, and public roads and their appurtenant structures in accordance with (i) regulations promulgated pursuant to the [Virginia Erosion and Sediment Control Law \(§ 62.1-44.15:51 et seq. of the Code of Virginia\)](#) and the Stormwater Management Act ([§ 62.1-44.15:24 et seq. of the Code of Virginia](#)), (ii) an erosion and sediment control plan and a stormwater management plan approved by the Virginia Department of [Conservation and Recreation Environmental Quality](#), or (iii) local water quality protection criteria at least as stringent as the above state requirements are deemed to comply with this Article. The exemption of public roads is further conditioned on the following:
- a. The road alignment and design has been optimized, consistent with all applicable requirements, to prevent or otherwise

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- minimize the encroachment in the Resource Protection Area and to minimize the adverse effects on water quality.
- (2) Construction, installation, and maintenance of water, sewer, and natural gas and underground telecommunication and cable television lines, owned, permitted or both by the Town of Cape Charles, shall be exempt from the Overlay District provided that:
- a. to the degree possible, the location of such utilities and facilities shall be outside RPAs;
 - b. no more land shall be disturbed than is necessary to provide for the proposed utility installation;
 - c. all construction, installation, and maintenance of such utilities and facilities shall be in compliance with all applicable state and federal requirements and permits and designed and conducted in a manner that protects water quality; and
 - d. any land disturbance exceeding an area of two thousand five hundred square feet (2,500 SF) complies with all Cape Charles erosion and sediment control requirements.
- (b) Exemptions for Silvicultural Activities. Silvicultural activities [located within designated CBPAs](#) are exempt from the requirements of this Article provided that silvicultural operations adhere to water quality protection procedures prescribed by the Virginia Department of Forestry in the [1997 edition of "Best Management Practices Handbook for Forestry Operations \[Technical Guide\] the Fifth Edition \(March 2011\) of "Virginia's Forestry Best Management Practices for Water Quality Technical Manual." The Virginia Department of Forestry will oversee and document installation of best management practices and will monitor in-stream impacts of forestry operations in Chesapeake Bay Preservation Areas.](#)
- (c) Exemptions in Resource Protection Areas. The following land disturbances in Resource Protection Areas may be exempted from the Overlay District: (1) water wells; (2) passive recreation facilities such as boardwalks, trails, and pathways; and (3) historic preservation and archaeological activities provided that it is demonstrated to the satisfaction of the Zoning Administrator that:
1. Any required permits, except those to which this exemption specifically applies, shall have been issued;
 2. Sufficient and reasonable proof is submitted that the intended use will not deteriorate water quality;
 3. The intended use does not conflict with nearby planned or approved uses; and
 4. Any land disturbance exceeding an area two thousand five hundred square feet (2,500 SF) shall comply with all Cape Charles erosion and sediment control requirements.

Section 32.194: Exceptions

- A. A request for an exception to the requirements of sections 32.186 and 32-189(c) of this overlay district shall be made in writing to the Board of Zoning

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Appeals. It shall identify the impacts of the proposed exception on water quality and on lands within the RPA through the performance of a water quality impact assessment which complies with the provisions of section 32.190.

- B. The Town of Cape Charles shall notify the affected public of any such exception requests and shall consider these requests in a public hearing in accordance with [§ 15.2-2204](#) of the Code of Virginia, except that only one hearing shall be required.
- C. The Board of Zoning Appeals shall review the request for an exception and the water quality impact assessment and may grant the exception with such conditions and safeguards as deemed necessary to further the purpose and intent of this Article if the Board of Zoning Appeals finds:
1. Granting the exception will not confer upon the applicant any special privileges that are denied by this Article to other property owners in the Overlay District;
 2. The exception request is not based upon conditions or circumstances that are self-created or self-imposed, nor does the request arise from conditions or circumstances either permitted or non-conforming that are related to adjacent parcels;
 3. The exception request is the minimum necessary to afford relief;
 4. The exception request will be consistent with the purpose and intent of the Overlay District and not injurious to the neighborhood or otherwise detrimental to the public welfare, and is not of substantial detriment to water quality; and
 5. Reasonable and appropriate conditions are imposed which will prevent the exception request from causing a degradation of water quality.
- D. If the Board of Zoning Appeals cannot make the required findings or refuses to grant the exception, the Board of Zoning Appeals shall return the request for an exception together with the water quality impact assessment and the written findings and rationale for the decision to the applicant.
- ~~D.E.~~ Exceptions to Section 32.189(b) may be made by the zoning administrator, provided that the findings noted in Section 32.194(C) are made.
- E.—A request for an exception to the requirements of provisions of this Article other than those in Sections 32.186 and 32.189.C shall be made in writing to the Zoning Administrator. The Zoning Administrator may grant these exceptions provided that: exceptions to the requirements are minimum necessary to afford relief; and reasonable and appropriate conditions are placed upon any exception that is granted, as necessary, so that the purpose and intent of this Article is preserved
- ~~1. Exceptions to the requirements are minimum necessary to afford relief; and Reasonable and appropriate conditions are placed upon any exception that~~

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~~is granted, as necessary, so that the purpose and intent of this Article is preserved.~~

~~2. Exceptions to § 7.9.B may be made provided that the findings noted in §7.14.C are made.~~

~~(g) *General requirements.* Applications for variances [waivers] and exceptions from the requirements of Section 32.189 general performance standards, and 7.6, development standards for RPAs, shall be made in writing and filed with the Zoning Administrator. Such applications shall identify any potential impacts of the proposed variance [waiver] or exception on water quality and on lands within the RPA through the performance of a water quality impact assessment, pursuant to Section 32.190 of this Ordinance, and shall examine the impacts of sea level rise, storm surge, and flooding on the project through the performance of a resiliency assessment, pursuant to Section 32.190(G). Each application for a variance [waiver] and exception shall be approved, denied, or approved with conditions according to the review process outlined in the following subsections. No application for a variance [waiver] or exception to sections 32.190 and 32.186 of this Ordinance shall be granted under this Section without meeting the following findings:~~

- ~~(1) The requested variance [waiver] or exception to the criteria is the minimum necessary to afford relief.~~
- ~~(2) Granting the variance [waiver] or exception will not confer upon the applicant any special privileges that are denied by this Ordinance to other property owners who are subject to its provisions and who are similarly situated.~~
- ~~(3) The variance [waiver] or exception is in harmony with the purpose and intent of this Ordinance and is not of substantial detriment to water quality.~~
- ~~(4) The variance [waiver] or 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, that will prevent the allowed activity from causing a degradation of water quality.~~
- ~~(6) Other findings, as appropriate to the Zoning Administrator are met.~~

~~(A) *Administrative variances [waivers].* The Zoning Administrator shall approve, deny, or approve with conditions an application requesting an administrative variance [waiver] following the review of a complete application, as defined under subsection (e) of this section. No such application shall be accepted by the Zoning Administrator unless accompanied by a nonrefundable fee as established by Cape Charles Town Council.~~

- ~~(1) The Zoning Administrator may establish such review policies as they deem expedient in implementing the intent of this Ordinance. In approving an application, the Zoning Administrator shall, if warranted, include reasonable and appropriate conditions that will prevent the degradation of water quality.~~
- ~~(2) No administrative variance [waiver] or exception shall be granted to Section 32.189 of this Ordinance, general performance standards, unless the Zoning Administrator makes the findings required in subsection 32.194(c) of this chapter.~~
- ~~(3) Administrative variances [waivers] to provisions within sections of this Ordinance other than 32.190 or 32.186 may be granted, provided that:~~

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- a. Variances [waivers] to the criteria shall be the minimum necessary to afford relief.
- b. Reasonable and appropriate conditions upon any variance [waiver] granted shall be imposed, as necessary, so that the purpose and intent of this Ordinance is preserved.

(B) Formal exceptions. Exceptions from the criteria of Section 32.186 of this Ordinance, development criteria for Resource Protection Areas, require public notice and a public hearing before the Board of Zoning Appeals. Complete applications for an exception shall be submitted to the Zoning Administrator for review and evaluation prior to being forwarded to the Board for consideration. No such application for an exception shall be accepted by the Zoning Administrator unless accompanied by a nonrefundable fee as set by the Cape Charles Town Council. Such fee shall include all costs of notification and advertising.

(1) The Zoning Administrator shall review complete applications for an exception to the requirements of Section 32.186 of this Ordinance, including the water quality impact assessment and resiliency assessment, and provide the Board and the applicant with copies of the submitted materials, an evaluation of the required findings and potential impacts of the proposed exception, and such other information as may aid the Board in considering the application no less than five (5) days prior to the scheduled hearing.

(2) Not later than 60 days after the receipt of a complete application, the Board shall hold a public hearing on such application. Notice of the time and place of the hearing shall be published no less than once per week for two (2) consecutive weeks prior to such hearing in a newspaper having a general circulation in the Town. The second such notice shall appear not less than five (5) days nor more than 21 days prior to the hearing.

(3) The Board shall notify, by first class mail, all property owners adjacent to the subject property and each waterfront property owner across the waterway from the subject property, if the water body is less than 500-feet wide, of the public hearing at least five (5) days prior to the hearing.

(4) The Board may make, alter and rescind rules for its procedures not inconsistent with the provisions of this Ordinance; provided, however, that a quorum shall be not less than a majority of the members of the Board, and provided further, that the concurring vote of a majority of the members of the Board present and voting shall be required to grant any exception.

(5) The Board shall approve, deny, or approve with conditions an application requesting an exception to the requirements of Section 7.6 following the review of a complete application and a determination that the proposed project meets the findings required by subsection 32.194(A) above.

(D) No application for relief from sections 32.190 or 32.186 of this Ordinance shall be considered complete where a resiliency assessment, as outlined in Section 32.190(G) of this Ordinance has not occurred or the proposed adaptation measure allows for the use of fill in a Resource Protection Area in contravention to the requirements of subsection 32.186(E)(1)(f)5 of this Ordinance.

Section 32.195: Enforcement

- A. Any person who: (i) violates any provision of this ordinance or (ii) violates or

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fails, neglects, or refuses to obey any Town of Cape Charles or its official Designee's final notice, order, rule, regulation, or variance or permit condition authorized under this ordinance shall, upon such finding by an appropriate circuit court be assessed a civil penalty not to exceed five thousand dollars (\$5,000) for each day of violation. Such civil penalties may, at the discretion of the court assessing them, be directed to be paid into the treasury of the Town of Cape Charles for the purpose of abating environmental damage to or restoring Chesapeake Bay Preservation Areas therein, in such a manner as the court may direct by order, except that where the violator is the Town of Cape Charles itself or its agent, the court shall direct the penalty to be paid into the state treasury.

