

**FINAL**

**ORDINANCE TO AMEND CHAPTER 106 OF THE ACCOMACK COUNTY CODE,  
ENTITLED “ZONING,” ARTICLE XVI THEREOF, TO REVISE PROVISIONS  
REGULATING THE CHESAPEAKE/ATLANTIC PRESERVATION OVERLAY  
DISTRICT TO REFLECT CURRENT STATE LAW**

WHEREAS, Virginia Code Section 62.2-44.115:74 requires counties, cities and towns in Tidewater Virginia to designate the Chesapeake Bay Preservation Area in their respective jurisdictions and to incorporate measures to protect the quality of State waters in the Chesapeake Bay Preservation Area into their respective zoning ordinances, subdivision ordinances, and comprehensive plans; and

WHEREAS, as defined in Virginia Code Section 62.1-44.15:68, Tidewater Virginia includes the County of Accomack; and

WHEREAS, on December 30, 1991, the Board of Supervisors for Accomack County (“Board”) adopted the original Chesapeake Bay Preservation Area (CBPA) program including designation of the CBPA, which consisted of the Chesapeake Bay Watershed, as shown on the County’s official zoning map and incorporating measures to protect state water quality withing the CBPA as required by state law; and

WHEREAS, on or about November 19, 2003, the Board created the CBPA Overlay District as shown on the County’s official zoning map and revised measures to protect water quality within the CBPA Overlay District in accordance with state law; and

WHEREAS, on February 18, 2009, the Board expanded water quality protection to include the Atlantic Ocean Watershed, as designated by the Board on the official zoning map, and renamed the combined CBPA Overlay District and Atlantic Ocean Watershed as the Chesapeake/Atlantic Preservation Overlay District, informally known as “CAPA;” and

WHEREAS, due to changes in, and clarification of, state law, including regulations and guidance, the Board determined that revisions to the CAPA Overlay District are necessary and on February 21, 2024, adopted a resolution to initiate and refer the drafting and review of such revisions to the Accomack County Planning Commission (“Planning Commission”); and

WHEREAS, after holding a duly advertised public hearing on July 10, 2024\_, the Planning Commission recommended certain revisions to the CAPA Overlay District; and

WHEREAS, after holding a duly advertised public hearing on October 16, 2024, the Board determined that the revisions to the CAPA Overlay District recommended by the Planning Commission represent good zoning practice and are required by public necessity, convenience, and general welfare.

NOW, THEREFORE, BE IT ORDAINED by the Accomack County Board of Supervisors that Chapter 106 of the Accomack County Code, entitled "Zoning," Article XVI thereof, be amended and reordained as follows:

## **CHAPTER 106 - ZONING**

### **ARTICLE XVI. - CHESAPEAKE ~~BAY~~/ATLANTIC PRESERVATION OVERLAY DISTRICT**

#### **Sec. 106-376. - Purpose and intent.**

(a) This article is enacted to implement the requirements of ~~Code of Virginia section 10.1-2100 § 62.1-44.15:67~~ et seq. of the Code of Virginia (The Chesapeake Bay Preservation Act) and ~~amends this chapter~~. The intent and the purpose of the Chesapeake/Atlantic Preservation Overlay District is to:

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

(b) ~~This~~ The Chesapeake /Atlantic Preservation Area (CAPA) overlay district is hereby adopted as depicted on the Accomack County Chesapeake/Atlantic Preservation map approved by the Board of Supervisors on or about February 18, 2009, which map is part of the county's official zoning map and incorporated herein by reference. The CAPA overlay district shall be in addition to, and shall overlay, all other zoning districts where they are applied so that any parcel of land lying in the ~~Chesapeake/Atlantic Preservation Area Overlay District~~ CAPA overlay district shall also lie in one or more of the other zoning districts provided for by this chapter. Unless otherwise provided for in the CAPA overlay district, the review and approval procedures provided for in all other ordinances of the county shall be followed in reviewing and approving development, redevelopment, and uses governed by this article.

(c) This article is enacted under the authority of ~~Code of Virginia, section 10.1-2100 § 62.1-44.15:67~~ et seq. of the Code of Virginia, and in particular, § 62.1-44.15:74, which requires that

localities in Tidewater, Virginia, including Accomack County, adopt zoning and subdivision ordinances that incorporate measures to protect the quality of state waters in the Chesapeake Bay Preservation Areas consistent with state law. ~~(The Chesapeake Bay Preservation Act)~~ It is further enacted pursuant to the zoning authority given localities under Title 15.2 of the Code of Virginia, ~~Section 15.2-2283. Code of Virginia more specifically, Section § 15.2-2283 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 Code of Virginia, Section § 62.1-255."~~

## **Sec. 106-377. - Definitions.**

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

*Administrator* means the Director of Environmental Programs or designee.

