

AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 25TH DAY OF NOVEMBER, 2003, AT 7:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

A. ROLL CALL

Jay T. Harrison, Sr., Chairman, Berkeley District
Bruce C. Goodson, Vice Chairman, Roberts District
John J. McGlennon, Jamestown District
Michael J. Brown, Powhatan District
James G. Kennedy, Stonehouse District

Sanford B. Wanner, County Administrator
Frank M. Morton, III, County Attorney

B. MOMENT OF SILENCE

Mr. Harrison requested the Board and citizens observe a moment of silence,

C. PLEDGE OF ALLEGIANCE

Emily Jones, a seventh-grade student at Toano Middle School, led the Board and citizens in the Pledge of Allegiance.

D. PUBLIC COMMENT

1. Mr. Ed Oyer, 139 Indian Circle, stated concern that utilization of the existing school facilities is not being addressed and building additional educational facilities is not necessary at this time.

E. HIGHWAY MATTERS

Mr. Steve Hicks, Resident Engineer, Virginia Department of Transportation (VDOT), stated that the potholes have been fixed on Lake Powell Road (Route 618).

Mr. Hicks stated that the construction on Ironbound Road between Jamestown Road and Sandy Bay Road has been hid.

Mr. Hicks provided an overview of VDOT's role in the debris cleanup, stated that debris within the VDOT easements on primary roadways and interstates will be removed, and stated that the debris removal by VDOT does not include construction material.

Mr. McGlennon requested verification of what material will be removed by VDOT.

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Mr. Hicks stated that vegetation will be removed from VDOT easements on roads maintained by VDOT.

Mr. Harrison requested that the old and new phases of The Meadows subdivision needs to be addressed as the roads are deteriorating.

Mr. McGlennon thanked VDOT for moving the Sandy Bay/Ironbound Road project

Mr. Goodson stated that the directional road signs at the intersection of Route 199 and Jamestown Road needs to be reviewed.

Mr. Hicks stated that the east and west directional on Route 199 will be changed to north and south in 2005.

Mr. Kennedy thanked Mr. Hicks for working with the Board and for the accomplishments that have been achieved in the Stonehouse District.

Mr. Hicks provided the Board with an overview of the fiscal status of VDOT as impacted by Hurricane Isabel and what funds are available for snow removal and tunnel safety.

F. CONSENT CALENDAR

Mr. Harrison inquired if a member wished to pull an item from the Consent Calendar.

Mr. Goodson requested Item No. 6, Williamsburg Community Health Foundation Debris Removal Assistance Grant, be pulled.

Mr. McGlennon made a motion to adopt the remainder of the items on the Consent Calendar,

On a roll call vote, the vote was: AYE: McGlennon, Brown, Goodson, Kennedy, Harrison (5). NAY: (0).

1. Minutes – October 28, 2003. Work Session
2. 2003 Police Officer of the Year – Richard A. Schugeld

RESOLUTION OF APPRECIATION

2003 POLICE OFFICER OF THE YEAR - RICHARD A. SCHUGELD

WHEREAS, Senior Officer Richard A. Schugeld has demonstrated his talents and expertise in the exemplary work he has accomplished and through his assistance and help to fellow officers; and

WHEREAS, Officer Schugeld has worked as a patrol officer and field training officer, providing training to three new police recruits and several auxiliary officers since May 2002; and

WHEREAS, he has served as a member of the SWAT Team, undergoing over 200 hours of tactical and specialized weapons training, as well as participated in over ten SWAT operations; and

WHEREAS, he has coordinated the Police Explorer Program, providing over 100 hours of training and activities for the involved youths; and

WHEREAS, Richard Schugeld's excellent attitude and work ethic represent the best in the law enforcement community.

NOW THEREFORE, BE IT RESOLVED, that the Board of Supervisors of James City County, Virginia, does hereby commend the outstanding public service of

Richard A. Schugeld

and presents him with this resolution of appreciation from a grateful community.

3. Metropolitan Medical Response System

RESOLUTION

METROPOLITAN MEDICAL RESPONSE SYSTEM

WHEREAS, James City County has been participating in regional planning for emergency medical response to catastrophic events or terrorist events; and

WHEREAS, the Hampton Roads Planning District Commission endorses the regional response concept for such emergencies requiring multiple disciplines and specialized capability.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the County Administrator to enter into a Mutual Aid Agreement and Memorandum of Understanding to provide and receive services within the Metropolitan Medical Response System.

4. Appropriation - Establishment of a Full-Time Limited-Term Bus Driver Position for Williamsbure Area Transport

RESOLUTION

APPROPRIATION - ESTABLISHMENT OF A FULL-TIME LIMITED-TERM BUS DRIVER

POSITION FOR WILLIAMSBURG AREA TRANSPORT

WHEREAS, Williamsburg Area Transport (WAT) has implemented transportation services in support of the College of William and Mary students for which the County is reimbursed by the College.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby establishes a full-time limited-term bus driver position to provide service to the College of William and Mary and authorizes the following appropriation in the FY 2004 WAT Budget:

Revenue:

From the College of William and Mary \$19,500

Expenditure:

One Full-Time Limited-Term Bus Driver \$19,500

5. Installation of "Watch for Children" Signs – Bradshaw Ordinary and Svcamore Landing

RESOLUTION

INSTALLATION OF "WATCH FOR CHILDREN SIGN - BRADSHAW ORDINARY

WHEREAS, Section 33.1-210.2 of the Code of Virginia provides for the installation and maintenance of signs by the Virginia Department of Transportation, alerting motorists that children may be at play nearby, upon request by a local governing body; and

WHEREAS, Section 33.1-210.2 further requires that the funding for such signs be from the secondary road system maintenance allocation for the County; and

WHEREAS, residents of the Bradshaw Ordinary community have requested that a "Watch for Children" sign be installed on Bradshaw Drive as illustrated on the attached drawing titled "Bradshaw Ordinary 'Watch for Children Sign'."

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby request that the Virginia Department of Transportation install and maintain one "Watch for Children" sign as requested with funds from the County's secondary road system maintenance allocation.

RESOLUTION

INSTALLATION OF "WATCH FOR CHILDREN SIGN - SYCAMORE LANDING

WHEREAS, Section 33.1-210.2 of the Code of Virginia provides for the installation and maintenance of signs by the Virginia Department of Transportation, alerting motorists that children may be at play nearby, upon request by a local governing body; and

WHEREAS, Section 33.1-210.2 further requires that the funding for such signs be from the secondary road system maintenance allocation for the County; and

WHEREAS, residents of the Sycamore Landing community have requested that a "Watch for Children" sign be installed on Sycamore Landing Road as illustrated on the attached drawing titled "Sycamore Landing 'Watch for Children Sign'."

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby request that the Virginia Department of Transportation install and maintain one "Watch for Children" sign as requested with funds from the County's secondary road system maintenance allocation.

6. Williamsburg Community Health Foundation Debris Removal Assistance Grant

Mr. Anthony Conyers, Jr., Community Services Manager, stated that the County received a Debris Removal Assistance Grant from the Williamsburg Community Health Foundation for low-income citizens.

Mr. Goodson made a motion to adopt the resolution.

On a roll call vote, the vote was: AYE: McGlennon, Brown, Goodson, Kennedy, Harrison (5). NAY: (0).

RESOLUTION

WILLIAMSBURG COMMUNITY HEALTH FOUNDATION

DEBRIS REMOVAL ASSISTANCE GRANT

WHEREAS, the Williamsburg Community Health Foundation has awarded James City County a grant for Debris Removal Assistance for low-income citizens; and

WHEREAS, the Department of Community Services will oversee the project and work in cooperation with the Division of Social Services to determine eligibility and contract with the Williamsburg-James City County Community Action Agency to perform the work for a period of one year beginning September 18, 2003.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby appropriates the \$25,000 grant awarded by the Williamsburg Community Health Foundation to assist low-income citizens with debris removal.

BE IT FURTHER RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the following appropriation to the Special Projects/Grants Fund:

Revenue:

| | |
|---|-----------------|
| From the Williamsburg Community Health Foundation | <u>\$25,000</u> |
|---|-----------------|

Expenditure:

| | |
|----------------|-----------------|
| Debris Removal | <u>\$25,000</u> |
|----------------|-----------------|

G. PUBLIC HEARING

1. Chesapeake Bay Preservation Ordinance

Mr. Darryl E. Cook, Environmental Director, presented an amended Chesapeake Bay Preservation Ordinance that complies with the State Chesapeake Bay Preservation Area Designation and Management Regulations and recommended the Board adopt the Ordinance.

Mr. Brown requested an amendment for the addition of "or State" to the fourth line of Section 23-10 2.d.

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Mr. Cook stated that the Ordinance could be amended to include that language.

Mr. Harrison opened the Public Hearing.

1. Mr. J. Timmons Roberts, 128 Chanco Road, stated support for therevisions to the Ordinance and inquired if buffers could be created along intermittent streams.

2. Mr. Ed Oyer, 139 Indian Circle, inquired if the stream flow included Skiffe's Creek and if the standard will apply to existing Resource Protection Areas (RPA).

Mr. Cook stated that it would.

Mr. Brown inquired if the existing 100-foot RPA buffer would be impacted by the Ordinance.

Mr. Cook stated that the RPAs have been in existence for several years and the requirements for RPAs have not changed.

3. Mr. Rich Costello, 10020 Sycamore Landing Road, stated that if the non-conforming structures require waivers, the conditions have changed and will impact existing single-dwelling structures.

Mr. Cook stated that language similar to this has been included in other documents and expansion of structures can be achieved through mitigations and preexisting lots do not have to go through a rigorous buffer test.