- B. With the consent of any person who: (i) violates any provision of any Town of Cape Charles ordinance related to the protection of water quality in Chesapeake Bay Preservation Areas or (ii) violates or fails, neglects, or refuses to obey any Town of Cape Charles or its official Designee's order, rule, regulation, or variance or permit condition authorized under such ordinance, the Town of Cape Charles may provide for the issuance of an order against such person for the one-time payment of civil charges for each violation in specific sums, not to exceed ten thousand dollars (\$10,000) for each violation. Such civil charges shall be paid into the treasury of the Town of Cape Charles for the purpose of abating environmental damage to or restoring Chesapeake Bay Preservation Areas therein, except that where the violator is the Town of Cape Charles itself or its agent, the civil charges shall be paid into the state treasury. Civil charges shall be in lieu of any appropriate civil penalty that could be imposed under subdivision 1 of this subsection. Civil charges may be in addition to the cost of any restoration required or ordered by the Town of Cape Charles body or official.

Section 32.196: Severability

The provisions of this ordinance shall be deemed to be severable, and if any of the provisions hereof are adjudged to be invalid or unenforceable, the remaining portions of this ordinance shall remain in full force and effect and their validity shall remain unimpaired.

Section 7.17: Effective Date

~~This ordinance was duly considered following a required public hearing held on November 18, 2024, and was adopted by the Town Council of Cape Charles, Virginia, at its regular meeting held December 19, 2024. (Ord. No. 20241219A; 12/19/24)~~

Appendix A – Definitions

Sec. 100 - Definitions

For the purpose of the Zoning Ordinance, the following words and phrases shall have the meanings respectively ascribed to them by this section. Please note that certain words and phrases have not been included here if their definitions are topic specific; those definitions continue to reside in their respective sections of the Zoning Ordinance which includes the *Sign Section (Article V), Floodplain Ordinance (Article VI), Subdivision Ordinance (Appendix B), Coastal Primary Sand Dune Ordinance (Appendix D), Erosion and Sediment Control Ordinance (Appendix E) and Wetlands Ordinance (Appendix F).*

ABANDONMENT means the relinquishment of property, or a cessation of the use of the property, by the owner or lessee without any intention of transferring rights to the property to another owner or of resuming the use of the property.

ACCESS means a way or means of approach to provide vehicular or pedestrian physical entrance to a property.

ACCESSORY USE, except as otherwise provided in the zoning district regulations, an accessory use is:

1. A use which is conducted on the same zoning lot as the principal use to which it is related, whether located within the same building or as an accessory structure, or as an accessory use of land, or which is conducted on a contiguous lot in the same ownership, and
2. Clearly incidental to, and customarily found in connection with, such principal use, and
3. Operated and maintained substantially for the benefit or convenience of the owners, occupants, employees, customers, or visitors of the zoning lot with the principal use.

ACRE is a measure of land area containing forty-three thousand and five hundred and sixty square feet (43,560 SF).

ACREAGE means a parcel of land, regardless of area, described by metes and bounds which respectively are ascribed to them by this section.

ADAPTATION MEASURE means a project, practice, or approach to mitigate or address an impact of climate change including sea-level rise, storm surge, and flooding including increased or recurrent flooding.

ADAPTIVE REUSE means the development of a new use for an older building or for a building originally designed for a special or specific purpose.

ADDITION means a structure added to the original structure at some time after the completion of the original structure or an extension or increase in floor area or height of a building or structure.

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ADJACENT includes the term contiguous.

ADJACENT GROUND ELEVATION means the elevation of the surface of the ground between a point touching the exterior wall of a building and a point three feet (.3') in distance from such wall measured perpendicularly therefrom.

ADULT BOOK STORE means any establishment having as a substantial portion of its stock in trade, books, pictures, magazines, and other periodicals which are distinguished or characterized by an emphasis on matter depicting, describing, or relating to specific sexual activities or specified anatomical areas, or an establishment trading in such books, pictures, magazines, and other periodicals which limits its customers to persons over eighteen years (18 yrs) of age.

ADULT CARE means the provision of health care including retirement homes, congregate living, and acute care facilities, or a mixture thereof.

ADULT MOVIE THEATER means any establishment used for presenting material distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas for observation by patrons therein, or an establishment used for presenting such material which limits its customers to persons over eighteen years (18 yrs) of age.

AFFORDABLE HOUSING means housing that is affordable to **households** with incomes typically at or below one hundred and twenty percent **120% of the area median income**, provided that the occupant pays no more than thirty percent (30%) of his gross income for gross housing costs, including utilities. For the purpose of administering affordable dwelling unit ordinances authorized by this chapter, local governments may establish individual definitions of affordable housing and affordable dwelling units including determination of the appropriate percent of area median income and percentage of gross income.

AGRICULTURE means the tilling of soil, the raising of crops, forestry, the keeping and raising of livestock and fowl, and including the process of any products produced on the premises, such as milk, eggs, and the like.

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.

ALLEY means the minor way used primarily for vehicular access to the rear or side of properties otherwise abutting a street. For an alley way to be recognized as such by the Town, it must have previously been officially adopted by the Town.

ALTERATION means any change or rearrangement in the supporting members of an existing building, such as bearing walls, columns, beams, girders, or interior partitions, as well as any exterior change such as doors, windows, roof, siding, porches, means of ingress or egress, or any enlargement to or diminution of a building or structure,

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whether horizontally or vertically, or the moving of a building or structure from one location to another.

AMERICANS WITH DISABILITIES ACT (ADA) is a 1990 federal law designed to bring disabled Americans into the economic mainstream by providing them equal access to jobs, transportation, public facilities, and services.

APARTMENT BUILDING means a building used or intended to be used as the residence of three (3) or more households/families living independently of each other.

APARTMENT UNIT is considered one (1) or more rooms with private bath and kitchen facilities comprising an independent, self-contained dwelling unit in a building containing three or more dwelling units.

AREA MEDIAN INCOME means the midpoint of Northampton County's income distribution for a family of four and is calculated on an annual basis by the Department of Housing and Urban Development as median family income (MFI).

AREA OF SPECIAL FLOOD PLAIN means the land in the flood plain within a community subject to a one percent (1%) or greater chance of flooding in any given year. This area is designated on the Flood Insurance Rate Map (hereinafter as FIRM) as AE and VE.

APPLICANT is the person submitting an application.

ATTIC is space between ceiling framing of the top story and the underside of the roof.

AUTOMOBILE GRAVEYARD means any lot or place which is exposed to weather upon which three or more motor vehicles of any kind, incapable of being operated, are placed.

AVERAGE SETBACK shall be the mean setback from a street right-of-way of buildings on both sides of a lot.

AWNING. An architectural projection or shelter projecting from and supported by the exterior wall of a building and composed of a covering of rigid or nonrigid materials and/or fabric on a supporting framework that may be either permanent or retractable, including such structures that are internally illuminated by fluorescent or other light sources.

AWNING, BACKLIT. An awning with a translucent covering material and a source of illumination contained within its framework.

BASE FLOOD ELEVATION means the highest height, expressed in feet above sea level, of the level of flood waters occurring in the regulatory base flood.

BANNER. A flexible substrate on which copy, or graphics may be displayed.

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BASEMENT means that portion of a building that is partly or completely below grade. A basement is a level within a building that has its floor surface below the adjoining ground level. A basement shall be counted as a story if over fifty percent (50%) of its height is above finished grade.

BASE FLOOD/100-YEAR FLOOD means a flood that on the average is likely to occur once every one hundred years (100 yrs) (i.e., that has a one percent (1%) chance of occurring each year, although the flood may occur in any year).

BATHROOM means a room or area that includes a sink and toilet. It may also include a bathtub, shower, or bidet.

BED AND BREAKFAST means a single-family dwelling containing sleeping and/or breakfast accommodations as an accessory use to the principal use. Such lodging shall have room accommodations for transient persons and wherein a charge is normally paid for such accommodations. Owner or manager is a permanent dweller residing on site.

BEDROOM is a room or space within a structure intended for sleeping. Requirements include:

- A minimum size of seventy square feet (70 SF); if more than one person occupies the room, there must be fifty square feet (50 SF) per occupant.
- Access to a bathroom without crossing another bedroom.
- Every bedroom must have access to natural ventilation and have a permanent heat source.
- Two means of egress: one that leads to the rest of the home without going through another bedroom and one that leads directly to the outside. If the outside egress is a window, it must be at least five point seven square feet (5.7 SF) and can be no more than forty-four inches (44") from the room floor, unless there is a permanent step installed. It shall be illegal to have locking bars or grates covering an egress window.
- Ceiling height must be no less than seven feet (7').

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

BIKEWAY means a pathway often paved and separated from streets and sidewalks designed to be used by bicycles.

BLIGHTED AREA is an area characterized by deteriorating and/or abandoned buildings, inadequate or missing public or community services, and vacant land with debris, litter, lack of sanitation facilities, trash and junk accumulation and impacted by adverse environmental nuisances, such as noise, heavy traffic, and odors.

BOARD OF ZONING APPEALS means the board appointed to review appeals made by

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individuals with regard to decisions of the Zoning Administrator or Floodplain Manager in the interpretation of this ordinance.

BUFFER AREA means an area of natural or established vegetation managed to protect other components of a Resource Protection Area and state waters from significant degradation due to land disturbances.

BUFFER YARD means an area or areas located within districts or land use classifications which extend along adjacent property lines abutting other districts.

BUILDING means any structure having a roof supported by walls which is solidly enclosed, including any area which is solidly enclosed with glass or any other rigid material which will not allow for the passage of air.

BUILDING, ACCESSORY means a subordinate and separate building located upon the same lot occupied by the main structure or where a main structure was previously located. Accessory buildings shall not be used as dwelling units, unless a zoning permit is issued in compliance with §4.1 (J).

BUILDING ELEVATION. The entire side of a building, from ground level to the roofline, as viewed perpendicular to the walls on that side of the building.

BUILDING FOOTPRINT is the land area on which a proposed building is located.