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

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

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

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

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

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

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

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

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

*Intensely developed area* or *IDA* means a portion of RPA or RMA designated by the board of supervisors and shown on the official zoning map where development is identified that meets any one of the three following criteria:

(1) Development has severely altered the natural state of the area such that it has more than 50 percent impervious surface; or

(2) Public sewer and water systems, or a constructed stormwater management drainage system, or both, ~~have been~~ were constructed and ~~served the area~~ began serving an intensely developed area in the Chesapeake Bay Watershed prior to October 1, 1989, the date of adoption of the state program adoption date adoption date in the Chesapeake Bay watershed, or began serving an intensely developed area in the Atlantic Ocean Watershed by February 19 18, 2009, the original date that the CAPA Overlay District was adopted in the Seaside watershed. This condition does not include areas planned for future public sewer and water or future constructed stormwater management drainage systems; or

(3) Housing density is equal to or greater than four dwelling units per acre.

The county's intensely developed areas shown on the county's official zoning map were approved by the county board of supervisors on or about February 18, 2009.

*Land disturbance or land-disturbing activity* means a man-made change to the land surface that potentially changes its runoff characteristics including clearing, grading, or excavation, except that the term shall not include those exemptions specified in Virginia Code § 62.1-44.15:34 any activity causing a land change which may result in soil erosion from water or wind and the movement of sediments into state waters or onto other lands, including but not limited to: clearing, grading, excavating, transporting and filling of land; except that this term shall not apply to minor activities such as home gardening, individual home landscaping, and repairs and home maintenance.

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

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

saturated soil conditions, as defined by state law ~~the U.S. Environmental Protection Agency pursuant to Section 404 of the Federal Clean Water Act, in 33 CFR 328.3b.~~

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

*Plan of development* means the process for site plan or subdivision plat review to ensure compliance with ~~Code of Virginia, § 10.1-2109~~ § 62.1-44.15:74, the Virginia Administrative Code, and this article, prior to any clearing or grading of a site or the issuance of a building permit.

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

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

*Resource management area or RMA* means the component of the Chesapeake/Atlantic Preservation Area that is not classified as the resource protection area. Resource management areas include land types that, if improperly used or developed, have the potential for causing significant water quality degradation or for diminishing the functional value of the resource protection area. The resource management area shall be contiguous to the entire inland boundary of the resource protection area. The resource management area may include floodplains, highly erodible soils, highly permeable soils and nontidal wetlands that are not in the resource protection area.

*Resource protection area or RPA* means that component of the Chesapeake/Atlantic Preservation Area comprised of lands ~~adjacent to water bodies with perennial flow that have an intrinsic water quality value due to the ecological and biological processes they perform or are sensitive to impacts which may result in significant degradation to the quality of state waters that~~ if improperly used or developed, have a potential for causing significant water quality degradation or for diminishing the functional value of the resource protection area. The resource protection area includes: i) tidal wetlands, ii) nontidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow, iii) tidal shores, iv) other lands necessary to protect the quality of state waters and iv) a buffer area of 100 feet in width located adjacent to and landward of the components listed in i) – iv) above and along both sides of any water body with perennial flow.

*Silvicultural activities* means forest management activities, including but not limited to the harvesting of timber, the construction of roads and trails for best management purposes, and the preparation of property for reforestation that are conducted in accordance with the silvicultural best management practices developed and enforced by the state forester pursuant to § ~~40.1-115~~

10.1-117 of the Code of Virginia and are located on property defined as real estate devoted to forest use under § 58.1-3230 ~~58.1-58.103-230~~ of the Code of Virginia.

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

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

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

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

- (1) Ports;
- (2) The intake and outfall structures of power plants, water treatment plants, sewage treatment plants, and storm sewers;
- (3) Marinas and other boat docking structures;
- (4) Beaches and other public water-oriented recreation areas;
- (5) Fisheries or other marine resources facilities; and
- (6) Aquacultural activities and facilities, including storage that requires immediate access from the site to the water.

*Wetlands* means tidal and nontidal wetlands, as defined in Virginia law.

#### **Sec. 106-383. - Required conditions.**

(a) All development and redevelopment in the Chesapeake/Atlantic Preservation Overlay District exceeding 2,500 square feet of land disturbance shall be subject to ~~a~~ the plan of development process, including the approval of a site plan in accordance with the provisions of this chapter or a subdivision plat in accordance with chapter 78 (the Accomack County Subdivision Ordinance).