Mr. Brown inquired if relief from the buffer requirements on preexisting lots can be appealed.

Mr. Cook stated that appeal avenues exist, and that an appeal for an expansion has not previously gone to the Wetlands Board.

As no one else wished to speak to this matter, Mr. Harrison closed the Public Hearing.

Mr. McGlennon made a motion to adopt the Ordinance as amended,

The Board thanked staff and citizens for their work regarding the Ordinance.

Mr. Brown requested that when the policy for implementation of the Ordinance is developed, that a presentation be made to the Board.

On a roll call vote, the vote was: AYE: McGlennon, Brown, Goodson, Kennedy, Harrison (5). NAY: (0).

H. BOARD CONSIDERATION

1. Chesapeake Bay Preservation Ordinance Transition – Amendments and Grandfathering/Vesting Rules

Mr. Darryl E. Cook, Environmental Director, provided an overview of a resolution outlining grandfathering/vesting rules for the revised Chesapeake Bay Preservation Ordinance and requested adoption of the resolution.

The Board and staff discussed an example of a situation where grandfathering would impact the Ordinance requirements.

Mr. Harrison made a motion to adopt the resolution.

On a roll call vote, the vote was: AYE: McGlennon, Brown, Goodson, Kennedy, Harrison (5). NAY: (0).

RESOLUTION

CHESAPEAKE BAY PRESERVATION ORDINANCE TRANSITION -

AMENDMENTS AND GRANDFATHERING/VESTING RULES

WHEREAS, the Board of Supervisors is considering comprehensive revisions and amendments to sections of Chapter **23**, Chesapeake Bay Preservation, of the Code of the County of James City, Virginia; and

WHEREAS, the orderly transition from the existing Chesapeake Bay Ordinance to the revised Ordinance requires transition **rules** to affect the changes in law.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby adopts the **grandfathering/vesting rules** for the revised Chesapeake Bay Preservation Ordinance, which has an effective date of January 1, 2004, as set forth below:

All site and subdivision plans (conceptual or preliminary) must comply with the revised Ordinance unless the plans fall under one or more of the following criteria:

1. *Final Site and Subdivision Plans.* Approved final plans that are still valid in accordance with Chapter 19 and Chapter 24 of the County Code will not be subject to the revised Ordinance. However, revisions to such approved plans that impact an established Resource Protection Area (RPA) (RPA based on the original USGS solid blue line streams) will have to comply with the provisions of the revised Ordinance relating to the exception process. These plans will not be subject to a review of the RPA delineation involving on-site determination of water bodies with perennial flow.
2. *Preliminary Site and Subdivision Plans.* Approved preliminary plans that are still valid in accordance with Chapter 19 and Chapter 24 of the County Code will not be subject to the revised Ordinance. However, revisions to such approved plans that impact an established RPA (RPA based on the original USGS solid blue line streams) will have to comply with the provisions of the revised Ordinance relating to the exception process. These plans will not be subject to a review of the RPA delineation involving on-site determination of water bodies with perennial flow.
3. *Site and Subdivision Plans in the Review Process.* Plans already in the development review process and those accepted for review prior to the effective date of the Ordinance will not be subject to the revised Ordinance. However, "accepted" shall mean that the plan contains all the information required in the Zoning and Subdivision Ordinances at the time of submission. Any plan determined to be deficient will need to be resubmitted, and if submitted after the effective date, it will have to comply with the revised Ordinance. However, revisions to such plans after submission that impact

an established RPA (RPA based on the original USGS solid blue line streams) will have to comply with the provisions of the revised Ordinance relating to the exception process. These plans will not be subject to a review of the RPA delineation involving on-site determination of water bodies with perennial flow.

4. ***Conceptual Plans.*** Conceptual plans approved prior to the effective date of the Ordinance will not be grandfathered nor will they grandfather any subsequent site or subdivision plans.
5. ***Rezoning and Special Use Permits.*** Approved rezoning and special use permits will have to comply with the provisions of the revised Ordinance unless the property cannot legally be developed to the proffered density, use, or square footage because of the new rules, or there is a specific feature (such as a house or other structure; a road, storm drain, or some other facility) shown on the proffered zoning plan that is located within the RPA, in which case the landowner may develop to the proffered density, use, or square footage minimizing any intrusions into RPA to the extent possible. The specific feature must be built consistent with all other applicable zoning and subdivision requirements. Once the specific feature is developed as shown on the proffered zoning plan, the provisions of the Ordinance RPA applies in full to any future development.

I. PUBLIC COMMENT

1. Mr. Mark Rinaldi, 10022 Sycamore Landing Road, stated concern that VDOT will not be collecting construction debris.
2. Mr. Ed Oyer, 139 Indian Circle, wished everyone a safe holiday.

J. REPORTS OF THE COUNTY ADMINISTRATOR

Mr. Wanner presented a resolution to change the December Board meeting to December 16, 2003, and into the new Board room.

Mr. Goodson made a motion to adopt the resolution.

On a roll call vote, the vote was: AYE: McGlennon, Brown, Goodson, Kennedy, Harrison (5). NAY: (0).

RESOLUTION

CHANGE OF DATE AND PLACE FOR

BOARD OF SUPERVISORS DECEMBER MEETING

WHEREAS, the regularly scheduled December meeting of the Board of Supervisors is December 9, 2003, at 7:00 p.m., in Building C; and

WHEREAS, the Board desires to change the date and place of the Board meeting to December 16, 2003, and meet in the new Board Room in Building F.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby amends the Board of Supervisors meeting schedule to change the scheduled meeting to December 16, 2003, in Building F, located at 101-F Mounts Bay Road, James City County, with a work session at 4:00 p.m. and the regular meeting at 7:00 p.m.

Mr. Wanner stated that if the County picks up construction debris not collected by VDOT, the County would be able to collect the debris and be reimbursed for the removal.

Mr. Wanner recommended at the conclusion of the Board meeting, the Board recess to 4 p.m. on December 16 in the new Board room in Building F.

K. BOARD REQUESTS AND DIRECTIVES

Mr. McGlennon recommended the Board consider amendment of its contract for the collection of construction debris.

Mr. McGlennon made the motion to amend the agreement

On a roll call vote, the vote was: AYE: McGlennon, Brown, Goodson, Kennedy, Harrison (5). NAY: (0).

Mr. McGlennon made a motion to authorize the County Administrator to give the day after Christmas and the day after New Year's off to staff in recognition for staff's work during the hurricane.

Mr. Kennedy stated concern regarding the motion given the number of holidays the County observes, the amount of annual and sick leave that employees receive, and the number of days that offices have been closed due to bad weather.

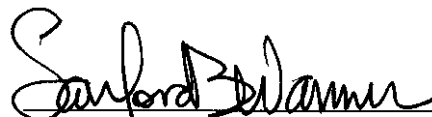
On a roll call vote, the vote was: AYE: McGlennon, Goodson, Harrison (3). NAY: Brown, Kennedy (2).

L. ADJOURNMENT

Mr. McGlennon made a motion to adjourn,

On a roll call vote, the vote was: AYE: McGlennon, Brown, Goodson, Kennedy, Harrison (5). NAY: (0).

At 8:04 p.m., Mr. Harrison adjourned the Board until 4 p.m. on Tuesday, December 16, 2003, in the new Board meeting room in Building F.



Sanford B. Wanner
Clerk to the Board

Hampton Roads Metropolitan Medical Response System Mutual Aid Agreement

This AGREEMENT entered into on the 15th day of NOVEMBER, 2003, by and between the member jurisdictions of the Hampton Roads Metropolitan Medical Response System ("HRMMRS"), being the cities of Chesapeake, Franklin, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, Williamsburg; the counties of Gloucester, Isle of Wight, James City, Southampton, Surry, York; and the town of Smithfield, each duly and lawfully represented by the contracting officer executing this instrument:

RECITAL

Whereas, each of the parties hereto support the Hampton Roads Metropolitan Medical Strike Team; and

Whereas, each of the parties hereto maintains equipment and personnel for emergency response within its own jurisdiction; and

Whereas, it is deemed mutually beneficial to the parties hereto to enter into an agreement concerning mutual aid and cooperation with regard to emergency medical responses to suspected terrorism events, and natural and man-made catastrophes, that are conceivably beyond the abilities and/or resources of the affected party; and

Whereas, the parties hereto desire to augment their emergency medical response resources in times of mass casualty, disaster or terrorism events; and

Whereas, the parties hereto desire that the terms and conditions of this HRMMRS Mutual Aid Agreement be established:

Therefore, the parties hereto mutually agree as follows:

AGREEMENT

1. In the event of a medical emergency in a party's jurisdiction that may necessitate the need of a mutual aid response, it shall be the duty of the requesting jurisdiction's incident commander to assure that the request for the mutual aid response is **communicated per** the requesting jurisdiction's policy.

2. In the event a request for a mutual aid response is properly made by the requesting jurisdiction, the responding equipment and personnel will be under the control of their own supervisor(s), the senior supervisor reporting to and taking directions from the requesting party's incident commander.

3. The incident commander of the requesting jurisdiction shall assume full command of the operations, but if that incident commander specifically requests the senior officer of the mutual aid response to assume command, that requesting party's incident commander shall not, by relinquishing command, be relieved of his/her responsibility for the operation.

4. The requesting party shall be responsible for designating a radio communications system for use by all emergency personnel. Should radio systems be incompatible, the incident commander and the senior officer of the mutual aid response shall coordinate communications.