BUILDING, HEIGHT means the vertical distance measured from the finished grade to the top of the highest roof beams on a flat or shed roof, to the top of a parapet, the deck level on a mansard roof, and the average distance between eaves and the ridge level for gable, hip, and gambrel roofs. Note: Mechanical equipment, chimneys, air conditioning units, elevator penthouses, church spires and steeples, water towers, and similar appurtenances are exempted from height restrictions. However, these exclusive items may not exceed the height limit by more than fifteen feet (15').

BUILDING INSPECTOR/OFFICIAL is the individual designated by the appointing authority to enforce the provisions of the building code.

BUILDING, MAIN means the principal structure or the principal building on a lot or the building or the principal building housing the principal use on a lot.

BUILDING, PARCEL means a fraction of a tract of land containing one or more building lots.

BUILDING PERMIT is an approval statement signed by the Building Permit Office authorizing the construction, alteration, reconstruction, repair, restoration, demolition, or razing of all or a part of any building.

BUILDING CODE OFFICIAL is appointed by the Town Council as the individual who issues the permit for the construction, alteration, reconstruction, repair, restoration,

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demolition, or razing of all or part of any building.

CANOPY, ATTACHED. A multisided overhead structure or architectural projection supported by attachments to a building on one or more sides and either cantilevered from such building or also supported by columns at additional points. The surface(s) and/or soffit of an attached canopy may be illuminated by means of internal or external sources of light. See also "Marquee."

CANOPY, FREE-STANDING. A multisided overhead structure supported by columns but not enclosed by walls. The surface(s) and or soffit of a free-standing canopy may be illuminated by means of internal or external sources of light.

CANOPY TREE means a tree that typically reaches 35 feet in height or taller when mature.

CAREGIVER is an adult who provides care for a mentally or physically impaired person within the Commonwealth. A caregiver shall be either related by blood, marriage or adoption to or the legally appointed guardian of the mentally or physically impaired person for whom he is caring.

CARRY-OUT RESTAURANT means an establishment that, by design of the physical facilities, service, or packaging sells prepared ready-to-eat foods intended primarily to be consumed off the premises.

CEMETERY means property used for interring the dead.

CERTIFICATE OF APPROPRIATENESS is a certificate or other statement indicating approval by the Administrator, the Harbor Area Review Board or the Historic District Review Board as the case may require, of plans for construction, alteration, reconstruction, repair, restoration, demolition, or razing of a building or structure or part thereof.

CHESAPEAKE BAY PRESERVATION AREA or **CBPA** means any land designated by the Town Council pursuant to Part III of the Chesapeake Bay Preservation Area Designation and Management Regulations, 9VAC25-830-10 et seq., § 62.1-44.15:68 of the Code of Virginia. A Chesapeake Bay Preservation Area shall consist of a Resource Protection Area and a Resource Management Area.

CHILD CARE CENTER means any facility, other than a family home, established for providing childcare, supervision, and protection of children.

CHILD AND PERSONAL CARE USES shall mean any care, activity, and supervision (with or without academic instruction) for five or more children.

CHURCH means a building or structure, or groups of buildings or structures, that by design and construction are primarily intended for conducting organized religious services and associated accessory uses.

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CLUB means a group of people organized for a common purpose to pursue common goals, interests, or activities and usually characterized by certain membership qualifications, payment of fees and dues, regular meetings, and a constitution and by-laws.

COASTAL HIGH HAZARD AREA means an area subject to high velocity waters including but not limited to hurricane wave wash. The area is designated on the FIRM as VE.

COMMERCIAL USE is an activity involving the sale of goods or services carried out for profit.

COMMERCIAL VEHICLE shall mean limousine, flatbed truck, dump truck, tow truck, bus, school bus, transport wrecker, cab-on-chassis truck, tractor trailer, wheeled attachment, earth-moving machinery, semi-trailer, and any vehicle over twenty feet (20') in length, eight feet (8') in height, or seven feet in width.

COMMISSION shall mean the Cape Charles Planning Commission.

COMPREHENSIVE PLAN is a master plan, long-range plan, intended to guide the growth and development of a community or region that typically includes inventory and analytic sections leading to recommendations for the community's future economic development, housing, recreation and open space, transportation, community facilities, and land use, all related to the community's goals and objectives for these elements.

CONDITIONAL USE means a use permitted in a particular zoning district upon showing that such use in a specified location will comply with all the conditions and standards for the location or operation of the use as specified in the zoning ordinance and authorized by the approving agency.

CONDITIONAL USE PERMIT is a permit recommended by the Planning Commission and issued by the Town Council stating that the conditional use meets all conditions set forth in local ordinances.

CONSTRUCTION FOOTPRINT means the area of all impervious surface including but not limited to buildings, roads and drives, parking areas, and sidewalks and the area necessary for construction of such improvements.

CONTINUING CARE RETIREMENT COMMUNITY, sometimes known as a life plan community, is a type of retirement community where a continuum of aging care needs from independent living, assisted living, and skilled nursing care can all be met within the community.

CONTRIBUTING PROPERTIES are those properties constructed fifty years (50 yrs) or more ago.

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COOPERATIVE means real estate owned by an association, each of the members of which is entitled, by virtue of his ownership, interest in the association, to exclusive possession of a unit. (See § 55.1-2100 et seq. of the Code of Virginia)

CONSTRUCTION shall mean any site or building preparation, assembly, erection, repair, alteration or similar action, or demolition of buildings or structures.

CONTRIBUTING STRUCTURE OR PROPERTY means a structure, building, or place constructed on or before 1964 OR which has special significance because of notable architectural or historic features relating to the cultural or artistic heritage of the community and whose authentic look and character should be retained. The National Register of Historic Places (amended 2019) provides the list of contributing structures and properties. Should a building or structure within the boundaries of the historic district not be listed in the national register, the building or structure will be classified as noncontributing.

COPY. Those letters, numerals, figures, symbols, logos and graphic elements comprising the content or message of a sign, excluding numerals identifying a street address only.

COUNTRY CLUB is land area and buildings containing golf courses, recreational facilities, a clubhouse, and customary accessory uses open to members and their guests.

CRAWL SPACE is an under-floor space that is not a basement which usually contains pipes, ducts, wiring and lighting fixtures, and permits access but is too low for standing.

DECK is an uncovered platform, constructed of wood or wood substitute.

DEMOLITION is the dismantling or tearing down of all or part of any building and all operations incidental thereto.

DEMOLITION PERMIT means the official authorization in writing to remove part or all of a building or structure.

DENSITY means the total number of families, individuals, dwelling units, households, or housing structures per unit of land.

DESIGN GUIDELINES are those set of recommendations adopted pursuant to §8.20 and §9.20 of this Code.

DEVELOPER means the owner or any person with written authorization for the owner who intends to improve or to construct improvements upon any given property.

DEVELOPMENT means a tract of land developed or to be developed as a unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain three (3) or more residential dwelling units. The term "development" shall not be construed

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to include any tract of land which will be principally devoted to agricultural production.

DEVELOPMENT within the Chesapeake Bay Preservation Act Overlay Ordinance means the construction or substantial alteration of residential, commercial, industrial, institutional, recreation, transportation, or utility facilities or structures.

DIAMETER AT BREAST HEIGHT or DBH means the diameter of a tree measured outside the bark at a point four- and one-half feet (4-1/2') above ground.

DISTRICT is a part, zone, or geographical area within the municipality within which certain zoning or development regulations apply.

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

DRIVE-THROUGH ESTABLISHMENT/RESTAURANT shall mean a business establishment so developed that its retail or service character includes providing a driveway approach and service window for motor vehicles so as to serve patrons as they are seated in the motor vehicle and passing by the service window rather than serving them from within a building.

DRIVEWAY shall mean a vehicular connection between the right-of-way of a street and to a vehicle parking, loading, or maneuvering facility, lots, building sites, uses, or other divisions of land and not intended to be public ingress and egress. A driveway is not considered a street.

DWELLING means a structure or portion thereof that is used exclusively for human habitation.

DWELLING, ACCESSORY is a dwelling unit which is an accessory use to a single-family dwelling or commercial use in the Commercial – Residential Districts.

DWELLING, CONDOMINIUM shall mean a single, separately owned dwelling unit in a multi-unit development or structure, with jointly owned and shared areas and facilities.

DWELLING, DUPLEX shall mean a building designed as a single structure, containing two (2) separate dwelling units joined side-by-side, has direct access to the outside, and each of which is designed or arranged to be occupied by two families living independently of each other.

DWELLING, MANUFACTURED HOME or MOBILE HOME means a special form of one-family dwellings with the following characteristics:

1. A structure, transportable in one or more sections, which in the traveling mode is eight (8) body feet or more in width, or forty (40) body feet or more in length, or which when erected on-site is three hundred and twenty (320) or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with a permanent foundation when connected to the required utilities, and

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includes the plumbing, heating, air conditioning, and electrical systems contained in the structure, and designed and constructed to National Manufactured Housing Construction and Safety Standards Act of 1974. The term does not include any self-propelled recreational vehicle.

2. Calculations used to determine the number of square feet in a structure will include the total of square feet for each transportable section comprising the completed structure and will be based on the structure's exterior dimensions measured at the largest horizontal projections when erected onsite. These dimensions will include all expandable rooms, cabinets, and other projections containing interior space, but do not include bay windows.

DWELLING, MULTI-FAMILY shall mean a building designed for and containing three (3) or more dwelling units.

DWELLING, SINGLE FAMILY DETACHED shall mean a single-family dwelling that is located on an individual lot of record.

DWELLING, SINGLE-FAMILY ATTACHED (TOWNHOUSE) shall mean a dwelling unit which is located on an individual lot of record, and which is attached to another dwelling unit or any adjoining lot by a common wall.

DWELLING UNIT means one or more rooms, designed, occupied, or intended for occupancy as a separate living quarter with cooking, sleeping, and sanitary facilities provided within the dwelling unit for the exclusive use of a single family maintaining a household.

EASEMENT is a grant of one or more of the property rights by the property owner to and/or for use by the public, a corporation, or another person or entity.

ENGINEER means a professional engineer licensed by the Commonwealth of Virginia.

ENLARGEMENT means an increase in the size of an existing structure or use, including the physical size of the property, building, parking, and other improvements.

EVENT CENTER shall mean a multi-purpose facility generally used for meetings, parties, banquets, weddings, and other social gatherings, conventions, and the display of merchandise by a variety of industrial groups, professional groups, social groups and trade organizations.