(b) Development in the RPAs may be allowed only if it is (i) water-dependent, ~~as defined~~; (ii) ~~constitutes~~ redevelopment; (iii) development or redevelopment within a designated intensely developed area shown on the official zoning map adopted by the Board of Supervisors; (iv) a new development where the application of the buffer area would result in the loss of a buildable area on a lot or parcel lawfully recorded prior to October 1, 1989 in the Chesapeake Bay

Watershed or on or before February 18, 2009 in the Atlantic Ocean Watershed, subject to the criteria in 9 VAC25-830-140(4)(a); ~~or is~~ (v) a road or driveway satisfying the conditions set forth in subsection (3) below and 9 VAC25-830-140(d); or (vi) a flood control or stormwater management facility satisfying the conditions in 9 VAC25-830-140(e) and ~~complies~~ complying with the performance standards set forth in sections 106-384 and 106-385 and the performance standards required by state law.

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

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

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

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

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

(c) A water quality impact assessment shall be required for any proposed land disturbance, development, or redevelopment within RPAs. The water quality impact assessment shall be of sufficient specificity to demonstrate compliance with the criteria set out in this article.

#### **Sec. 106-384. – Performance standards.**

(a) *Purpose and intent.* The performance standards in subsections (a) and (b) apply to all land within the CAPA Overlay District and those in subsection (c) apply to the RPA. The purpose of these performance standards is to establish the means to minimize erosion and sedimentation potential, reduce land application of nutrients and toxins, and maximize rainwater infiltration. Natural ground cover, especially woody vegetation, is most effective in holding soil in place and preventing site erosion. Indigenous vegetation, with its adaptability to local conditions without the use of harmful fertilizers or pesticides, filters stormwater runoff. Minimizing impervious cover enhances rainwater infiltration and effectively reduces stormwater runoff potential. ~~The purpose and intent of these~~ These performance standards requirements are also to are designed to implement the following objectives:

- (1) Prevent a net increase in nonpoint source pollution from new development;
- (2) Achieve a ten percent reduction in nonpoint source pollution from redevelopment; and
- (3) Achieve a 40 percent reduction in nonpoint source pollution from agricultural uses.

(b) *General performance standards for all development and redevelopment in the CAPA Overlay District.*

- (1) Land disturbance shall be limited to the area necessary to provide for the proposed use or development.
  - a. In accordance with an approved site plan, the limits of land disturbance, including clearing or grading, shall be strictly defined by the construction footprint. These limits shall be clearly shown on submitted plans and physically marked on the development site.
  - b. Ingress and egress during construction shall be limited to one access point, unless otherwise approved by the administrator.
- (2) Indigenous vegetation, except noxious plants, shall be preserved to the maximum extent practicable consistent with the use or development permitted in the underlying zoning district.
  - a. Existing trees over six inches in diameter (at breast height) shall be preserved outside the construction footprint, and shall be protected from construction activities. Diseased trees and trees weakened by age, storm, fire, or other injury may be removed as approved by the administrator.
  - b. Clearing shall be allowed only to provide necessary access, positive site drainage, water quality best management practices and the installation of utilities, as approved by the administrator.

(3) Land development shall minimize impervious cover to promote infiltration of stormwater into the ground consistent with the use or development proposed. Total impervious cover resulting from development shall not exceed 60 percent of the site. Surfaces and materials which promote infiltration shall be used where feasible for any required parking area, alley, or other low traffic driveway, unless otherwise approved by the administrator.

(4) Any land-disturbing activity, as defined in § 62.1-44.15:24 of the Code of Virginia, in the CAPA Overlay District, shall comply with the requirements of 9VAC25-870-51 and 9VAC25-870-103.

(5) Notwithstanding any other provisions of this article, including any exceptions or exemptions thereto, any land disturbing activity exceeding 2,500 square feet, including construction of all single-family houses, septic tanks and drainfields, shall comply with the requirements of Chapter 38, Article III (The Accomack County Erosion and Sediment Control Ordinance), and the Virginia Erosion and Sediment Control Regulations or, effective July 1, 2024, the Virginia Erosion and Stormwater Management Regulations . Enforcement of these erosion and sediment control requirements shall be conducted in accordance with state and local law.