5. The services performed and expenditures made under this Agreement shall be deemed to be for public and governmental purposes and all immunities from liability enjoyed by the local government within its boundaries shall extend to its participation in rendering assistance outside its

boundaries. It is understood that for the purposes of this Agreement, the mutual aid response is rendering aid once it departs its own jurisdictional boundaries.

6. All pension, disability, worker's compensation, life and health insurance and other benefits enjoyed by personnel participating in the mutual aid response shall extend to the services they perform under this Agreement whether inside or outside of their respective jurisdictions. Each party agrees that provisions of these benefits shall remain the responsibility of the participating personnel's jurisdiction.

7. Each party hereto agrees to waive any and all claims against all other parties hereto which may arise out of their participation in HRMMRS activities inside or outside of their respective jurisdictions.

8. The parties participating in this Agreement shall not be liable to each other for reimbursement for injuries to personnel or damage to equipment incurred when going to or returning from another jurisdiction. No party shall be liable to any other party for any other costs associated with, or arising out of, the rendering of assistance by a mutual aid response pursuant to this Agreement; except, however, the responding jurisdiction may request reimbursement to replenish equipment and supplies. However, should the incident be declared a disaster by the President of the United States and/or Governor of Virginia, it shall be incumbent upon the requesting jurisdiction to coordinate with the mutual aid team(s) the calculation of actual costs incurred for use of personnel and equipment. The requesting party shall also, upon receipt of reimbursement funds, coordinate with the mutual aid team(s) the disbursement of those funds related to personnel and equipment provided by the mutual aid team(s).

9. Nothing contained in this Agreement should in any manner be construed to require any of the parties to respond to a request for services when the service personnel of the jurisdiction to whom the request is made are, in the opinion of the requested jurisdiction, needed or are being used within the boundaries of that jurisdiction, nor shall any such request require the requested jurisdiction to continue to provide services to another jurisdiction when its service personnel, vehicles or equipment are, in the requested jurisdiction's opinion, needed for other duties within its own boundaries.

10. Nothing in this Agreement is intended to, nor shall it be interpreted to override, supercede, nullify or in any way change any mutual aid agreement or understanding currently enjoyed by any party, jointly or severely.

11. Any of the parties hereto may withdraw from this Agreement by giving thirty (30) days written notice to that effect to each of the other parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized officers, with their respective official seals affixed hereto and attested by their respective city, county or town clerk, and indicated thereafter the ordinance or resolution authorizing the execution.

ATTEST:

City/County of JAMES CITY

By Sanford B Wannue
City/County Clerk

By: Sanford B Wannue
City Manager/County or Town Administrator

Resolution/~~Ordinance~~ No. _____

Adopted on 11/25/2003

Hampton Roads Metropolitan Medical Response System Metropolitan Medical Strike Team Response Memorandum of Understanding

This Memorandum of Understanding will address the sponsorship, response, staffing, and training requirements for civilian agencies supporting Hampton Roads Metropolitan Medical Strike Team (HRMMST) members and for localities supporting HRMMST members under the provisions of the Hampton Roads Metropolitan Medical Response System Mutual Aid Agreement.

1. A HRMMST member requested to respond to a Hampton Roads Metropolitan Medical Response System ("HRMMRS") activation, or participate in training and regional exercises, will be provided coverage under the individual member's sponsoring jurisdiction's or agency's liability and compensation policies and plans, including, but not limited to, health, liability, and worker's compensation benefits. To the extent authorized by law, each participating jurisdiction and agency will provide for the payment of compensation and death benefits to its injured members of the responding HRMMST if such member(s) sustain injuries or are killed while rendering aid pursuant to this Memorandum of Understanding, in the same manner and on the same terms as if the injury or death were sustained within the member's own jurisdiction or agency.

2. HRMMST members responding to an incident will report to the areas designated when notification of an incident is received. Use of sponsoring jurisdiction or agency official vehicles is preferred.

3. HRMMST members will respond to the incident with personal protective equipment and clothing and/or other equipment issued to them by the HRMMRS and/or the sponsoring jurisdiction or agency.

4. HRMMST members will be made available to meet the initial and annual continuing education and training requirements of the HRMMRS. Members will be made available both on and off duty to assure compliance with the training requirements, unless to do so would cause an undue hardship on the affected locality.

5. HRMMST members will be available to respond to a HRMMRS activation inside or outside of their jurisdiction/work location, both on and off duty, unless to do so would cause an undue hardship on the affected locality. HRMMST members will respond at no cost to the affected/requesting locality provided they are responding to a properly executed HRMMRS incident and are part of the Strike Team on call. If the incident is declared a "Disaster" by the Governor of Virginia and/or President of the United States, each jurisdiction and agency may be able to seek reimbursement as outlined by FEMA federally declared disaster requirements.

6. This Memorandum of Understanding may be modified with the approval of the agency directors and the managers of the various localities.

7. This Memorandum of Understanding may be terminated by providing written notice thirty (30) days prior to termination to the Hampton Roads MMRS Oversight Committee, c/o Tidewater Emergency Medical Services Council, Inc., 855 West Brambleton Avenue, Norfolk, Virginia 23510-1001.

JAMES CITY COUNTY

Jurisdiction/Agency Name (Sponsoring Jurisdiction/Agency)