EXISTING CONSTRUCTION means, for the purpose of determining rates, structures for which the start of construction commenced before the effective date of the FIRM. **EXISTING CONSTRUCTION** may also be referred to as **EXISTING STRUCTURES**.

EXISTING USE is the use of a lot or structure at the time of the enactment of the zoning ordinance.

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FARM or FARMLAND is a parcel of land used for agricultural activities.

FENCE means an artificially constructed barrier of any material or combination of materials erected to enclose, screen, or separate areas.

FILL means material such as sand, soil, gravel, or crushed stone which is placed in an area, often to adjust elevation or create land contouring.

FLEX SPACE, INDUSTRIAL USE: Flex buildings are, by design, “flexible” and allow for a wide range of office and warehouse uses. They can be used for many purposes and are easier to retrofit to meet a company's needs than typical warehouse buildings.

FLOOD or FLOODING means:

1. A general and temporary condition of partial or complete inundation of normally dry land areas from:
 - a. The overflow of inland or tidal waters.
 - b. The unusual and rapid accumulation or runoff of surface waters from any source.
 - c. Mudslides (i.e., mudflows) which are approximately caused or precipitated by accumulations of water on or under the ground.
2. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in 1 (a) of this section.

FLOOD INSURANCE RATE MAP (FIRM) means the official map of the community, on which the administrator has delineated both special hazard areas and the risk premium zones applicable to the community. **FLOOD PLAIN** means (1) a relatively flat land area adjoining a river, stream, or watercourse which is subject to partial or complete inundation; (2) an area subject to the unusual and rapid accumulation of runoff of surface water from any source.

FLOOD PLAIN means the channel and the relatively flat area adjoining the channel of a natural stream, river, or body of water that has been or may be covered by floodwater. **FLOODPLAIN within the Chesapeake Bay Preservation Act Overlay Ordinance** means all lands that would be inundated by floodwater as a result of a storm event of a 100-year return interval.

FLOOD PLAIN MANAGEMENT means the operation of an overall program of corrective and preventive measures for reducing flood damage including but not limited to emergency preparedness plans, flood control works, and flood plain

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management regulations.

FLOOD PROOFING means any combination of structural and nonstructural additions, changes, or adjustments to structure which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

FLOOR AREA shall mean the gross horizontal areas of a building, including mezzanines and lofts, exclusive of garages, parking structures, basements, open balconies and porches, and equipment and service areas, measured from the exterior face of the exterior walls of a building.

FOOT CANDLE means a standard measurement of light intensity, defined as the illuminance on a one- square foot surface from a uniform source of light.

FORESTRY means an establishment primarily engaged in the operation of timber tracts, tree farms, forest nurseries, the gathering of forest products, or in performing forest services.

FREEBOARD means an additional amount of height above the Base Flood Elevation used as a factor of safety (e.g., 2 feet above the Base Flood) in determining the level at which a structure's lowest floor must be elevated or floodproofed to be in accordance with state or community floodplain management regulations.

FRONTAGE is the width in linear feet of each lot where it abuts the right-of-way of any public or private street.

FRONTAGE, BUILDING. The length of an exterior building wall or structure of a single premise orientated to the public way or other properties that it faces.

FRONTAGE, PROPERTY. The length of the property line(s) of any single premise along either a public way or other properties on which it borders.

FUNCTIONALLY DEPENDENT USE means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long- term storage or related manufacturing facilities.

FUNERAL HOME is a building used for the preparation of the deceased for burial and the display of the deceased and rituals connected therewith before burial or cremation.

GARAGE means a deck, building, or parking structure, or part thereof, used or intended to be used for the parking and storage of vehicles.

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GARAGE, PRIVATE RESIDENTIAL is a structure that is an accessory to a residential building and that is used for the parking and storage of vehicles owned and operated by the residents thereof and that is not a separate commercial enterprise available to the general public.

GOLF COURSE means a tract of land laid out for at least nine holes for playing the game of golf and improved with tees, greens, fairways, and hazards, and that may include a clubhouse and shelter.

GOVERNING BODY shall mean the Cape Charles Town Council.

GRADE (ADJACENT GROUND LEVEL), generally flat horizontal surfaces, is the lowest point of elevation of the finished surface of the ground, paving or sidewalk within the area between the building or structure and the property line. When ground level slopes, the reference plane shall be established by the average elevations at the four corners of the lot and two additional highest points on the lot (i.e., the average of six (6) points).

GRADING is the act of excavation or filling or combination thereof or any leveling to a smooth horizontal or sloping surface on a property, but not including normal cultivation associated with an agricultural operation.

GROSS FLOOR AREA (GFA) shall mean the total covered floor area inside the building envelope, including exterior walls, and excluding the roof.

GROUND COVER means grasses or other plants and landscaping grown to keep soil from being blown or washed away.

GROUP HOME is a residential facility, licensed by the Department of Behavioral Health and Developmental Services, in which no more than eight individuals with mental illness, mental retardation, or developmental disabilities reside, with one (1) or more residential counselors or other staff persons. For the purposes of this ordinance, mental illness and developmental disability shall not include current illegal use of or addiction to a controlled substance as defined in [§ 54.1-3401](#) of the Code of Virginia.

HARDSHIP means a restriction on property so unreasonable that it results in an arbitrary and capricious interference with basic property rights, and that which relates to the physical characteristics of the property, not the personal, financial, or self-imposed circumstances of the owner or user.

HEALTH CARE FACILITY means a facility or institution, whether public or private, principally engaged in providing services for health maintenance and the treatment of mental or physical conditions.

HISTORIC DISTRICT means an area containing buildings or places in which historic

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events occurred or having special public value because of notable architectural or other features relating to the cultural or artistic heritage of the community of such significance as to warrant conservation and preservation.

HISTORIC LANDMARK is defined as any building or place listed on the National Register of Historic Places or on the Register of the Virginia Historic Landmarks Commission.

HISTORIC STRUCTURES means any structure that is:

1. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the national register;
2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
3. Individually listed on a state inventory of historic places in the states with historic preservation programs which have been approved by the Secretary of the Interior; or
4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either: a. by an approved state program as determined by the Secretary of the Interior, or b. directly by the Secretary of Interior in the states without approved programs.

HOME OCCUPATION means any activity carried out for gain by a resident and conducted as a customary, incidental, and accessory use in the resident's dwelling.

HOSPITAL means an institution providing primary health services and medical or surgical care to persons, primarily inpatients, suffering from illness, disease, injury, deformity, and other abnormal physical or mental conditions and including, as an integral part of the institution, related facilities, such as laboratories, outpatient facilities, training facilities, medical offices, and staff residents.

HOTEL is a building in which lodging or boarding and lodging facilities are provided for transient guests and offered to the public for compensation and in which ingress and egress to and from all rooms are through an inside lobby or office supervised by a person in charge at all hours.

HOUSEHOLD (family) all the people who occupy a housing unit. A household includes the related family members and all the unrelated people, if any, such as lodgers, foster children, wards, or employees who share the housing unit. A person living alone in a housing unit, or a group of unrelated people sharing a housing unit such as partners

or roomers, is also counted as a household.

IMPERVIOUS is any paved, hardened or structural surfaces which prevent or impede the infiltration of stormwater into the soil.

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

IMPROVEMENT means any permanent structure that becomes part of, placed upon, or is affixed to real estate.

INDUSTRY means those fields of economic activity including forestry, fishing, hunting, and trapping; mining; construction; manufacturing; transportation; communications; electric, gas, and sanitary services; and wholesale trade.

INFILL DEVELOPMENT: Development that takes place on vacant or underutilized parcels within an area that is already characterized by residential and/or commercial development and has access to municipal services.

INSTITUTIONAL USES shall mean a nonprofit or quasi-public use, such as a religious institution, library, public or private school, hospital, or government owned or government operated structure or land used for public purpose.

INTENSELY DEVELOPED AREA or IDA means a portion of Resource Protection Area, or a Resource Management Area designated by the Town Council where development is concentrated and little of the natural environment remains.

JUNKYARD means any area, lot, parcel, building, or structure or part thereof used for the storage, collection, processing, purchase, sale, salvage, or disposal of junk.

KENNEL means a commercial establishment in which dogs or domesticated animals are housed, groomed, bred, boarded, trained, or sold, all for a fee. This includes any building or premises used, designed, or arranged for the boarding or breeding or care of four (4) or more dogs, cats, or other domesticated pets of at least six months (6 mos) of age.

KITCHEN means a space within a structure designated for the cooking and preparation of food that includes a sink and a refrigerator.

LAND DISTURBANCE or LAND DISTURBING ACTIVITY means a man-made change to the land surface that may result in soil erosion or has the potential to change its runoff characteristics, including construction activity such as the clearing, grading, excavating, or filling of land.

LAND USE means a description of how land is occupied or utilized.

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LANDSCAPE means an expanse of natural scenery; lawns, trees, plants, and other natural materials, such as rock and wood chips and decorative features, including sculptures, patterned walks, fountains, and pools.

LANDSCAPE PLAN is a plan indicating the location, size, quantity and species of replacement trees and shrubbery.

LANDSCAPE ZONE is an area reserved for the growing and maintenance of landscape materials, including approved street trees and ground cover.

LIMIT OF MODERATE WAVE ACTION (LiMWA) is an informational line that can be found on flood maps for some coastal areas. On a flood map, it is shown as a black line with black arrows that point to areas where wave heights are between one and one-half (1.5) and three (3) feet. It also marks the inland limit of the Coastal Zone A.

LIVING SHORELINE is a shoreline management practice that: provides erosion control and water quality benefits; protects, restores, or enhances natural shoreline habitat; and maintains coastal processes through the strategic placement of plants, stone, sand fill, and other structural and organic materials. When practicable, a living shoreline may enhance coastal resilience and attenuation of wave energy and storm surge. Pursuant to Va. Code §28.2-104.1, living shorelines are recognized as the preferred alternative for stabilizing shorelines in the Commonwealth. Only living shorelines shall be permitted for shoreline management unless the best available science shows that such approaches are not suitable.

LOT means a parcel of land occupied by a main structure or to be occupied by a main structure or group of main structures and accessory structures, together with such yards, open space, and lot areas as are required by this ordinance, and having frontage upon a street, either shown on a plat of record or considered as a unit of property and described by metes and bounds.