(6) All on-site sewage disposal systems not requiring a VPDES permit shall (i) be pumped out a least once every five years, or (ii) if deemed appropriate by the local health department, and subject to any conditions the local health department may set, the on-site sewage disposal system may have a plastic filter satisfying the Virginia Department of Health's Sewage Handling and Disposal Regulations installed and maintained in the outflow pipe from the septic tank to filter solid material from the effluent while sustaining adequate flow to the drainfield to permit normal use of the septic system, or (iii) provide certified documentation every five years from a sewage handler permitted by the Virginia Department of Health, certified by 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 qualified to operate, maintain, or design onsite sewage systems, that the septic system has been inspected, is functioning properly, and the tank does not need to have the effluent pumped out of it. These requirements shall be managed and enforced by the Virginia Department of Health.

(7) For new construction, a 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 lawfully recorded prior to October 1, 1989 in the Chesapeake Bay Watershed, or on or before February 18, 2009 in the Atlantic Ocean Watershed, if such lot or parcel is not sufficient in capacity to accommodate a reserve sewage disposal site, as determined by the local health department. Building or construction of any impervious surface shall be prohibited on the area of all sewage disposal sites or on an on-site sewage treatment system which operates under a permit issued by the state water control board, until the structure is served by public sewer.

(8) For any development or redevelopment, stormwater runoff shall be controlled by the use of best management practices, consistent with the water quality protection provisions

~~(4 VAC 3-20-71 et seq.)~~ of set out Chapter 38, Article IV of the Accomack County Code and the Virginia Stormwater Management Program Regulations, or, effective July 1, 2024, set out in the Virginia Erosion and Stormwater Management Regulations that achieve the following:

a. For new development and development on previously developed land where the runoff was treated by a water quality protection best management practice, the post-development nonpoint source pollution runoff load shall not exceed the predevelopment load, based on the existing average land cover condition of the sub-watershed area as calculated by the Eastern Shore Soil and Water Conservation Service.

b. For redevelopment of previously developed land where the runoff was not treated by a water quality protection best management practice, achieve a 10% reduction in nonpoint source pollution. Both both the pre- and post-development loadings shall be calculated by the same procedures. ~~Post-redevelopment nonpoint source pollution loading shall be at least ten percent less than the existing loading.~~ However, where the design data is available, the original post-development nonpoint source pollution loadings can be substituted for the existing development loadings.

(9) Prior to initiating grading or other on-site activities on any portion of a lot or parcel, all wetlands permits required by federal, state, and local laws and regulations shall be obtained and evidence of such submitted to the administrator, pursuant to section 106-386.

(10) Land in the CAPA ~~CAPA's~~ upon which agricultural activities are being conducted shall have a soil and water quality conservation assessment. Such assessment ~~{shall}~~ evaluate the effectiveness of existing practices pertaining to soil erosion and sediment control, nutrition management and management of pesticides, ~~and w~~Where necessary, ~~results in the administrator may require~~ a plan that outlines additional practices need to ensure that water quality protection is accomplished consistent with this article and with state law.

(c) RPA buffer area requirements.

(1) To minimize the adverse effects of human activities on the other components of ~~resource protection areas~~ the RPA, state waters, and aquatic life, a 100-foot buffer area of vegetation that is effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff, shall be retained if present and established where it does not exist. Such vegetation includes a mixture of groundcovers, grasses, shrubs, and trees identified by:

a. Reference lists available from the administrator;

b. Appropriate state or local agencies; or

c. A qualified landscape professional applying the standards and objectives contained herein ~~cited in this section~~.

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

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

(4) The 100-foot RPA buffer area shall be maintained to meet the following additional performance standards:

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

1. Trees may be pruned or removed as necessary to provide for sight lines and vistas, provided that where removed, they shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff by preventing the channeling of water through the buffer. ~~(If desired, lists~~ No trees shall be removed under this subsection without the approval of the administrator. Suggested Replacement vegetation may be obtained from shall also be approved by the administrator).

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

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

4. For shoreline erosion control projects, trees and woody vegetation may be removed, necessary control techniques employed, and appropriate vegetation established to protect or stabilize the shoreline in accordance with the best available technical advice and applicable permit conditions or requirements. Trees shall be utilized in the development when vegetation is being established as appropriate to the site conditions and project specifications. No trees shall be removed without the approval of the administrator.

b. When the application of the 100-foot RPA buffer ~~areas~~ would result in the loss of a buildable area on a lot or parcel lawfully recorded prior to October 1, 1989 in the Chesapeake Bay Watershed, or on or before February 18, 2009, in in the Atlantic Ocean Watershed, the administrator may permit encroachments into the buffer area in accordance with section 106-385 and the following criteria:

1. Encroachments into the 100-foot buffer ~~areas~~ shall be the minimum necessary to achieve a reasonable buildable area for a principal structures and necessary utilities;
2. Where practical, a vegetated area that will maximize water quality protection, mitigate the effects of the buffer encroachment, and is equal to the area of encroachment into the buffer area shall be established elsewhere on the lot or parcel. and
3. In no case shall the encroachment extend into the seaward (waterward) 50 feet of the buffer area.