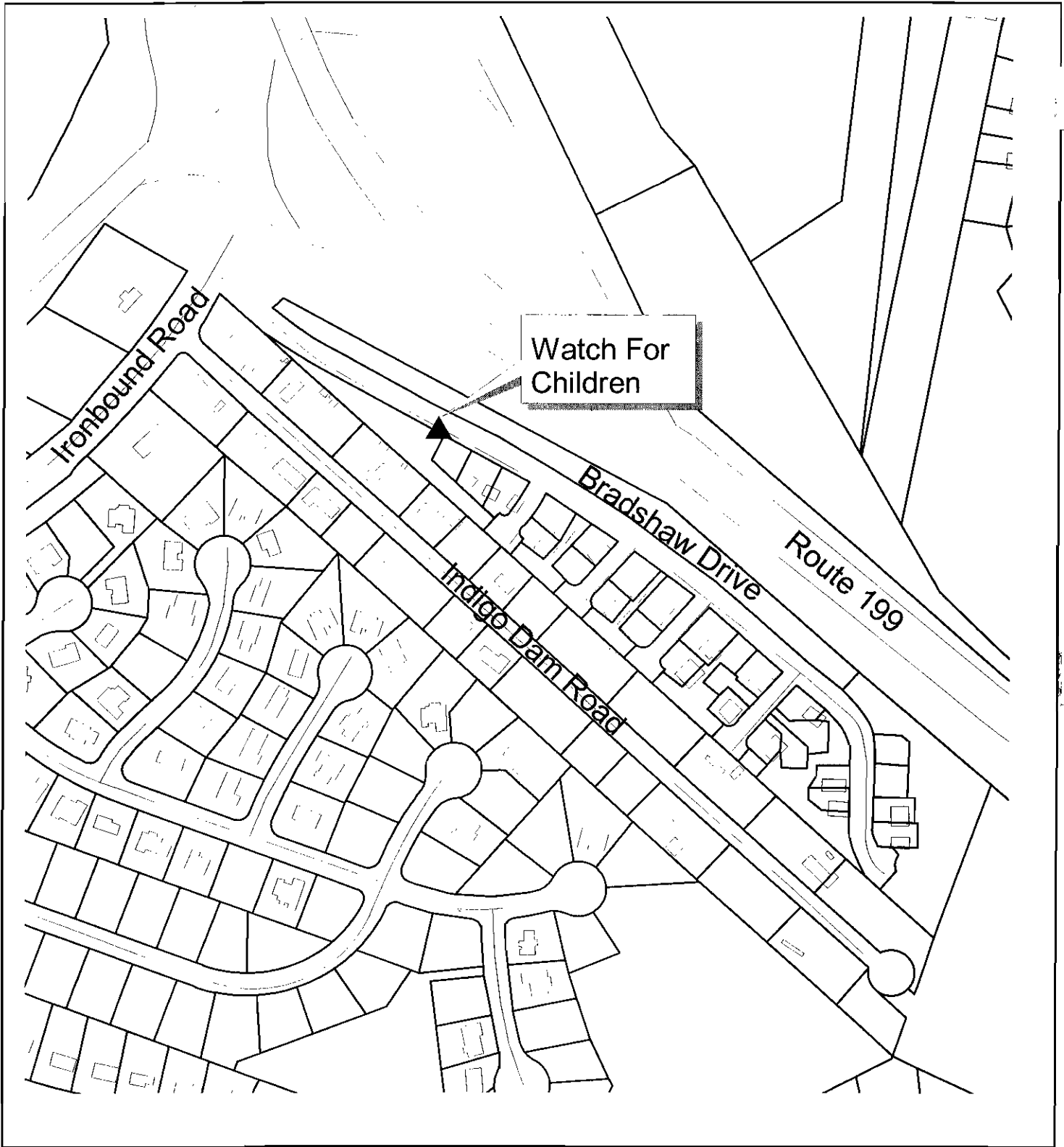
Paula Blumauer COUNTY ADMINISTRATOR

Authorized Signature

Title

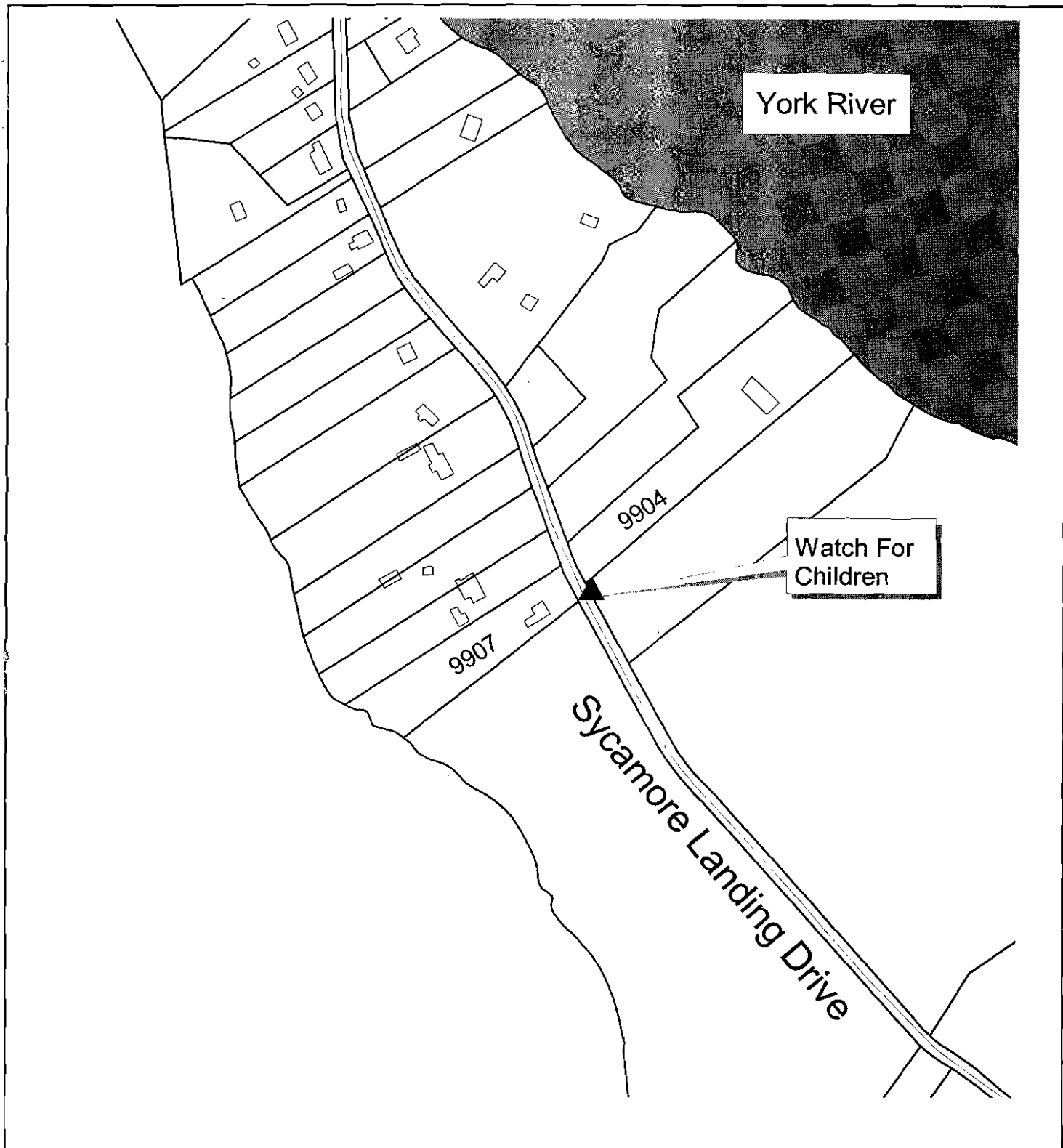
11/26/03

Date Signed



BRADSHAW ORDINARY "WATCH FOR CHILDREN" SIGN





SYCAMORE LANDING "WATCH FOR CHILDREN" SIGN



ADOPTED

NOV 25 2003

ORDINANCE NO. 183A-3BOARD OF SUPERVISORS
JAMES CITY COUNTY
VIRGINIA

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 23, CHESAPEAKE BAY PRESERVATION, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING, SECTION 23-3, DEFINITIONS; SECTION 23-4, DESIGNATION OF CHESAPEAKE BAY PRESERVATION AREA (CBPA); SECTION 23-5, PERMITTED USES; SECTION 23-6, LOT SIZE; SECTION 23-8, DETERMINING RESOURCE PROTECTION AREA BOUNDARIES; SECTION 23-9, PERFORMANCE STANDARDS; SECTION 23-10, PLAN OF DEVELOPMENT; SECTION 23-11, WATER QUALITY IMPACT ASSESSMENT; SECTION 23-13, EXEMPTIONS; SECTION 23-14, EXCEPTIONS; SECTION 23-16, GRANTING WAIVERS OR EXCEPTIONS; SECTION 23-17, APPEALS; AND SECTION 23-18, VIOLATIONS; PENALTIES; BY AMENDING AND RENAMING SECTION 23-7, REQUIRED CONDITIONS, TO DEVELOPMENT CRITERIA FOR RESOURCE PROTECTION AREAS; SECTION 23-12, WANERS, TO WANERS FOR NONCOMPLYING STRUCTURES; AND SECTION 23-15, APPLICATIONS FOR WAIVERS OR EXCEPTIONS, TO APPLICATIONS FOR EXCEPTIONS.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 23, Chesapeake Bay Preservation, is hereby amended and reordained by amending Section 23-3, Definitions; Section 23-4, Designation of Chesapeake Bay Preservation Area (CBPA); Section 23-5, Permitted uses; Section 23-6, Lot size; Section 23-8, Determining resource protection area boundaries; Section 23-9, Performance standards; Section 23-10, Plan of development; Section 23-11, Water quality impact assessment; Section 23-13, Exemptions; Section 23-14, Exceptions; Section 23-16, Granting waivers or exceptions; Section 23-17, Appeals; and Section 23-18, Violations; penalties; by amending and renaming Section 23-7, Development criteria for resource protection areas; Section 23-12, Waivers for noncomplying structures; and Section 23-15, Applications for exceptions.

Ordinance to Amend and Reordain
Chapter 23. Chesapeake Bay Preservation
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Chapter 23. Chesapeake Bay Preservation

Sec. 23-3. Definitions.

For the purpose of this chapter, the following words and phrases shall have the meanings ascribed below:

Agricultural lands. Those lands used for tilling soil, planting and harvesting crops or plant growth of any kind in the open, pasture, horticulture, dairying, floriculture, or raising poultry and/or livestock. Buildings and structures are not included in this definition.

Best managementpractice (BMP). A practice, or combination of practices, that is determined by a state, local or regional agency to be the most effective, practicable means of preventing or reducing the amount of pollution generated by nonpoint sources to a level compatible with water quality goals.

Board. *The Chesapeake Bay Board, which is comprised of the members of the James City County Wetlands Board.*

Buffer area. An area of natural or established vegetation managed to protect other components of resource protection areas and county and state waters from significant degradation due to land disturbances or uses.

Caliper. The diameter of a tree trunk measured six inches above the ground for nursery stock.

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Chesapeake Bay Preservation Area (CBPA). All land in James City County designated by the board of supervisors pursuant to part III of the Chesapeake Bay Regulations and the Code of Virginia, section 10.1-2107 of the Act. Chesapeake Bay Preservation Area (CBPA) shall consist of resource protection areas (RPAs) and resource management areas (RMAs).

Development. The construction or substantial alteration of residential, commercial, industrial, institutional, recreational, transportation, or utility facilities or structures.

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

Floodplain. All lands that would be inundated by floodwater as a result of a storm event of a 100-year return interval as designated by Chapter 24, Section 24-586, et seq., of the County Code.

Highly erodible soils. Soils (excluding vegetation) with an erodibility index (EI) from sheet and rill erosion equal to or greater than eight. The erodibility index for any soil is defined by the *Universal Soil Loss Equation* as the product of the formula $RKLS/T$, as defined by the "Flood Security Act (F.S.A.) Manual" of August 1988, in the "Field Office Technical Guide" of the U.S. Department of Agriculture Soil Conservation Service, where K is the soil susceptibility to water erosion in the surface layer; R is the rainfall and runoff, LS is the combined effects of slope length and steepness; and T is the soil loss tolerance.

Highly permeable soils. Soils with a given potential to transmit water through the soil profile. Highly permeable soils are identified as any soil having a permeability equal to or greater than six inches of water movement per hour in any part of the soil profile to a depth of 72 inches (permeability groups "rapid" and

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"very rapid") as found in the *National Soils Survey Handbook* of ~~July 1983~~ November 1996, in the "Field Office Technical **Guide**" of the U.S. Department of ~~Agriculture Soil~~ *Natural Resources Conservation Service*.

Hydric soils. Soils that are saturated, flooded or ponded long enough during the growing season to support wetland vegetation.

Impervious cover. 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, streets, parking areas, and any concrete, asphalt or compacted aggregate surface. *Pervious pavement surfaces will not be considered as totally impervious but will be given partial credit based on the open area and runoff characteristics of the paver structure and the proposed installation.*

Land disturbing activity. As defined in the *Erosion and Sediment Control Ordinance*, section 8-2 of the county code.

Manager. The manager of development management or his designee.

Nonpoint source pollution (NSP). Includes, but is not limited to, the following stormwater-borne pollutants resulting from land use activities:

- (1) Sediment;
- (2) Nutrients, such as phosphorus and nitrogen;

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- (3) Bacteria; *such as fecal coliforms*
- (4) Viruses;
- (5) Oxygen depletion;
- (6) Hydrocarbons, such as fuels and lubricants;
- (7) Toxic metals, such as lead, zinc, copper;
- (8) Toxic chemicals;
- (9) Chlorides, *chlorinated water*; and
- (10) Increases in water temperature *above normal, ambient levels*.