LOT AREA means the total area within the lot lines of a lot, excluding any street rights-of-way.

LOT, CORNER means a lot or parcel of land abutting upon two or more streets at their intersection or upon two parts of the same street forming an interior angle of less than one hundred and thirty-five degrees (135°).

LOT COVERAGE is that portion of the lot that is covered by buildings.

LOT DEPTH means the average distance measured from the front of the lot line to the rear of the lot line.

LOT, FLAG means a lot not meeting minimum frontage requirements and where access to the public road is by narrow private right-of-way or driveway.

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LOT FRONTAGE means the length of the front lot line measured at the street right-of-way line.

LOT LINE means a line of record bounding a lot that divides one lot from another lot or from a public or private street or any other public space.

LOT LINE, FRONT is the lot line separating a lot from the street right-of-way.

LOT LINE, REAR is the lot line opposite and most distant from the front lot line. In the case of a triangular or otherwise irregularly shaped lot, a line ten feet (10') in length entirely within the lot, parallel to and at a maximum distance from the front lot line.

LOT OF RECORD means a lot that exists as shown or described on a plat or deed in the records of the local registry of deeds.

LOT WIDTH is the horizontal distance between the side lot lines measured at right angles to its depth along a straight line parallel to the front lot line at the minimum required building setback line.

MANSARD. An inclined decorative roof-like projection that is attached to an exterior building facade.

MANUFACTURED HOME PARK/SUBDIVISION means a parcel (or contiguous parcels) of land divided into two or more lots for rent or sale. MAP means the Flood Insurance Rate Map (FIRM) for the community issued by the Federal Insurance Administration.

MANUFACTURED HOUSING means factory-built, single-family structures that meet national standards.

MANUFACTURING is an establishment engaged in the mechanical or chemical transformation of materials or substances into new products, including the assembling of component parts, the creation of products, and the blending of materials, such as lubricating oils, plastics, resins, or lacquers.

MARINA is a facility for the storing, servicing, fueling, berthing, and securing of boats and that may include eating, sleeping, and retail facilities for owners, crews, and guests.

MARQUEE. See the term "Canopy."

MATURE TREE means a canopy tree with a diameter at breast height (DBH) of 12 inches or greater or an understory tree with a DBH of four (4) inches or greater.

MEAN SEA LEVEL means, for purposes of the National Flood Insurance Program, the

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National Geodetic Vertical Datum (NGVD) of 1929 or other datum to which base flood elevations shown on the Flood Insurance Rate Map are referenced.

MENTALLY or PHYSICALLY IMPAIRED PERSON is a person who is a resident of Virginia and who requires assistance with two or more activities of daily living, as defined in [§ 63.2- 2200](#) of the Code of Virginia, as certified in writing by a physician licensed in the Commonwealth of Virginia.

MIXED USE DEVELOPMENT means property that incorporates two (2) or more different uses, and may include a variety of housing types, within a single development.

MOBILE HOME PARK is a site containing space with the required improvements and utilities that are leased for the long-term placement of manufactured houses and that may include services and facilities for the residents.

MODULAR BUILDING, OR HOMR OR INDUSTRIALIZED BUILDING means, but is not limited to, single and multifamily houses, apartment units, commercial buildings, and permanent additions thereof, a combination of one (1) or more sections or modules, subject to state regulations and including the necessary electrical, plumbing, heating, ventilating, and other service systems, manufactured off-site and transported to the point of use for installation or erection, with or without other specified components, to comprise a finished building. Unlike Manufactured Homes, the design, installation, and construction of modular or industrialized homes are regulated by the Uniform Statewide Building Code.

MOTEL is one (1) or more buildings in which lodging or board and lodging are provided for transient guests for compensation and supervised by a person in charge at all hours. Ingress and egress to and from all rooms are made primarily directly from an exterior walkway rather than from an inside lobby.

MUNICIPAL COMMUNITY CENTER. See ‘Neighborhood Community Center.’”

NATURE-BASED SOLUTION means an approach that reduces the impacts of sea-level rise, flooding, and storm events through the use of environmental processes and natural systems.

NEIGHBORHOOD is an area of the community with characteristics that distinguish it from other areas and that may include distinct ethnic or economic characteristics, housing types, schools, or boundaries defined by physical barriers, such as roads, railroads, or other natural features.

NEIGHBORHOOD COMMUNITY CENTER is a facility within Residential Districts intended for the use of Town citizens for recreational and educational use.

NEW CONSTRUCTION means structures for which the start of construction commenced on or after the effective date of a flood plain management regulation

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adopted by a community and includes any subsequent improvement to such structures.

NON-CONFORMING LOT is a lot, the area, dimensions, or location of which was lawful prior to the adoption, revision, or amendment of the zoning ordinance but that fails by reason of such adoption, revision, or amendment to conform to the present requirements of the zoning district.

NON-CONFORMING STRUCTURE or **BUILDING** is a structure or building, the size, dimensions, or location of which was lawful prior to adoption, revision, or amendment of the zoning ordinance but that fails by reason of such adoption, revision, or amendment to conform to the present requirements of the zoning district.

NON-CONFORMING USE is a use or activity that was lawful prior to the adoption, revision, or amendment of the zoning ordinance but fails by reason of such adoption, revision, or amendment to conform to the present requirements of the zoning district.

NONCONTRIBUTING STRUCTURE are those that were built after 1964 or have been altered to such a degree that they are no longer representative of the period which they were built or are in such poor physical condition that their retention is difficult. The National Register of Historic Places (amended 2019) provides the listing of non-contributing structures and properties. Should a building or structure within the boundaries of the historic district not to be listed in the national register, the building or structure will be classified as non-contributing.

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

NONTIDAL WETLANDS means those wetlands other than tidal wetlands that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support and that under normal circumstances do support a prevalence of vegetation typically adapted for life in saturated soil conditions such as defined by the U.S. Environmental Protection Agency pursuant to Section 404 of the Federal Clean Water Act in 33 C.F.R. 328.3b.

NOXIOUS WEEDS means weeds that are difficult to control effectively, such as Johnson Grass, Kudzu, and multiflora rose.

OCCUPANCY PERMIT is a required permit allowing the use of a building or structure after it has been determined that all the requirements of applicable ordinances have been met.

OFFICE means a room or group of rooms for conducting affairs of a business, profession, service, industry, or government and generally furnished with desks,

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tables, files, and communication equipment.

OFF-SITE PARKING means parking provided for a specific use but located on a site other than the one on which the specific use is located.

OPEN SPACE is a lot or portion of a lot set aside, designated or reserved for the outdoor enjoyment of the public or for all persons occupying a building on the lot, and is preserved as natural areas or is designed as a park or recreational area.

OPERATOR means the proprietor of any dwelling, lodging, or sleeping accommodations offered as a short-term rental, whether in the capacity of owner, lessee, mortgagee in possession, licensee, or any other possessory capacity.

OUTDOOR STORAGE means the keeping in an enclosed area of any goods, junk, material, merchandise, or vehicles in the same place for more than twenty-four hours (24 hrs).

OVERLAY ZONE is an area where additional requirements are superimposed upon a base zoning district or underlying district.

OWNER shall mean the legal or beneficial titleholder of a site, including but not limited to, a mortgagee or vendee in possession, receiver, executor, trustee, lessee or other person, firm or corporation in control of the site.

PARAPET. The extension of a building facade above the line of the structural roof.

PARCEL: See **LOT**.

PARK means a tract of land designated and used by the public for active and passive recreation.

PARKING LOT OR PARKING GARAGE shall mean an area or building designated and designed for the temporary storage of vehicles.

PARKING SPACE shall mean a marked or striped usable hard-surfaced area enclosed within a main or accessory building, or unenclosed, permanently reserved for the temporary storage of one vehicle.

PATIO is an uncovered courtyard composed of a paved surface such as concrete, tile, or brick which lies directly on the ground.

PAVERS shall mean preformed paving blocks that are installed on the ground to form patterns while at the same time facilitate pedestrian and vehicular travel.

PEDESTRIAN WALKWAY shall mean a walking surface similar to a sidewalk, which facilitates the safe, unobstructed and convenient flow of pedestrians internally on a

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private property.

PERIOD OF SIGNIFICANCE: The National Register of Historic Places recognizes buildings, sites, and districts for their historic significance, and has documented that the significance be associated with a discrete chronological period for the Cape Charles Historic District from 1883 to 1964.

PERMEABILITY is the ease with which air, water, or other fluids can move through soil or rock.

PERMIT is any written governmental permission issued by an authorized official, empowering the holder thereof to do some act not forbidden by law but not allowed without such authorization.

PERMITTED USE means any allowable use in a zoning district and subject to the restrictions applicable to the zoning district.

PERSON means any individual or group of individuals, corporation, partnership, association, or any other entity, including state and local governments and agencies.

PERVIOUS is any surface or element through which water can infiltrate directly into the ground.

PERVIOUS PAVING is any paving surface that presents an opportunity for precipitation to infiltrate or percolate directly into the ground.

PHASE or **PHASED** is subparts or segments of construction projects where the subpart or segment is constructed and stabilized prior to completing construction activities on the entire construction site.

PICNIC AREA means a place equipped with tables, benches, grills, and trash receptacles for people to assemble, cook, eat, and relax.

PLACE OF WORKSHIP shall mean a building where persons regularly assemble for religious purposes and related social events, and which is maintained and controlled by a religious body organized to sustain religious ceremonies and purposes.

PLAN OF DEVELOPMENT means the process for site plan or subdivision plat review to ensure compliance with [§10.1-2109 of the Code of Virginia](#) and this Article prior to any clearing or grading of a site or the issuance of a building permit. [For the Chesapeake Bay Preservation Act Overlay Ordinance, PLAN OF DEVELOPMENT means any process for site plan review in local zoning and land development regulations designed to ensure compliance with Va. Code § 62.1-44.15:74 and with this Ordinance, prior to issuance of a building permit.](#)

PLANNED UNIT DEVELOPMENT means a form of development characterized by unified site design for a variety of housing types and densities, clustering of buildings,

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common open space, and a mix of building types and land uses in which project planning and density calculation are performed for the entire development rather than on an individual lot basis.

PLAT or PLAT OF SUBDIVISION means the schematic representation of land divided or to be divided and information in accordance with the provisions of §§ [15.2-2241](#), [15.2-2242](#), [15.2-2258](#), [15.2-2262](#), and [15.2-2264](#), and other applicable statutes.