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

1. Agricultural activities may encroach into the landward 50 feet of the 100-foot ~~wide~~ buffer ~~area~~ when at least one agricultural best management practice, which, in the opinion of the Eastern Shore Soil and Water Conservation District, addresses the more predominant water quality issue on the adjacent land - erosion control or nutrient management - is being implemented on the adjacent land, provided that the combination of the undisturbed buffer area and the best management practice achieves water quality protection, pollutant removal, and water resource conservation at least the equivalent of the 100-foot ~~wide~~ buffer ~~area~~. If nutrient management is identified as the predominate water quality issue, a nutrient management plan, including soil test, must be developed consistent with the "Virginia Nutrient Management Training and Certification Regulations (~~4 VAC 5-15 et seq.~~ 4 VAC50-85) administered by the Virginia ~~Department of Conservation and Recreation~~ Soil and Water Conservation Board.

2. Agricultural activities may encroach within the landward 75 feet of the 100-foot-~~wide~~ buffer ~~area~~ when agricultural best management practices which address erosion control, nutrient management, and chemical pest control, are being implemented on the adjacent land. The erosion control practices must prevent erosion from exceeding the soil loss tolerance level, referred to as "T", as defined in the "National Soil Survey Handbook" of November 1996 in the Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resource Conservation Service. A nutrient management plan, including soil test, must be developed consistent with the "Virginia Nutrient Management Training and Certification Regulations (~~4 VAC 5-15 et seq.~~ 4 VAC50-85) administered by the Virginia Department of Conservation and Recreation. In conjunction with the remaining buffer area, this collection of best management practices shall be

presumed to achieve water quality protection at least the equivalent of that provided by the 100-foot ~~wide~~ buffer ~~area~~.

3. The 100-foot buffer ~~area~~ is not required to be designated adjacent to agricultural drainage ditches if the adjacent agricultural land has in place at least one best management practice as considered by the Eastern Shore Soil and Water Conservation District to address the more predominant water quality issue on the adjacent land - either erosion control or nutrient management – is being implemented on adjacent land.

(5) When agricultural or silvicultural uses within the buffer area cease and the lands are proposed to be converted to other uses, the full 100-foot ~~wide~~ buffer ~~area~~ shall be re-established. In re-establishing the 100-foot buffer, adequate management measures shall be undertaken to provide woody vegetation that assures the buffer functions are maintained or established, as determined by the administrator.

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

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

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

(b) *Types.* There shall be two levels of water quality impact assessments: A minor assessment and a major assessment. The applicable water quality impact assessment, if required, will be submitted as part of a complete proposed development plan, and reviewed in accordance with the criteria cited herein

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

- (1) Proposed development within a RPA, including any buffer modification or encroachment ~~as provided for in section 106-384 "Performance Standards"~~.
- (2) Development in an RMA as deemed necessary by the administrator due to the unique characteristics of the site or intensity of the proposed development.

~~There shall be two levels of water quality impact assessments: A minor assessment and a major assessment. The applicable water quality impact assessment, if required, will be submitted as part of a complete proposed development plan, and reviewed in accordance with the criteria cited in the following appropriate subsections.~~

*(d) Minor water quality impact assessment.*

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

- a. Location of the components of the resource protection area, including the RPA 100-foot buffer ~~area~~ and any water body with perennial flow.
- b. Location and nature of the proposed encroachment into the buffer area, including: areas of clearing or grading; location of any structures, driveways, or other impervious cover; type of surfacing or paving to be used, and location of sewage disposal systems or reserve drainfields.
- c. Type and location of proposed best management practices to mitigate the proposed encroachment, including soil erosion and sediment control and stormwater runoff management.
- d. Location of existing vegetation onsite and the location of trees and other vegetation to be removed from the buffer to accommodate the buffer encroachment or modification;
- e. Re-vegetation plan that supplements the existing buffer vegetation in a manner that provides for pollutant removal, erosion and runoff control.