Nontidal wetlands. Those wetlands, other than tidal wetlands, that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, as defined by the U.S. Environmental Protection Agency pursuant to section 8404 of the Federal Clean Water Act, in 33 CFR 328.3b, ~~dated November 13, 1986.~~

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Noxious weeds Weeds that are difficult to control effectively, such as Johnson Grass, Kudzu and multiflora rose. A complete list is contained in the Department of Conservation and Recreation, Division of Natural Heritage publication entitled *Invasive Plant Species of Virginia*.

Plan of development. Site plans, subdivision plans or other plans submitted pursuant to section 23-10 to ensure compliance with this chapter.

Public Road. 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 (section 10 1-560 et seq. of the Code of Virginia) and (ii) the Virginia Stormwater Management Act (section 10 1-603.1 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.

Redevelopment. The process of developing land that is or has been previously developed.

Resource management area (RMA). That component of the CBPA that is not classified as the resource protection area. Lands of particular sensitivity within RMAs include, but not limited to, nontidal wetlands not in RPAs floodplains, highly erodible soils, highly permeable soils, and hydric soils.

Resource protection area (RPA). That component of a CBPA comprised of lands at or near the shoreline 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. RPAs shall include:

~~connected by surface flow and contiguous to tidal wetlands or to tributary streams, and a 100-foot-wide buffer area, as defined in this chapter, adjacent to and landward of other RPA components:~~

(1) *Tidal wetlands;*

(2) *Nontidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow;*

(3) *Tidal shores;*

(4) *A buffer area not less than 100 feet in width located adjacent to and landward of the components listed in subdivisions 1 through 3 above, and along both sides of any water body with perennial flow.*

Runoff. That portion of precipitation that is discharged across the land surface through conveyance to one or more waterways.

Sightline. A line extending from a fixed point to a viewed object or area through an opening or passageway.

Silvicultural activities. 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.

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Substantial alteration. Expansion or modification of a building or development which would result in a disturbance of land exceeding an area of 2,500 square feet in the RMA only.

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

Tidal wetlands. Vegetated and nonvegetated wetlands, as defined in section ~~62.1-13.2~~ 28.2-1300 of the Code of Virginia.

~~*Tributary stream.* Any perennial stream that is so depicted on the most recent U.S. Geological Survey 7-1/2 minute topographic quadrangle map (scale 1:24,000).~~

Water Body with Perennial flow. A body of water that flows in a natural or man-made channel year-round during a year of normal precipitation. This includes, but is not limited to, **streams**, estuaries, and tidal embayments, and ~~may include drainage ditches or channels constructed in wetlands or from former natural drainageways, which convey perennial flow~~ **Lakes and ponds through which a perennial stream flows are part of the perennial stream.** Generally, the water table is located above the streambed for most of the year and groundwater is the primary source for stream flow. **The methodology to determine perennial flow shall be in accordance with section 23-10 (2)(d) of this chapter.**

Water-dependent facility. A development of land that cannot exist outside of the RPA and must be located on the shoreline because of the intrinsic nature of its operation. These facilities include, but are not limited to:

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- (1) Ports;
- (2) The intake and **outfall** structures of power plants, water treatment plans, 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. Tidal and nontidal wetlands.

Sec. 23-4. Designation of Chesapeake Bay Preservation Area (CBPA).

The board of supervisors hereby designates all of James City County, Virginia, as a CBPA. The CBPA is further delineated on the CBPA map as resource protection areas (RPAs) and resource **management** areas (RMAs). The CBPA map shows general locations of RPAs and RMAs and should be consulted by persons contemplating development. *Site specific determinations of RPAs shall occur through the Plan of Development review process or through the review of a Water Quality Impact Assessment developed pursuant to section 23-11 of this chapter.*

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Sec. 23-5. Permitted uses.

Permitted uses, special permit uses, accessory uses and special requirements shall be as established by the zoning district for that lot, parcel or acreage as specified in chapter 24 of this Code, unless specifically modified by the requirements set forth herein. All land-disturbing activities shall be prohibited on slopes of 25 percent or greater unless ~~permitted in other sections of this chapter and~~ determined by the manager to be consistent with the intent of this chapter.

Sec. 23-6. Lot size.

Lot size shall be subject to the requirements of the zoning ordinance; provided, that any lot shall have sufficient area outside the RPA to accommodate an intended use, in accordance with performance standards in section 23-9, when this use is not otherwise allowed in the RPA.

Cross reference-Zoning, Ch. 24.

Sec. 23-7. ~~Required conditions.~~ *Development criteria for resource protection areas.*

~~(a) All development and redevelopment exceeding 2,500 square feet of land disturbance shall be subject to a plan of development review process, including the approval of a site plan in accordance with the provisions of the zoning ordinance or a subdivision plan in accordance with the subdivision ordinance.~~

~~(b) Development in RPAs may be allowed only if it is water dependent or constitutes redevelopment.~~

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~~(c) A water quality impact assessment shall be required for any proposed development or redevelopment within RPAs and for any other development within RMAs when required by the manager because of the unique characteristics of the site or intensity of development or potential impacts on water quality or RPAS.~~

~~(d) Plans of development or water quality impact statements are not required for agricultural lands.~~

In addition to the general performance criteria set forth in section 23-9, the criteria in this section are applicable in Resource Protection Areas.

(a) Development in *RPAs* may be allowed only when permitted by the *manager* and if it (i) is water dependent; (ii) constitutes redevelopment; (iii) is a new use subject to the provisions of subsection (c)(2) of this section; (iv) is a road or driveway crossing *satisfying* the conditions set forth in subdivision (3) of this section; or (v) is a *flood* control or stormwater management facility *satisfying* the conditions set forth in subdivision (4) of this section.

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

a. It does not conflict with either the comprehensive plan or any applicable approved watershed management plan;

b. It complies with the performance criteria set forth in section 23-9 of this chapter;

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- c. *Any nonwater - 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.*
- (2) *Redevelopment on isolated redevelopment sites shall be permitted only if there is no increase in the amount of impervious cover and no further encroachment within the RPA and it shall conform to sections 23-9(b)(4) and (5), and the stormwater management requirements outlined under section 23-9(b)(8) of this chapter.*
- (3) *Roads and driveways not exempt under section 23-13 and which, therefore, must comply with the provisions of this chapter, may be constructed in or across RPAs if each of the following conditions are met:*
- a. *The manager makes a finding that there are no reasonable alternatives to aligning the road or drive in or across the RPA, and;*
 - b. *The alignment and design of the road or driveway are optimized, consistent with other applicable requirements, to minimize encroachment in the RPA and minimize adverse effects on water quality, and;*
 - c. *The design and construction of the road or driveway satisfy all applicable criteria of this chapter including the submission of a water quality impact assessment, and;*

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- d. *The manager reviews the plan for the road or driveway proposed in or across the RPA in coordination with the plan of development requirements as required under section 23-10.*
- (4) *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 RPAs provided that:*
- a. *The manager has conclusively established that location within the RPA is the optimum location, meaning that it is the best place to locate the facility from an engineering/functionality consideration regardless of the presence of an RPA;*
 - b. *The size of the facility is the minimum necessary to provide necessary flood control, stream channel protection, stormwater treatment or all three;*
 - c. *The facility must be consistent with a stormwater management program that has been approved by the Chesapeake Bay Local Assistance Board as a Phase I modification to the county's program;*
 - d. *All applicable permits for construction in state or federal waters must be obtained from the appropriate state and federal agencies;*
 - e. *Approval must be received from the county prior to construction; and,*

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f. Routine maintenance must be performed on the facility to assure that it continues to function as designed.

(b) A water quality impact assessment as outlined in section 23-11 of this chapter shall be required for any proposed land disturbance, development or redevelopment within RPAs and for any other development within RMAs when required by the manager because of the unique characteristics of the site, intensity of development, or potential impacts on water quality or RPAs in accordance with the provisions of section 23-11 of this chapter.

(c) Buffer area requirements. To minimize the adverse effects of human activities on the other components of RPAs, 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 during development where it does not exist. The buffer shall have three layers of vegetation comprised of native trees, shrubs, and ground covers. Where the buffer is being established, a buffer modification plan will be prepared that may incorporate existing vegetation. A list of acceptable native plants is available from the manager. A buffer area not less than 100 feet in width shall be located adjacent to and landward of other RPA components and along both sides of any tributary stream water body with perennial flow. The full buffer area shall be designated as the landward component of the RPA. The 100-foot buffer area shall be deemed to achieve a 75 percent reduction of sediments and a 40 percent redirection of nutrients. AN subdivision plats submitted for approval after August 6, 1990, shall clearly identify the boundaries of any RPA within the property. Such plat shall contain a statement that all existing vegetation within the RPA shall remain in its undisturbed natural state, except for vegetation weakened by age, storm, fire or other natural cause.

Developers shall install signs identifying the landward limit of the RPA. Signs shall be obtained, installed and maintained in accordance with guidelines established by the manager.