PLAYGROUND means an active recreational area with a variety of facilities, including equipment for younger children as well as court and field games.

PLOT means a single-family parcel of land or a parcel of land that can be identified and referenced to a recorded plat or map.

PORCH means a roofed area, which may be screened, usually attached to or part of and with direct access to or from a building. A porch becomes a room when the enclosed space is heated or air conditioned, or has water and sewer service, and when the percentage of window area to wall area is less than fifty percent (50%).

PREMISES shall mean any building, lot, parcel of land, or portion of land whether improved, or unimproved including adjacent sidewalks and parking strips.

PRESERVATION is the process of applying measures necessary to sustain the existing form, integrity, and materials of an historic property. Work, including preliminary measures to protect and stabilize the property, generally focuses upon the ongoing maintenance and repair of historic materials and features rather than extensive replacement and new construction. The limited and sensitive upgrading of mechanical, electrical, and plumbing systems and other code-required work to make properties functional is appropriate within a preservation project. However, new exterior additions are not within the scope of this treatment.

PRINCIPAL BUILDING shall mean a building in which is conducted the principal permitted use(s) of the lot on which said building is situated.

PRINCIPALLY ABOVE GROUND means that at least fifty-one percent (51%) of the actual cash value of the structure, less land value, is above ground.

PRIVATE shall mean property owned by individuals, corporations, and other organizations and not by city, county, state or federal governments.

PROFFER is an offer of restrictions on use of property presented by an applicant for conditional rezoning or a special exception.

PROJECT shall mean the entire proposed development.

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PROPERTY means a lot, parcel, or tract of land together with the building and structures located thereon.

PUBLIC, when used as a modifier shall mean "government-owned" or "government-operated."

PUBLIC AREA means any park, playground, trail, path, or other recreational area and open space; scenic and historical sites; schools and other public buildings and structures; and other places where the public is directly or indirectly invited to congregate.

PUBLIC ART is a fountain, sculpture, painting, mural, or similar object that is sited within a planned development as a focal point and is intended for the enjoyment of the general public.

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 Virginia Department of Transportation, including regulations promulgated pursuant to (i) ~~the Erosion and Sediment Control Law~~ [Stormwater Management Act \(§ 62.1-44.15:5124 et seq. of the Code of Virginia\)](#). This definition includes those roads where the Virginia Department of Transportation exercises direct supervision over the design or construction activities, or both, and cases where secondary roads are constructed and maintained, or both, by the Town of Cape Charles in accordance with the standards of the Town of Cape Charles.

PUBLIC UTILITY means a closely regulated enterprise with a franchise for providing to the public a utility service deemed necessary for the public health, safety, and welfare.

PUBLIC UTILITY FACILITY means any building, structure, and facility including generating and switching stations, poles, lines, pumping stations, repeaters, antennas, transmitters, and receivers, valves, and all buildings and structures relating to the furnishing of utility services, such as electric, gas, telephone, water, sewer, and public transit, to the public.

RECONSTRUCTION is any or all work needed to remake or rebuild all or part of any building to a sound condition, but not necessarily of original materials. It is the process of depicting, by means of new construction, the form, features, and detailing of a non-surviving site, landscape, building, structure, or object for the purpose of replicating its appearance at a specific period of time and in its historic location. Reconstruction is different from the other historic treatments in that it is undertaken when there are often no visible historic materials extant or only a foundation remains.

RECREATION, ACTIVE means leisure-time activities, usually of a formal nature and often performed with others, requiring equipment and taking place at prescribed

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places, sites, or fields.

RECREATION, PASSIVE means activities that involve relatively inactive or less energetic activities, such as walking, sitting, picnicking, card games, checkers, and similar games.

RECREATIONAL VEHICLE means a vehicle which is:

1. built on a single chassis;
2. four hundred square feet (400 SF) or less when measured at the largest horizontal projection;
3. designated to be self-propelled or permanently towable by a light-duty truck; and
4. designed primarily not for use as a permanent dwelling but as a temporary living quarters for recreational camping, travel, or seasonal use.

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

REHABILITATION is the process of making possible a compatible use for a property through repair, alterations, and additions while retaining to the maximum extent practicable those portions or features which convey its historical, cultural, or architectural values.

REGULATION shall mean any rule, development standard, or other requirement adopted by the governing body pursuant to the requirements of this Zoning Ordinance.

REPAIRS are any or all work involving the replacement of existing work with equivalent material for the purpose of maintenance, but not including any addition, change, or modification in construction.

RESIDENCE means a home or abode or place where an individual is actually living at a specific point in time.

RESIDENTIAL PROPERTY shall mean all property used for single-family detached, single-family attached, or multifamily residences, or mixed-use development that contains one or more dwelling units.

RESOURCE MANAGEMENT AREA or **RMA** means that component of the Chesapeake Bay Preservation Area that is not classified as the Resource Protection Area. RMAs include land types that, if improperly used or developed, have the potential for causing significant water quality degradation or for diminishing the functional value of the Resource Protection Area.

RESOURCE PROTECTION AREA or **RPA** means that component of the Chesapeake

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

RESTAURANT means an establishment where food and drink are prepared and served and consumed primarily within the principal building.

RESTORATION is any or all work connected with the returning to or restoring of a building or a part of any building to its original condition through the use of original or nearly original materials. It is the process of accurately depicting the form, features, and character of a property as it appeared at a particular period of time by means of the removal of features from other periods in its history and reconstruction of missing features from the restoration period. The limited and sensitive upgrading of mechanical, electrical, and plumbing systems and other code-required work to make properties functional is appropriate within a restoration project.

RETAIL is the selling of goods, wares, or merchandise directly to the ultimate consumer or persons without a resale license.

RETAIL SALES mean an establishment engaged in selling goods or merchandise to the general public for personal or household consumption and rendering services incidental to the sale of such goods.

RETAINING WALL is a structure constructed and erected between lands of different elevations to protect structures and/or to prevent erosion.

RIGHT-OF-WAY means (1) a strip of land acquired by reservation, dedication, forced dedication, prescription or condemnation and intended to be occupied by a road, crosswalk, railroad, electric transmission lines, oil or gas pipelines, water line, sanitary storm sewer, and other similar uses; (2) generally the right of one to pass over the property of another.

ROOF LINE. The top edge of a peaked roof or, in the case of an extended facade or parapet, the uppermost point of said facade or parapet.

SAND DUNES means naturally occurring accumulations of sand in ridges or mounds of the beach.

SETBACK is the minimum distance allowable between a building or structure and any lot line.

SHORT-TERM RENTAL means the provision of a room or space that is suitable or intended for occupancy for dwelling, sleeping, or lodging purposes, for a period of fewer than thirty (30) consecutive days, in exchange for a charge for the occupancy.

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This does not include a hotel, motel, or bed and breakfast.

SIDEWALK: A hard-surfaced walk or raised path and any curb ramps or blended transitions, along and generally paralleling the side of the streets for pedestrians. Sidewalks do not include the curb or gutter structures.

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 property for reforestation that are conducted in accordance with the silvicultural best management practices developed and enforced by the State Forester pursuant to § 10.1-1105 of the Code of Virginia and are located on property defined as real estate devoted to forest use under § 58.1- 3230 of the Code of Virginia.

SITE PLAN means the development plan for one or more lots on which is shown the existing and proposed conditions of the lot, including topography, vegetation, drainage, flood plains, wetlands, and waterways; landscaping and open spaces; walkways; means of egress and ingress; circulation; utilities; structures and buildings; signs and lighting; berm; buffers and screening devices; surrounding development; and any other information that reasonably may be required in order that an informed decision can be made by the approving authority; a proposal for a development or a subdivision including all covenants, grants or easements and other conditions relating to use, location and bulk of buildings, density of development, common open space, public facilities and such other information as required by the subdivision ordinance to which the proposed development or subdivision is subject.

SPOT ZONING means the rezoning of a lot or parcel of land to benefit an owner for a use incompatible with the surrounding land uses and that does not further the comprehensive plan.

STANDARDS are Zoning Ordinance requirements that are evaluated by the Zoning Administrator or Code Official and not under the discretion of the Historic District Review Board or the Harbor Area Review Board.

START OF CONSTRUCTION means the date the building permit was issued, provided the actual START OF CONSTRUCTION, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within one hundred and eighty (180) days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the state of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary

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forms; nor does it include the installation of property or accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual **START OF CONSTRUCTION** means the first alteration on any wall, ceiling, floor, or other structural part of a building, whether or not the alteration affects the external dimensions of the building.

STOOP is a small porch (covered or uncovered) and the step(s) to it.

STORM SURGE is the resulting temporary rise in sea level due to the action of wind stress on the water surface and low atmospheric pressure created during storms which can cause coastal flooding. Surge is the difference from expected tide level. Storm tide is the total water level.

STORY means that portion of a building included between the surface of any floor and the floor next above it or, if there is no floor above it, the space between the floor and the ceiling next above it. A basement shall be counted as a story if over fifty percent (50%) of its height is above finished grade.

STORY, HALF, HABITABLE ATTIC, means a finished or unfinished area, not considered a full story, complying with all of the following requirements:

- The occupiable floor area is at least seventy square feet (70 SF).
- The occupiable floor area has a ceiling height of not less than seven feet (7'). For rooms with sloped ceilings, ceiling height shall not be less than five feet (5') and not less than fifty percent (50%) of the required floor area shall have a ceiling height of not less than seven feet (7'). A shower or tub equipped with a shower head shall have a ceiling height in accordance with the Virginia Residential Building Code.
- The occupiable space is enclosed by the roof assembly above, knee walls (if applicable) on the sides and the floor-ceiling assembly below.
- Total occupiable space shall not exceed fifty percent (50%) of the greatest story floor area.

STREET means highway, street, avenue, boulevard, road, lane, alley, or any public way.

STREET, ARTERIAL means a street which moves or is designed to move large volumes of traffic from one part of town to another, connecting residential areas with employment centers and centers of commercial activity. Traffic volumes are usually five hundred (500) vehicles per day or greater.

STREET, COLLECTOR means a street that collects traffic from local streets and connects with minor and major arterial.

STREET, LOCAL means a street designed to provide vehicular access to abutting property and to discourage through traffic.