(2) Upon the completed review of a minor water quality impact assessment, the administrator will determine if the proposed encroachment into the 100-foot RPA buffer ~~area~~ is consistent with the provisions of this article. ~~and make a finding based upon the following criteria in conjunction with subsection 106-386(1), "Required information—Minor Development:"~~

- a. The necessity of the proposed encroachment and the ability to place improvements elsewhere on the site to avoid disturbance to the buffer area;
- b. Impervious surface is minimized;
- c. Proposed best management practices, where required, achieve the requisite reductions in pollutant loadings;

- d. The development, as proposed, meets the purpose and intent of this article;
- e. The cumulative impact of the proposed development, when considered in relation to other development in the vicinity, both existing and proposed, will not result in a significant degradation of water quality.

(e) *Major water quality impact assessment.* A major water quality impact assessment shall be required for any development which (i) exceeds 10,000 square feet of land disturbance within the RPAs and requires involves any encroachment into the 100-foot buffer ~~area~~; (ii) causes less than 10,000 square feet of land disturbance within the RPA and requires involves any encroachment into the waterward 50 feet of the 100-foot buffer ~~area~~; (iii) disturbs any portion of any other component of the RPA; or (iv) is located in ~~a~~ the RPA and is deemed necessary by the administrator. Such assessment shall be prepared and submitted for review in conjunction with ~~subsection 106-386(2), the plan of development~~ or with any request for rezoning, conditional use permit or special use permit; that involves encroachment or disturbance of the RPA as deemed necessary by the administrator. The information required ~~is this section below~~ shall be considered a minimum, unless the administrator determines that some of the elements are unnecessary due to the scope and nature of the proposed use and development of land. All information required ~~in this section should below~~ shall be certified as complete and accurate by a professional engineer or a certified land surveyor, or other person qualified to do such work. The following information elements shall be included in the preparation and submission of a major water quality assessment:

(1) All of the information required in a minor water quality impact assessment as specified in subsection ~~(e)~~ (d) of this section.

(2) A hydrogeological element that:

a. Describes the existing topography, soils, hydrology and geology of the site and adjacent lands.

b. Describes the impacts of the proposed development on topography, soils, and hydrology on the site and adjacent lands.

c. Indicates the following:

1. Disturbance or destruction of wetlands and justification for such action;
2. Disruptions or reductions in the supply of water to wetlands, or connect streams, creeks, ponds, or other waterways;
3. Disruptions to existing hydrology including wetland and stream circulation patterns;
4. Source location and description of proposed fill material;
5. Location of dredge material and location of dumping area for such material;

6. Estimation of pre- and post-development pollutant loads in runoff;
  7. Estimation of percent increase in impervious surface on-site and type of surfacing materials used;
  8. Percent of site to be cleared for project;
  9. Anticipated duration and phasing schedule of construction project;
  10. Listing of all requisite permits from all applicable agencies necessary to develop project.
- d. Describes the proposed mitigation measures for the potential hydrogeological impacts. Potential mitigation measures include:
1. A soil erosion and sediment control plan or agreement explaining proposed erosion and sediment control concepts; concepts may include minimizing the extent of the cleared area, perimeter controls, reduction of runoff velocities, measures to stabilize disturbed areas, schedule and personnel for site inspection;
  2. Proposed stormwater management system.
- (3) The landscape element/plan required by subsection 106-385(2)d.
- (4) In reviewing a major water quality impact assessment, the administrator will determine if the proposed development is consistent with the purpose and intent of the article. The administrator may request the Virginia Department of ~~Conservation and Recreation (DCR)~~ Environmental Quality to review such assessment and respond with written comments, which will be incorporated into the administrator's final review provided that such comments are provided by ~~DCR~~ DEQ within 90 days of the request. The administrator's findings shall be based upon the following criteria:
- a. Within the RPA, the proposed development is water-dependent, redevelopment, or a road or drive permitted under section 106-383(b);
  - b. The disturbance of wetlands will be minimized;
  - c. The development will not result in significant disruption of the hydrology of the site;
  - d. The development will not result in unnecessary destruction of plant materials on-site;
  - e. Proposed erosion and sediment control concepts are adequate to achieve the reductions in runoff and prevent off-site sedimentation;
  - f. Proposed stormwater management concepts are adequate to control the stormwater runoff to achieve the required objectives and standards for pollutant control;

- g. Proposed revegetation of disturbed areas will provide runoff control and pollutant removal equivalent to the full 100-foot undisturbed buffer area;
  - h. The design and location of any proposed drainfield will be in accordance with the requirements of section 106-384;
  - i. The development, as proposed, is consistent with the purpose and intent of the CAPA overlay district.
- (5) A completed water quality impact assessment shall include evidence that all wetlands permits required by law have been obtained.