- (1) *Permitted buffer modifications. In order to maintain the functional value of the buffer area, existing vegetation may be removed upon approval by the manager of a buffer modification plan only to provide for reasonable sight lines, access paths, general wood lot management, and BMPs 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 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. *Access paths shall be constructed and surfaced so as to effectively control erosion;*
 - c. *Dead, diseased, or dying trees or shrubbery, or noxious weeds may be removed based upon the approval of the manager, who may require a recommendation by a professional forester or arborist; and*
 - 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 and restore the function of the buffer in accordance with the best available technical advice and applicable permit conditions or requirements.*

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(2) *Permitted buffer encroachments.*

- a. *When application of the buffer would result in the loss of a buildable area on a lot or parcel recorded prior to August 6, 1990, encroachments into the buffer may be allowed through an administrative process in accordance with the following criteria:*
1. *Encroachments into the buffer shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities;*
 2. *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; and*
 3. *The encroachment may not extend into the seaward 50 feet of the buffer area.*
- b. *When application of the buffer would result in the loss of a buildable area on a lot or parcel recorded between August 6, 1990, and January 1, 2004, encroachments into the buffer may be allowed through an administrative process in accordance with the following criteria:*
1. *The lot or parcel was created as a result of a legal process conducted in conformity with the county's subdivision regulations;*
 2. *Conditions or mitigation measures imposed through a previously approved exception shall be met;*
 3. *If the use of a best management practice (BMP) was previously required, the BMP shall be evaluated to determine if it continues to function effectively and, if necessary, the BMP shall be reestablished or repaired and maintained as required; and*
 4. *The criteria in subdivision 2 of this section shall be met.*

(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 BMP 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 BMP achieves water quality protection, pollutant removal and water resource conservation at least the equivalent of the 100-foot buffer area. If nutrient management is identified as the predominant water quality issue, a nutrient management plan, including soil tests, must be developed and implemented consistent with the Virginia Nutrient 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 75 feet of the 100-foot wide buffer area when agricultural BMPs 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 "Field Office Technical Guide" of the U.S. Department of Agriculture Natural*

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Resource Conservation Service. A nutrient management plan, including soil tests, must be developed and implemented consistent with the Virginia Nutrient Management Training and Certification Regulations (§ VAC 5-515 et seq.) administered by the Virginia Department of Conservation and Recreation. In conjunction with the remaining buffer area, this collection of BMPs shall be presumed to achieve water quality protection at least the equivalent of that provided by the 100-foot wide buffer area.

- c. *The buffer area is not required to be designated for agricultural drainage ditches if at least one BMP 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.*

- (4) *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 reestablished. In reestablishing the buffer, management measures shall be undertaken to provide woody vegetation that assures the buff functions are maintained or established.*

Sec. 23-8. Determining resource protection area boundaries.

The CBPA map shall be used as a guide to the general location of RPAs. *In addition, A reference materials that may be used as general guidance for estimating locations of Resource Protection Areas include federal and county topographic maps, wetland maps, and aerial photography. Site-specific boundaries of the RPA shall be determined by the applicant through the performance of an environmental inventory required as*

part of the plan of development review process or a water quality impact assessment. Site-specific boundaries determined by the applicant shall be reviewed and approved by the manager.

Sec. 23-9. Performance standards.

(a) ***Purpose and intent.*** The performance standards establish the means to minimize erosion and sedimentation potential, reduce land application of nutrients and toxics, and maximize rainwater infiltration. Natural ground cover, especially woody vegetation, is most efficient 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 **and infiltrates** stormwater runoff. Keeping impervious cover to a minimum enhances rainwater infiltration and effectively reduces ~~increases of~~ stormwater runoff potential.

The purpose and intent of these requirements is also to implement the following objectives: prevent a net increase in nonpoint source pollution from new development **and development on previously developed land where the runoff was treated by a water quality protection best management practice**; achieve a ten percent reduction in nonpoint source pollution from ~~redevelopment on previously developed land where the runoff was~~ **not treated by one or more water quality best management practices**; and achieve a 40 percent reduction in nonpoint source pollution from agricultural and silvicultural uses.

(b) ***General performance standards:***

- (1) Land disturbance shall be limited to the area necessary to provide for the ~~desired~~ **proposed** use or development.

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- a. In accordance with an approved plan of development, the limits of clearing **and/or** grading shall be clearly defined. These limits shall be clearly shown on submitted plans and physically marked on the development site in accordance with subsection (2)b. below.
 - b. Impervious cover shall not exceed 60 percent of the site *unless it can be demonstrated that the project will have the same impact on water quality as the project would have if it were 60 percent impervious. Demonstration of equivalent water quality will be through compliance with guidelines developed by the manager. For projects with an approved stormwater master plan, compliance with this impervious cover provision can be demonstrated on a project basis rather than an individual site basis. However, in no case shall impervious cover exceed the limits established in section 24-9(c)(4) of the zoning ordinance.*
 - c. Ingress and egress during construction shall be limited to one access point, unless otherwise approved by the manager.
- (2) ~~Indigenous~~ Existing vegetation shall be preserved to the maximum extent ~~possible~~ practicable, consistent with the use **and** or development permitted by an approved plan of development.
- a. Existing trees over 12 inches in diameter at breast height shall be preserved except in impervious areas *and as necessary to accommodate site grading. Upon approval by the manager, ~~D~~diseased* trees or trees weakened by age, storm, fire or other injury may be removed; provided, that when such removal results in a 20 percent or greater reduction in

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existing tree canopy, a sufficient number of trees with a 2 1/2 inch caliper shall be planted to restore the full canopy.

- b. Prior to clearing or grading, suitable protective barriers, such as safety fencing ~~or chainlink fencing~~, shall be erected outside of the dripline of any tree or stand of trees to be preserved unless otherwise approved on the clearing plan. 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 permitted.
- (4) *AN development and redevelopment exceeding 2,500 square feet of land disturbance shall be subject to a plan of development review process conducted in accordance with section 23-10 of this chapter.*
- (45) Any land-disturbing activity exceeding 2,500 square feet, including construction of all single-family houses, and *septic tanks and drainfields* shall comply with the requirements of chapter 8 of this Code.
- (56) All on-site sewage disposal systems not requiring a NPDES permit shall be pumped out at least once every five years. *However, in lieu of requiring proof of septic tank pump-out every five years, owners of on-site sewage disposal systems can submit documentation every five years, certified by*

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a sewage handler permitted by the Virginia Department of Health, that the septic system has been inspected, is functioning properly, and the tank does not need to have the effluent pumped out of it.

(67) 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~~ August 6, 1990, 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.

(78) For any development or redevelopment, stormwater runoff shall be controlled by the use of BMPs that ~~achieve the following:~~ *are consistent with the water quality protection provisions (4 VAC 3-20-71 et seq.) of the Virginia Stormwater Management Regulations (4 VAC 3-20). This consistency shall be demonstrated by compliance with the criteria and BMP facilities contained in the latest version of the James City County Guidelines for Design and Construction of Stormwater Management BMPs. In addition, increases in the quantity of stormwater runoff resulting from development or redevelopment shall be addressed by the requirements of chapter 8 of the County Code.*

~~a. For new development sites, the post-development non-point source pollution runoff load shall not exceed the predevelopment load, based on average land cover conditions;~~

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

~~1. In no case may the post-development nonpoint source pollution runoff load exceed the predevelopment runoff load;~~

la. If ~~BMPs are structural~~ compliance for a development is based in whole or part on the use of existing downstream onsite or offsite structural BMPs, evidence shall be provided that facilities are currently in good working order and performing at the design levels of service. The manager 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 chapter;

(89) 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 county laws and regulations shall be obtained and evidence of such submitted to the manager. *For those projects where no wetlands are proposed to be impacted or where the impacts do not require written authorization, documentation shall be submitted to the manager by a qualified wetlands professional attesting that the wetlands permitting process has been completed and no further documentation is necessary from the regulatory agencies.*

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(910) *All lands upon which agricultural activities are being conducted shall ~~have~~ undergo a soil and water quality conservation ~~plan assessment~~. Such ~~plans assessment~~ shall ~~be based upon the "Field Office Technical Guide" of the U.S. Department of Agriculture Soil Conservation Service~~ accomplish water quality protection consistent with this chapter. Such a plan shall ~~be approved by the local Soil and Water Conservation District by January 1, 1995~~ 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 this chapter. Plans of development or water quality impact assessments are not required for activities on agricultural lands except for land disturbing activities *not related to food and/or fiber production*.*

~~(c) *Buffer area requirements.* To minimize the adverse effects of human activities on the other components of RPAs, 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 during development where it does not exist. A buffer area not less than 100 feet in width shall be located adjacent to and landward of other RPA components and along both sides of any tributary stream. The full buffer area shall be designated as the landward component of the RPA. The 100-foot buffer area shall be deemed to achieve a 75 percent reduction of sediments and a 40 percent reduction of nutrients. A combination of a buffer area not less than 50 feet in width and appropriate BMPs located landward of the buffer area which collectively achieve water quality protection, pollutant removal, and water resource conservation at least the equivalent of the 100-foot buffer area may be employed in lieu of the 100-foot buffer if approved by the manager. All subdivision plats submitted for approval after August 6, 1990, shall clearly~~

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~~identify the boundaries of any RPA within the property. Such plat shall contain a statement that all existing vegetation within the RPA shall remain in its undisturbed natural state, except for vegetation weakened by age, storm, fire or other natural cause. Developers shall install signs identifying the landward limit of the RPA. Signs shall be obtained, installed and maintained in accordance with guidelines established by the manager. The following additional performance criteria shall apply:~~

~~(1) In order to maintain the functional value of the buffer area, indigenous vegetation may be removed only to provide for reasonable sight lines, access paths, general wood lot management, and BMPS, 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. Any removal of existing vegetation shall require approval following review of the plan of development;~~

~~b. Access paths shall be constructed and surfaced so as to effectively control erosion;~~

~~c. Dead, diseased, or dying trees or shrubbery may be removed at the discretion of the landowner based upon the approval of the manager, who may require a recommendation by a professional forester or arborist; and~~

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~~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 available technical advice and applicable permit conditions or requirements.~~