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STREET SCAPE means a design term referring to all the elements that constitute the physical makeup of a street and that, as a group, define its character, including building frontage, landscaping, street paving, street furniture, trees and other plantings, awnings, and marquee signs and lighting.

STRUCTURAL ALTERATION means any change in either the supporting members of a building, such as bearing walls, columns, beams and girders, or in the dimension or configuration of the roof or exterior walls.

STRUCTURE means a combination of materials to form a construction for use, occupancy, or ornamentation whether installed on, above, or below the surface of land or water.

STRUCTURE, APPURTENANT means a structure which is on the same parcel of property as the principal structure to be insured and the use of which is incidental to the use of the principal structure.

SUBDIVISION unless otherwise defined in an ordinance adopted pursuant to § 15.2-2240, means the division of a parcel of land into three or more lots or parcels of less than five acres (5 ac) each for the purpose of transfer of ownership or building development, or, if a new street is involved in such division, any division of a parcel of land. The term includes resub division and, when appropriate to the context, shall relate to the process of subdividing or to the land subdivided and solely for the purpose of recordation of any single division of land into two (2) lots or parcels, a plat of such division shall be submitted for approval in accordance with § 15.2-2258. Nothing in this definition, section, nor any ordinance adopted pursuant to § 15.2-2240 shall preclude different owners of adjacent parcels from entering into a valid and enforceable boundary line agreement with one another so long as such agreement is only used to resolve a bona fide property line dispute, the boundary adjustment does not move by more than two hundred and fifty feet (250') from the center of the current platted line or alter either parcel's resultant acreage by more than five percent (5%) of the smaller parcel size, and such agreement does not create an additional lot, alter the existing boundary lines of localities, result in greater street frontage, or interfere with a recorded easement, and such agreement shall not result in any nonconformity with local ordinances and health department regulations. Notice shall be provided to the zoning administrator of the locality in which the parcels are located for review. For any property affected by this definition, any division of land subject to a partition suit by virtue of order or decree by a court of competent jurisdiction shall take precedence over the requirements of Article 6 (§ 15.2- 2240 et seq.) and the minimum lot area, width, or frontage requirements in the zoning ordinance so long as the lot or parcel resulting from such order or decree does not vary from minimum lot area, width, or frontage requirements by more than twenty percent (20%). A copy of the final decree shall be provided to the zoning administrator of the locality in which the property is located.

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SUBSTANTIAL ALTERATION means expansion or modification of a building or development that would result in a disturbance of land exceeding an area of twenty thousand five hundred square feet (2,500 SF) in the Resource Management Area only.

SUBSTANTIAL DAMAGE means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed fifty percent (50%) of the market value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENTS means any construction, rehabilitation, addition, or other improvements of a structure, the cost of which equals or exceeds fifty percent (50%) of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred substantial damage regardless of the actual repair work performed. The term does not include either: (1) any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or (2) any alteration of a historic structure, provided that the alteration will not preclude the structure as continued designation as a historic structure.

TAKING means to take, expropriate, acquire, or seize property without compensation.

TEMPORARY STRUCTURE shall mean a structure without any foundation or footing and removed when the designated time period, activity, or use of which the temporary structure was erected has ceased.

TEMPORARY FAMILY HEALTH CARE STRUCTURE means a transportable residential structure, providing an environment facilitating a caregiver's provision of care for a mentally or physically impaired person meeting criteria stated in § 15.2-2292.1.

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 the vegetated and non-vegetated wetlands as defined in Section 28.2-1300 of the Code of Virginia.

TRACT is an area, parcel, site, piece of land, or property that is the subject of development applications.

TRAILER means a structure standing on wheels, towed or hauled by another vehicle, and used for short- term human occupancy, carrying materials, goods, or objects or as a temporary office.

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TRANSPORTATION FACILITY is any structure or facility that is primarily used, as part of a transit system, for the purpose of loading, unloading, or transferring passengers or accommodating the movement of passengers from one mode of transportation to another.

UNDERSTORY TREE means a tree that typically reaches 12 to 35 feet in height when mature.

USE means the purpose or activity for which land or buildings are designed, arranged, or intended or for which land or buildings are occupied or maintained.

UTILITY INSTALLATION. See Public Utility Facility.

VACANCY means any unoccupied land, structure, or part thereof that is available and suitable for occupancy.

VARIANCE means, in the application of a zoning ordinance, a reasonable deviation from those provisions regulating the shape, size, or area of a lot or parcel of land or the size, height, area, bulk, or location of a building or structure when the strict application of the ordinance would unreasonably restrict the utilization of the property, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the purpose of the ordinance. It shall not include a change in use, which change shall be accomplished by a rezoning or by a conditional zoning.

VIEWSHEDS are the areas of land extending south from Washington Avenue to Bayshore Lane, that align in width and angle with the existing streets to the north (including Harbor Street and Peach Street), that shall be restricted to only ground-level development and their amenities, including but not limited to streets, pedestrian or multi-modal trails, or linear parks, so as to maintain the view from the north to the south and vice-versa.

WATER-DEPENDENT FACILITY means a development of land that cannot exist outside the Resource Protection Area and must be located on the shoreline by reason of the intrinsic nature of its operation. These facilities include but are not limited to: (1) ports; (2) the intake and outfall structures of power plants, water treatment plants, sewage treatment plants, and storm sewers; (3) marinas and other boat docking structures; (4) beaches and other public water-oriented recreation areas; and (5) fisheries or other marine resources facilities.

WETLANDS means tidal and non-tidal wetlands.

WORKFORCE HOUSING means housing commonly targeted at “essential workers” in a community (e.g., police officers, firefighters, teachers, nurses, medical personnel,

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service workers). Workforce housing is targeted more generally at income levels from eighty percent (80%) to one hundred and twenty percent (120%) of Area Median Income (AMI), regardless of type of employment.

YARD is an open space that lies between the principal building or buildings and the nearest lot.

YARD, FRONT means a space extending the full width of the lot between any building and the front lot line and measured perpendicularly to the building at the closest point to the front lot line.

YARD, REAR means a space extending across the full width of the lot between the principal building and the rear of the lot and measured perpendicularly to the building to the closest point of the rear lot line.

YARD, SIDE means a space extending from the front yard to the rear yard between the principal building and the side lot line and measured perpendicularly from the side lot line to the closest point of the principal building.

ZONING or **TO ZONE** means the process of classifying land within a locality into areas and districts, being generally referred to as “zones,” and the prescribing and application in each of these areas and district regulations concerning buildings and structural designs, building and structure placement, and uses to which the land, buildings, and structures within such designated areas may be put.

Appendix C - Site Plan Ordinance

Section 100: Purpose of Article

The purpose of these requirements is to provide for the orderly development of certain activities in the Town and to ensure that such activities are developed in a manner harmonious with surrounding properties and in the interest of the general public welfare. To achieve these ends and to assure compliance with all applicable requirements of this chapter, site plans for certain uses of land shall be submitted to and reviewed by the Zoning Administrator.

Section 200: Developments and Uses Requiring a Site Plan

- (a) All development which exceeds two thousand five hundred square feet (2,500 sf) of land disturbance, including single-family residential development, shall submit either a plot plan or site plan prior to the initiation of the development process. Land-disturbing activities shall not include minor activities such as home gardening, individual home landscaping, and home maintenance, nor shall it include access or staging areas provided they do not result in land disturbance.
- (b) Any changes to an existing multi-family, commercial, and industrial use that increase the improved square footage by more than one hundred square feet (100 sf) or as deemed necessary by the Zoning Administrator or increase the number of units within the previously approved site plan.
- (c) Churches, church schools, public and private schools, hospitals, nursing homes, and government offices.

Section 300: Procedures for Preparation

- (a) Site plans or any portion thereof involving engineering, architecture, landscape architecture, or land surveying shall be certified by an engineer, architect, or land surveyor authorized by the Commonwealth to practice as such.
- (b) Site plans shall be prepared to a scale of not more than one-inch equals one hundred feet (1" = 100') or other scale acceptable to the administrator.
- (c) A site plan may be prepared in one (1) or more sheets to show clearly the information required by the Article and to facilitate the review and approval of the site plan. If prepared in more than one (1) sheet, match lines shall clearly indicate where the several sheets join.
- (d) All horizontal dimensions shown on the site plan shall be in feet and decimal fractions to a foot to the closest one-hundredths of a foot (.01), and all bearings in degrees, minutes, and seconds to the nearest ten (10) seconds.
- (e) Every site plan shall show the name and address of the owner or developer, the north point, the date, the scale of drawing, and the number of sheets. In addition, it shall reserve a blank space at least three inches (3") wide and five inches (5")

for the approving authority.

- (f) Three (3) copies of the site plan shall be submitted to the Zoning Administrator for administrative review.

Section 400: Required Information

- (a) Plot Plans. One (1) copy of a plot plan, drawn to scale, for individual single-family dwellings or accessory structures for single-family residences or for commercial development which results in a land disturbance less than five thousand square feet (5,000 sf) and which will result in an area of impervious surface of less than sixteen percent (16%) of any lot or parcel shall be submitted to the Zoning Administrator for review and approval. Any encroachment into a Resource Protection Area (RPA) shall require an applicant to prepare a site plan as outlined in Subsection B below including the submission of a water quality impact assessment in accordance with Section 32.190 of the Chesapeake Bay Preservation Ordinance.