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

The lawful use of a building or structure which existed on ~~the effective date of the ordinance from which this article derives or which exists at the time of any amendment of this article~~ October 1, 1989 within the Chesapeake Bay Watershed or which existed on February 18, 2009, in Atlantic Ocean Watershed, and which building or structure is not in conformity with ~~new provision of overlay district~~ this article, may be continued in accordance with the following provisions, and the provisions in this chapter for nonconforming uses:

- (1) No change or expansion of the use ~~or~~ of an existing nonconforming building or structure shall be allowed with the exception that the administrator may grant a waiver for the expansion of an existing principal structure on a ~~legal~~ lawful nonconforming lot or parcel to provide for remodeling and alterations or additions to such nonconforming structures in accordance with article ~~XX~~ IX of this chapter, provided that:
  - a. The waiver request is the minimum necessary to afford relief;
  - b. The waiver is not based on conditions or circumstances which are self-created or self-imposed, nor does the request arise from conditions or circumstances either permitted or nonconforming that are related to adjacent parcels;
  - c. The waiver is in harmony with the purpose and intent of this article; and is not substantially detrimental to water quality;
  - d. Reasonable and appropriate conditions are imposed, as warranted, that will prevent the waiver from causing a degradation of water quality;
  - e. Granting the waiver will not confer upon the applicant any special privileges that are denied by this article to other property owners in the CAPA Overlay District.
- (2) Unimproved nonconforming lots of record prior to October 1, 1989 ~~at the time of the effective date of the ordinance~~ for land within the Chesapeake Bay Watershed or on or before February 18, 2009 for land within the Atlantic Ocean Watershed, ~~from which this~~

~~chapter is derived which~~ that are of insufficient size to meet the minimum requirements of this chapter regarding area, frontage, setbacks, width, depth, side and rear yards, or buffer area requirements may be used as permitted by this article ~~or~~ and in accordance with the regulations for the underlying zoning district in which the lot is located, through an administrative process and subject to the following:

a. Lots must comply with all minimum zoning requirements, provisions, and other applicable ordinances in effect on the date such lot was lawfully recorded;

b. When the application of the full 100-foot RPA buffer would result in the loss of a buildable area on a lot or parcel lawfully recorded prior to October 1, 1989 for the Chesapeake Bay Watershed or on or before February 18, 2009, for the Atlantic Ocean Watershed, the administrator may permit encroachments into the 100-foot RPA buffer ~~area~~ in accordance with the following:

1. Encroachments into the 100-foot RPA buffer ~~area~~ shall be the minimum to achieve a reasonable buildable area for the ~~principle~~ principal structure and necessary utilities;

2. Where practicable, an area equal to the area of encroachment into the 100-foot RPA buffer shall be established elsewhere on the lot or parcel in a way to maximize water quality protection and mitigate the effects of the buffer encroachment; and

3. In no case shall the encroachment extend into the ~~waterward feet of the~~ 50-foot seaward (waterward) RPA buffer. In any case where a the 50-foot seaward buffer area cannot be maintained, an applicant may request an exception in accordance with section 106-389 of this article; however, all criteria for an exception must be satisfied.

(3) An application to alter or expand a nonconforming ~~use~~ building or structure in existence at the time this ordinance was adopted on December 30, 1991, shall be made to, and upon forms furnished by, the administrator and shall include for the purpose of proper enforcement of this article, the following information:

a. Name and address of applicant and property owner;

b. Legal description of the property and type of proposed use and development;

c. A sketch of the dimensions of the lot or parcel, location of buildings and proposed additions relative to the lot lines, and boundary of the resource protection area;

d. Location and description of any existing private water supply or sewage system.

Any administrative approval of the alteration or expansion of a nonconforming building or structure shall be subject to the following:

a. There will be no increase in nonpoint source pollutant load; and

- b. Any development or land disturbance exceeding an area of 2,500 square feet complies with all state and local erosion and sediment control measures.

Nothing herein shall be construed to prevent the reconstruction of a nonconforming structure from occurring as a result of casualty loss, as determined by the administrator.