~~(2) When application of the buffer area would result in the loss of a buildable area on a lot or parcel recorded prior to October 1, 1989, modifications to the width of the buffer area may be allowed in accordance with the following criteria:~~

~~a. Modifications to the buffer area shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities;~~

~~b. Where possible an area equal to the area encroaching the buffer area shall be established elsewhere on the lot or parcel in a way to maximize water quality protection; and~~

~~c. In no case shall the reduced portion of the buffer area be less than 50 feet in width.~~

~~(3) On agricultural lands, 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. The agricultural buffer area may be reduced as follows:~~

~~a. To a minimum width of 50 feet when the adjacent land is enrolled in a federal, state or locally funded agricultural BMP program, and the program is being implemented; provided, that the combination of the reduced buffer area and BMPs achieve water quality~~

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~~protection, pollutant removal and water resource conservation at least the equivalent of the 100-foot buffer area;~~

~~o. To a minimum width of 25 feet when a soil and water quality conservation plan, as approved by the local soil and water conservation district, has been implemented on the adjacent land; provided, that the portion of the plan being implemented for the CBPA achieves water quality protection at least the equivalent of that provided by the 100-foot buffer area in the opinion of the local soil and water conservation district board. Such plan shall be based upon the "Field Office Technical Guide" of the U.S. Department of Agriculture Soil Conservation Service and accomplish water quality protection consistent with the Act and the regulations adopted pursuant to the Act.~~

~~c. The buffer area is not required for agricultural drainage ditches if the adjacent agricultural land has in place BMPs in accordance with a conservation plan approved by the local soil and water conservation district.~~

Sec. 23-10. Plan of development.

Any development or redevelopment exceeding 2,500 square feet of land disturbance in the CBPA 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 ~~unless the manager determines that due to the scope and nature of the proposed development certain of the required information is unnecessary to assure compliance with all applicable requirements of this chapter and any applicable approved watershed management plans.~~ Administration of the plan of development process shall be in accordance with chapter 24 of this Code for site plans and chapter

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19 of this Code for subdivision plans. The following plans or studies shall be submitted, unless otherwise provided for:

(1) *Site and subdivision plans.* Site plans in accordance with the provisions of chapter 24 of this Code or subdivision plans in accordance with chapter 19 of this Code; *In the event that chapter 24 does not require the preparation of a site plan for a development activity that exceeds 2,500 square feet of land disturbance, a plan will still be required for the purposes of this chapter that complies with items 2, 3, and 5 of this subsection.*

(2) *Environmental inventory.* An environmental inventory shall be submitted in conjunction with preliminary site plan or preliminary subdivision plan approval applications. *Except for the perennial stream determination required in item d of this subsection, this requirement may be waived by the manager when the proposed use or development would result in less than 5,000 square feet of disturbed area. For existing single-family lots in a RPA, showing items required by subsection a. through 4. below on the plat plan normally required as part of the building permit application shall satisfy the requirements for an environmental inventory. An environmental inventory is not required for existing single-family lots in the RMA.*

a. The environmental inventory shall be drawn to scale clearly delineating the following components:

1. Tidal wetlands;

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2. Tidal shores;
 3. Nontidal wetlands ~~in RPA~~ *connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow (i.e. RPA wetlands);*
 4. A 100-foot buffer area located adjacent to and landward of the components listed in items 1. through 3. above, and along both sides of any ~~tributary stream water body~~ *with perennial flow;*
 5. Nontidal wetlands ~~in RMA~~ *not included in item 3 (i.e. RMA wetlands);*
 6. ~~Hydric soils;~~ *100-year floodplains as designated by chapter 24 of the County Code;*
and
 7. Slopes 25 percent or greater.
- b. Wetlands delineations shall be performed consistent with the procedures specified in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, ~~1989~~ *currently approved for use by the Army Corps of Engineers.*

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c. The environmental inventory shall be drawn at the same scale as the preliminary site plan or subdivision plan and shall be certified as complete and accurate by a person or firm competent to make the inventory.

*d. The environmental inventory shall **include** a reliable, site specific evaluation to determine whether water bodies on or adjacent to the development site have perennial flow. This evaluation shall be **provided** by the person applying to use or develop the site using one of the county or state approved methods of in-field indicators of perennial flow unless the county has already made a field determination of perennial flow for the site. These site-specific determinations shall be **confirmed** by the manager and shall **be** used to establish the boundaries of the RPA.*

(3) *Clearing plan.* A clearing plan shall be submitted in conjunction with site plan review or subdivision plan review. No clearing or grading of any lot or parcel shall be permitted without an approved clearing plan. For existing single-family lots, a clearing line shown on the plat plan normally submitted as part of the building permit application shall satisfy clearing plan requirements. No clearing or grading shall occur on existing single-family lots until ~~the~~ a complete building permit application is ~~obtained~~ submitted.

Clearing plans shall be prepared and/or certified by design professionals practicing within their areas of competence as prescribed by the Code of Virginia.

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a. Contents of the plan:

1. The clearing plan shall be drawn to scale and clearly delineate the location, size and description of existing and proposed plant material. All existing trees on the site 12 inches or greater diameter at breast height (DBH) shall be shown on the clearing plan, or where there are groups of trees, the woodlines of the group may be outlined instead. The specific number of trees 12 inches or greater DBH to be preserved outside of the impervious cover and outside the groups shall be indicated on the plan. Trees to be removed and woodlines to be changed to create desired impervious cover shall be clearly delineated on the clearing 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 chapter, shall be shown on the clearing plan.
3. Within the RPA buffer area, trees to be removed for sight lines, ~~vistas~~, access paths, and BMPs, as provided for in this chapter, shall be shown on the plan. Vegetation required by this chapter to replace any existing trees within the buffer area shall also be shown on the clearing plan.
4. *Erosion and sediment controls shall be provided as necessary and in accordance with chapter 8 of the County Code.*

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b. Plant specifications:

1. All plant materials necessary to supplement the buffer area or vegetated areas outside the impervious cover shall be installed according to standard planting practices and procedures.
2. All supplementary or replacement plant materials shall be living and in 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.
3. Where areas to be preserved, as designated on an approved clearing plan, are encroached, replacement of **existing** trees and other vegetation will be achieved at a ratio of two planted trees to one removed. Replacement trees shall be a minimum 2 1/2 inches caliper at the time of planting.

c. Maintenance:

1. The applicant shall be responsible for the maintenance, repair and replacement of all vegetation as may be required by the provisions of this chapter.
2. In buffer areas and areas outside the impervious cover, 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 chapter.

- d. Installation and bonding requirements:
1. Where buffer areas are required, no certificate of occupancy shall be issued until the installation of required plant material to establish or supplement the buffer is completed, in accordance with the approved clearing plan.
 2. When the occupancy of a structure is desired prior to the completion of the plan, a certificate of occupancy may be issued only if the applicant provides a form of surety satisfactory to the county attorney in an amount equal to the costs of the remaining plant materials, related materials and installation costs
 3. All required plant material shall be installed and approved by the first planting season following issuance of a certificate of occupancy or the surety may be forfeited.
- (4) *Stormwater management plan.* A stormwater management plan shall be submitted as part of the plan of development process required by this chapter and in conjunction with site plan or subdivision plan preliminary approval. A stormwater management plan is not required for existing single family lots.

To control stormwater runoff structural BMPs shall be required for site plans with impervious cover exceeding ten percent of site area and for subdivisions with more than one-half dwelling unit per acre. *However, all projects are subject to the stormwater provisions of chapter 8 of this Code.* Single-family subdivisions of five lots or less shall not be subject to this requirement. Any contiguous property owned by the same subdivider, or deemed by the manager as a logical part of a contiguous subdivision, cannot be subdivided into greater than five lots without complying with the requirements of this chapter. BMPs shall be designed and constructed in accordance with guidelines established by the manager.

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

- a. Contents of the Plan: At a minimum, the stormwater management plan shall contain the following:
 1. Location and design of stormwater-control devices and BMPs.
 2. Procedures for implementing nonstructural stormwater-control practices

- b. The plan shall establish a long-term schedule for inspection and maintenance of stormwater management facilities that includes all maintenance requirements and persons responsible for performing maintenance. If the designated maintenance responsibility is with a party other than James City County, then a maintenance agreement shall be executed between the responsible party and the county.

- (5) ***Erosion and sediment-control plan.*** Erosion and sediment-control plan in accordance with chapter 8 of this Code.

- (6) ***Landscaping plan.*** Landscaping plan in accordance with chapter 24 of this Code.

- (7) ***Final plan.*** Final site plans or final subdivision plans for all lands within CBPAs shall include the following information:
 - a. Delineation of the RPA boundary;
 - b. Delineation of required buffer areas;
 - c. Delineation of RMA wetlands;
 - d. All wetlands permits required by law;
 - e. Delineation of slopes 25 percent or greater; and
 - f. BMP maintenance agreement to ensure proper maintenance of BMPs in order to continue their functions.

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Sec. 23-11. Water quality impact assessment.

A water quality impact assessment shall be required for any proposed land disturbance, development or redevelopment within RPAs and for development or redevelopment in RMAs, when required by the manager, because of the unique characteristics of the site or intensity of the proposed development or redevelopment or potential impact on water quality or RPAs. A water quality impact assessment shall identify impacts of proposed development on water quality and land in RPAs and recommended measures for mitigation of these impacts. Water quality impact assessments shall address NSP components set forth in section 23-3 of this chapter and shall follow guidelines established by the manager. Development or redevelopment within an RMA shall not require a water quality impact assessment when impervious cover is less than 40 percent of the total site area.