- (1) At a minimum, the plot plan shall be drawn to scale and contain the following information:

- a. a boundary survey of the site drawn to scale or site drawing showing the north arrow and property line boundaries and distances;
- b. area of the lot/parcel;
- c. location, dimension, and use of proposed and existing structures including marine and temporary structures. In the case of temporary structures, the date when the structures will be removed must be indicated;
- d. location of all building restriction lines, setbacks, easements, covenant restrictions, and rights-of-way;
- e. dimensions and location of all existing driveways, parking areas, or other impervious surfaces;
- f. limits of clearing and grading;
- g. specifications for the protection of existing trees and vegetation during clearing, grading, and all phases of construction;
- h. location of the Resource Protection Area (-RPA) and Resource Management Area (RMA) boundary, as specified in Subsection 32-186(a) of the Chesapeake Bay Preservation Ordinance, including any additional required buffer areas and RPA maintenance and use restrictions; ~~revision adopted by Town Council 12/2010~~;
- i. **plat notations as required in Section 7.11 (F)(2);**
- j. location of all erosion and sediment control devices;
- k. amount of **existing and proposed** impervious surface ~~proposed~~ for the site, **as well as total amount of impervious cover proposed within the RPA.**

- (b) A site plan shall be required for any single-family, residential, or commercial development which results in five thousand square feet (5,000 sf)

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or more of land disturbance or for any multi-family or industrial development or for development specified in Subsections 2.B and 2.C or for any other development deemed necessary by the Zoning Administrator. All site plans shall contain the following information:

- (1) Location of the tract by an insert map at a scale of not less than one-inch equals two thousand feet (1" = 2,000'), unless otherwise acceptable to the administrator, indicating the scale, the north arrow, and such information as the names and numbers of the adjoining roads, streams and bodies of water, railroads, subdivisions, or other landmarks sufficient to clearly identify the location of the property.
- (2) A boundary survey of the tract by bearings and distances certified by a licensed land surveyor.
- (3) Certificate signed by the surveyor or engineer setting forth the source of title of the owner of the tract and the place of record of the last instrument in the chain of title.
- (4) All existing property lines; existing streets and easements, their names, numbers, and width; the location and sizes of existing sanitary and storm sewers, gas lines, water mains, culverts, and other utilities and their easements; existing buildings; existing watercourses, waterways, or lakes and their names; and other existing physical features in or adjoining the project.
- (5) Existing zoning and zoning district boundaries on the property in question and on immediately surrounding properties, including all Resource Protection Area (RPA) and Resource Management Area (RMA) boundaries, and present use of adjoining tracts.
- (6) Existing topography with a maximum of two-foot (2') contour levels. Where existing ground is on a slope of less than two percent (2%), either one foot (1') contours or spot elevations where necessary but not more than fifty feet (50') apart in both directions.
- (7) The location, dimensions, and materials proposed for the construction of proposed streets, alleys, driveways, and the location, type, and size of vehicular entrance(s) to the site.
- (8) The location and amount (in square feet) of all existing and proposed impervious surface including but not limited to all off-street parking, loading spaces, and walkways. The type of surfacing, size, angle of stalls, width of aisles and a specific schedule showing the number of parking spaces provided should also be indicated.
- (9) All proposed water and sanitary sewer facilities indicating all pipe sizes, types, and grades and where connection is to be made to town or to other utility system; all proposed gas lines and other utilities and their easements.
- (10) The proposed location, general use, number of floors, height and floor area for each building, accessory and main, and where applicable, the number, size, and type of dwelling units.
- (11) Proposed finished grading by contours supplemented where necessary by spot elevations.
- (12) The location, sizes, types, and grades of ditches, catch basins, and pipes,

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and connections to existing drainage system.

- (13) Provisions for the adequate control of erosion and sedimentation indicating the proposed temporary and permanent control practices and measures that will be implemented during all phases of clearing, grading, and construction.
 - (14) Delineation of any floodplain limits.
 - (15) Location, type, size, and height of fencing, retaining walls, and screen planting where required under the provisions of the chapter.
 - (16) A landscape plan, drawn to scale, delineating dimensions and distances and the location, type, size, and description of all existing and proposed plant materials. Any required buffer area and all existing trees on site six inches (6") or greater DBH shall be clearly shown on the landscape plan. Where there are groups of trees, stands may be outlined instead. Trees to be removed to create a desired construction footprint shall be clearly delineated on the plan. The landscape plan will include specifications for the protection of existing trees and buffer areas during clearing, grading, and all phases of construction.
 - (17) The location and dimensions of proposed recreation, open space, and required amenities and improvements including details of disposition.
 - (18) A storm water management plan to include maps, graphs, tables, narrative descriptions, and citations to support references as appropriate to communicate the information required by the Town Code. At a minimum, the storm water management plan shall contain: (a) location and design of all planned storm water control devices; (b) procedures for implementing non-structural storm water control practices and techniques as applicable; (c) pre- and post-development non-point source pollutant loadings with supporting documentation of all utilized coefficients and calculations; and (d) for facilities, verification of structural soundness including a Professional Engineer or Class IIIB Surveyor Certification. All engineering calculations must be performed in accordance with procedures outlined in the current edition of the Local Assistance Manual, the Virginia Erosion and Sediment Control Handbook, or the Virginia Department of Transportation Drainage Manual.
- (c) All features and elements of the site plan required by this Article shall in all respects conform to all applicable provisions and standards of the Code of Virginia and this Code, including, but not limited to: The Cape Charles Comprehensive Zoning Ordinance, Subdivision Ordinance, Erosion and Sediment Control Ordinance, or any PUD zoning ordinance approved by Town Council.

Section 500: Procedure for Processing

- (a) All applicants for site plan review shall submit to the Zoning Administrator a site plan for the proposed development. The site plan review fee, as established by the Council, shall be paid at this time.

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- (b) The Zoning Administrator shall review all site plans which are submitted to him pursuant hereto. The administrator shall check the site plan for general completeness and compliance with all applicable requirements. The administrator shall circulate the site plan to the relevant town departments, agencies, and officials for written comments as to the proposed development's conformance to all applicable standards and requirements and whether approval of the site plan is recommended.
- (c) Except under abnormal circumstances, within 45 days from the receipt of the site plan in his office, the Zoning Administrator shall approve, approve subject to conditions, or disapprove the site plan and notify the applicant in writing of the action taken. If the site plan is denied approval, the administrator, in notifying the applicant of the decision, shall set forth in detail the reasons for the denial, which shall be limited to any defect in form or required information, any violation of any provision or standard of this chapter or any other ordinance, or the inadequacy of any utility and shall state any changes which would make the site plan acceptable.

Section 600: Time for Obtaining Building Permit After Approval; Extension of Time

Approval of a site plan submitted under the provisions of this Article shall expire five years (5 yrs) after the date of such approval unless building permits have been obtained for construction in accordance therewith. A single one-year (1 yr) extension may be given upon written request by the applicant to the Zoning Administrator and Town Manager made within ninety (90) days before the expiration of the approved site plan. The Zoning Administrator and Town Manager shall acknowledge the request and shall make a decision regarding the requested extension within thirty (30) days after receipt of the request.

Section 700: Revision of Site Plan; Waiver of Requirements of Article

The Zoning Administrator may approve minor revisions to an approved site plan, provided that Town requirements and specifications are not affected. Major revisions shall require that a new site plan be drawn, and the review and approval process begun anew. Any revision to an approved site plan that does not change the proposed use, and that exceeds the ordinance requirements of the previously approved plan, shall be approved by the Zoning Administrator.

Section 800: Appeals

Any applicant aggrieved of any decision of the Zoning Administrator on a site plan review may, within ten (10) days of such decision, appeal to the Town Council. The Town Council shall act upon such an appeal by the owner at its next regularly scheduled meeting. The applicant may appeal Town Council's decision to the

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Northampton County Circuit Court as provided by law.

Section 900: Building Permits to Comply with Site Plans

No permit shall be issued for any structure in an area covered by the site plan that is required under the provisions of this Article in conformity to such a plan which has been duly approved or revised as provided in Section 700.

Section 1000: Agreement and Bond for Construction of Certain Improvements; Establishment of Fees for Examination and Issuance of Building Permits

- (a) Prior to the issuance of any building permits for which an approved site plan is required, there shall be executed by the owner, developer, or their contractor, an agreement to construct the agreed-upon physical improvements that are located within the public right-of-way or public easements in a form approved by the Town. Such agreements shall be in accordance with this ordinance and be accompanied by a letter of credit, escrow, or a bond with surety acceptable to the Town (hereinafter “security”) in the amount of the estimated cost of the required physical improvements as determined by the town departments, divisions, or agencies responsible for such improvements.
- (b) Such security shall remain in force until the completion of the secured improvements within the public right-of-way or public easements shown on the approved site plan. Such security shall be partially and proportionally released within thirty (30) days of receipt by the Town of written notice from the contractor certifying completion of a distinguishable part of the secured improvements. If the Town notifies the contractor in writing of any defects or deficiencies in the secured improvements within this thirty (30) day period, then corrective measures must be taken by the contractor prior to any partial or complete release of the security.
- (c) Such security shall be with a firm or bank acceptable to the Town Manager which approval shall not be unreasonably withheld.
- (d) “Best Management Practices” (BMP) imposed by these regulations that require regular or periodic maintenance in order to continue their function shall be regulated by a maintenance agreement submitted to the Town by the owner, developer, homeowner association, or other entity responsible for said BMPs and, where approved by the Town, shall run with the land and be binding upon the entity that assumes responsibility for said BMPs.

Section 1100: Compliance with Approved Site Plan

- A. Unless otherwise specifically provided in this chapter, the construction standards for all offsite improvements and site improvements required by this Article shall comply with approved site plan.

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- B. Inspections during the installation of the offsite improvements and required onsite improvements shall be made by the department responsible for such improvements as are required to certify compliance with the approved site plan.
- C. The owner shall notify the Town Manager in writing three (3) days prior to the beginning of all street or storm sewer work shown to be constructed on the site plan.
- D. The owner or owner's contractor shall provide adequate supervision on the site during the installation of all required improvements within the public right-of-way or public easements and have a responsible superintendent or foreman, together with one (1) set of approved plans, profiles, and specifications, available at the site at all times when work is being performed.
- E. Upon satisfactory completion of the installation of the required improvements, the owner shall receive a certificate of approval from the Zoning Administrator. The Town Manager will authorize the release of any bond which may have been furnished for the guarantee of satisfactory installation of such improvements or parts thereof upon notice by the Zoning Administrator that the improvements have been satisfactorily completed.
- F. The installation of improvements as required in this Article shall in no case serve to bind the Town except such improvements for the maintenance, repair, or operation thereof, but such acceptance shall be subject to the existing regulations concerning the acceptance of each type of improvement. Upon acceptance, the Town shall assume all ownership, maintenance, and repair obligations of the dedicated improvements.

Section 1200: Occupancy Certificates

A final occupancy permit may be issued for any appropriately completed building or part of building located in a part of the total area of an approved site plan, such part of the total area to be known as a section, provided that:

- A. The other onsite construction and improvements included in the approved site plan for the section have been completed and have been inspected and accepted by the Zoning Administrator, the Town Manager, and the county health officer or their agents.
- B. The off-site improvements related to and necessary to service the section has been completed, inspected, and accepted by the Town Manager or his agents, or the developer has provided surety acceptable to the Town.