## **Sec. 106-388. - Exemptions.**

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

(1) Construction, installation, operation, and maintenance of electric, natural gas, fiber optic and telephone transmission lines, railroads, and public roads and their appurtenant structures: in accordance with regulations promulgated pursuant to the state erosion and sediment control law, (Code of Virginia, § ~~10.1-560~~ 62.1-44.15:51 et seq.) and the Stormwater Management Act (Code of Virginia, § ~~10.1-603.1~~ 62.1-44.15:24 et seq.).: ~~an~~ An erosion and sediment control plan and stormwater management plan approved by the Virginia Department of ~~Conservation and Recreation~~ Environmental Quality; or local water quality protection criteria at least as stringent as the above state requirements will be deemed to constitute compliance with ~~these regulations~~ this section. The exemption of public roads is further conditioned on the following:

a. Optimization of the road alignment and design, consistent with other applicable requirements, to prevent or otherwise minimize encroachment in the ~~resource protection area~~ RPA and adverse effects on water quality;

b. Public roads shall include those roads ~~which~~ that satisfy all the same construction, siting, and water quality standards applicable to roads built by the state department of transportation.

(2) Construction, installation, and maintenance of water, sewer, natural gas, and underground telecommunications and cable television lines owned, permitted, or both, by a local government or regional service authority shall be exempt from the overlay district provided that:

a. To the degree possible, the location of such utilities and facilities should be outside the RPAs;

b. No more land shall be disturbed than is necessary to provide for the desired utility installation;

c. All such construction, installation, and maintenance of such utilities and facilities shall be in compliance with all applicable state and federal requirements and permits and designed and conducted in a manner than protects water quality; and

d. Any land disturbance complies with all ~~the county~~ state and local erosion and sediment control requirements.

(b) *Exemptions for silvicultural activities.* Silvicultural activities are exempt from the requirements of this article provided that silvicultural operations adhere to water quality protection procedures prescribed by the Virginia Department of Forestry in the most recent edition of its Forestry Best Management Practices for Water Quality in Virginia Technical Guide.

(c) *Exemptions in the resource protection areas (RPAs).* The following land disturbances in the RPAs may be exempted from the 100-foot RPA buffer protection requirements of this article ~~overlay district~~: water wells; passive recreation facilities such as boardwalks, trails, and pathways; and historic preservation and archaeological activities, provided ~~that~~ it is demonstrated to the satisfaction of the administrator that:

(1) Any required permits for the proposed use, except those ~~to which~~ are contingent on this exemption specifically applies, shall have been issued;

(2) Sufficient and reasonable proof, which may include a water quality impact assessment, is submitted that the intended use will not deteriorate water quality;

(3) The intended use ~~does not~~ is not in conflict with the use provisions of this Chapter or adversely impact nearby planned or approved uses; and

(4) Any land disturbance shall comply with all ~~the~~ state and local county erosion and sediment control requirements set out in Virginia law or in Chapter 38 of this Code.

(d) *Partial exemptions for RPA development in the Atlantic Ocean Watershed* ~~vested intense seaward development in resource protection areas (RPAs).~~

(1) The following land development in the RPAs shall be exempted from the buffer area requirements of the CAPA Overlay District, to the extent necessary to provide a ~~minimum~~ building envelope of no greater than 3,500 square feet, provided ~~that~~ all of the following is demonstrated to the satisfaction of the administrator:

a. The development is located in in the ~~to the east and seaward of the Chesapeake Bay/Seaside~~ Atlantic Ocean Watershed divide.

b. The development is on a parcel ~~with vested rights established~~ lawfully recorded prior to on or before February 19 18, 2009.

c. The development is on a parcel demonstrated to lack a minimum building envelope of 3,500 square feet outside the RPA 100-foot RPA buffer. Development shall be permitted to encroach into the 100-foot RPA buffer only to the extent necessary to provide a building envelope of no greater than 3,500 square feet.

d. The development preserves all existing vegetation in the 50-foot seaward RPA buffer ~~within the yard setback areas required for main structures by the underlying zoning district, that is located in the RPA and seaward~~ (waterward) of the proposed

f. Any land disturbance ~~exceeding 2,500 square feet~~ shall comply with all ~~county~~ state and local stormwater management and erosion and sediment control requirements.

g. Compliance with all other requirements of the CAPA overlay district is demonstrated (buffer area requirements may be partially exempted per subsection c. above).

This ordinance shall be effective immediately upon adoption.

VOTE:

AYES:

NAYS:

ABSENT:

Accomack County Board of Supervisors

By:

\_\_\_\_\_  
Chairman

Dated: \_\_\_\_\_

I hereby certify that the foregoing is a true and correct copy of the Ordinance approved \_\_\_\_\_, 2024, at a meeting of the Accomack County Board of Supervisors, Accomack County, Virginia.

A COPY TESTE:

\_\_\_\_\_  
Michael T. Mason, County Administrator/  
Secretary to the Board