Sec. 23-12. Waivers for Noncomplying Structures.

~~It is not the intent of this chapter to prevent beneficial use or minor modification or alteration of structures legally existing prior to adoption of this chapter, or to prevent the practical use of lots or structures existing prior to adoption of this chapter whose proximity to a RPA leaves insufficient area suitable for building outside the RPA, or which lacks soil suitable for reserve or alternate drainfields, or which contains other factors which make the property practically unusable upon application of the requirements of this chapter. Waivers to all or part of this chapter may be granted by the manager to allow the beneficial use of property; provided that:~~

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~~(1) Waivers granted shall be the minimum necessary to provide for buildable area or practical beneficial use;~~

~~(2) Facilities, to the extent practical, which are not water dependent shall be located outside of a RPA;~~

~~(3) Waivers granted shall cause no increase in nonpoint source pollution load;~~

~~(4) Land disturbances in excess of 2,500 square feet shall comply with chapter 8 of this Code, and~~

~~(5) The application for waiver is made pursuant to section 23-15.~~

The manager through an administrative process may permit the continued use, alteration, or the expansion of any structure in existence on August 6, 1990, which is not in conformity with the provisions of this chapter. The process requires that:

(1) The manager grant a waiver for noncomplying structures on legal nonconforming lots or parcels to provide for alterations or expansions to such nonconforming structures provided that:

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

b. Any development or land disturbance exceeding an area of 2,500 square feet complies with all erosion and sediment control requirements of this chapter; and

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- c. *For expansion of a principal **noncomplying** structure, the manager makes the following findings:*
1. *The request for the waiver is the minimum **necessary** to **afford relief**;*
 2. *Granting the waiver will not confer upon the applicant **any specific privileges** that are denied by this **chapter** to other property owners in similar situations;*
 3. *The waiver is in harmony **with** the purpose and intent of this chapter and does not result in water **quality** degradation;*
 4. *The waiver is **not** based on conditions or **circumstances** that are self-created or self-imposed;*
 5. *Reasonable and appropriate conditions are imposed, as warranted, that will **prevent** the waiver **from** causing a degradation of water quality;*
 6. *Other findings, as appropriate and required by the manager are met; and*
 7. *In no case **shall** this provision apply to accessory structures as defined in chapter 24 of the County Code.*

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- d. The waiver does not **conflict** with the comprehensive plan or any applicable approved watershed management plan.*
- (2) *An application for a waiver **shall be made in writing** to the manager and **shall** include for the purpose of **proper** enforcement of this chapter, 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; and,*
- e. A plan that depicts the impacts to components of the environmental inventory as required by section 23-10(2) of this chapter, and identification of **the** amount of impact to each component.*
- (3) *A waiver shall become null and void if building foundations are **not completed** within twelve months from the **date** issued.*

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Sec. 23-13. Exemptions.

- (a) *Public utilities, railroads, public roads, and related facilities.*
- (1) Construction, installation, operation and maintenance of electric, *natural gas, fiber-optic*, and telephone transmission lines, railroads, and ~~activities of the Virginia Department of Transportation~~ *public roads* and their appurtenant structures in compliance with (i) the Erosion and Sediment Control Law (section 10.1-560 et seq. of the Code of Virginia) *and the Stormwater Management Act (section 10.1-603.1 et seq. of the Code of Virginia)*, (ii) ~~or an erosion and sediment control plan and a stormwater management plan approved by the Virginia Soil and Water Conservation Board Department of Conservation and Recreation, or~~ (iii) *this chapter's water quality protection criteria which is at least as stringent as the above state requirements* will be deemed to comply with the regulations adopted pursuant to the Act. *The exemption of public roads is further conditioned on the following:*
- a. *The road alignment and design have been optimized, consistent with all applicable requirements, to prevent or otherwise minimize the encroachment in the RPA and to minimize the adverse effects on water quality.*
- (2) Construction, installation and maintenance by public agencies of water and sewer, *natural gas, and underground telecommunications and cable television lines owned, permitted or both, by the county or a regional service authority* shall be exempt from this chapter; provided that:

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- a. To the degree possible, the location of such utilities and facilities should be outside RPAs;
- b. No more land shall be disturbed than is necessary to provide for the ~~desired~~ *proposed* utility installation;
- c. All such construction, installation and maintenance of such utilities and facilities shall be in compliance with all applicable federal, state and county permits and designed and conducted in a manner that protects water quality; and
- d. Any land disturbance exceeding an area of 2,500 square feet complies with chapter 8 of this Code.

(b) Exemptions for silvicultural activities. Silvicultural activities are exempt from the requirements of this chapter; provided, that silvicultural operations adhere to water quality protection procedures prescribed by the Department of Forestry in its *Virginia's Forestry Best Management Practices Handbook for Forestry Operations Water Quality*.

(c) Exemptions for Resource Protection Areas. The following land **disturbances** may be exempted by the manager from the requirements of **this** chapter provided that they comply with subdivisions 1 through 3 of this subdivision: (i) water wells; (ii) passive recreational facilities, such as boardwalks, trails, and pathways; and, (iii) historic preservation and archaeological activities.

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- (1) *Any required permits, except those to which this exception specifically applies, shall have been issued:*
- (2) *Sufficient and reasonable proof is submitted that the intended use will not deteriorate water quality; and,*
- (3) *Any land disturbance exceeding an area of 2,500 square feet shall comply with chapter 8 of this Code.*

See. 23-14. Exceptions.

~~(a) Exceptions to the requirements of this chapter may be granted by the manager, provided that exceptions to the requirements shall be the minimum necessary to afford relief and reasonable and appropriate conditions upon any exception granted shall be imposed as necessary so that the purpose and intent of the Act is preserved.~~

~~(b) Exceptions from these requirements may be granted for the following land disturbances in RPAs: water wells; passive recreational facilities, such as boardwalks, trails, and pathways; and, historic preservation and archaeological activities; provided, that it is demonstrated to the satisfaction of the manager that:~~

~~(1) Any required permits, except those to which this exception specifically applies, shall have been issued;~~

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~~(2) Sufficient and reasonable proof is submitted that the intended use will not deteriorate water quality,
and~~

~~(3) The intended use does not conflict with nearby planned or approved uses~~

Exceptions to the requirements of section 23-7 of this chapter may be granted, provided that:

(a) A request for an exception to the requirements of this section shall be made in writing to the Chesapeake Bay Board (Board), which is comprised of the members of the James City County Wetlands Board. The request 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 23-11.

(b) No later than 60 days after receipt of a complete exception request, the board shall hold a public hearing on the request. The board 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. Also, when giving any required notice to the owners, their agents, or the occupants of abutting property and property immediately across the street or road from the property affected, the notice shall be given by first-class mail to the last known address as shown on the current real estate tax assessment book or records

(c) The board 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 chapter if the board finds that:

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- (1) *The exception request is the **minimum** necessary to afford relief;*
- (2) *Granting the **exception** will not confer upon the applicant any special privileges **denied** by this chapter to other property owners similarly situated in the vicinity;*
- (3) *The **exception** request will be in harmony with the purpose and **intent** of this chapter, and is not of substantial detriment to water **quality**;*
- (4) *The exception request is not based on 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**; 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 cannot make the **required findings** or refuses to grant the exception, the Board 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.*

(e) *A request for an exception to the requirements of provisions of this chapter other than sections 23-7 shall be made in writing to the manager. The manager may grant these exceptions provided that:*

- (1) *Exceptions to the requirements are the minimum necessary to afford relief; and*
- (2) *Reasonable and appropriate conditions are placed upon any exception that is granted, as necessary, so that the purpose and intent of this chapter is preserved.*

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- (3) *Exceptions to Section 23-9 may be made provided ~~the findings~~ as noted in Section 23-14(c) are made.*

Sec. 23-15. Applications for ~~waivers or~~ exceptions.

Applications for ~~waivers or~~ exceptions shall be made in writing to *the board or* the manager as appropriate in accordance with sections 23-14(a) and (e), and shall include the following:

- (1) Name and address of applicant and property owner;
- (2) Legal description of the property and type of proposed use and development;
- (3) A sketch of the dimensions of the lot or parcel, location of buildings and proposed additions relative to the lot lines, the RPA, slopes greater than 25 percent and all wetlands; ~~and~~
- (4) Location and description of any existing private water supply or sewage system; *and*
- (5) *A water quality impact assessment completed in accordance with section 23-11 of this chapter and guidelines established by the manager.*
- (6) *For exceptions that must be granted by the Chesapeake Bay Board, a nonrefundable processing fee of \$100 shall accompany each application to cover the cost of processing.*

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Sec. 23-16. Granting waivers or exceptions.

The *board or the* manager may grant waivers or exceptions as set forth herein. When reviewing applications, the *board or the* manager will consider written comments from the county engineer, the director of planning and other interested parties. Waivers or exceptions granted will become null and void if building foundations are not completed within 12 months.

- (a) *The manager shall act on a complete ~~application~~ for an administrative waiver or ~~exception~~ as described in Section 23-15 ~~within~~ 21 calendar days of receipt;*
- (b) *The board shall make its determination within 30 days of the hearing; and*
- (c) *If ~~the~~ board or the manager fails to act within these ~~time frames~~, the application shall be deemed to be approved*

Sec. 23-17. Appeals.

(a) An owner of property subject to an administrative decision, order or requirement under this chapter may appeal by submitting a written application for review to the ~~wetlands board~~ ~~no~~ later than 30 days from the rendering of such decision, order or requirement. The board shall hear the appeal as soon as practical after receipt of the application. The appellant, the board of supervisors, the manager, the planning director and any person or agency expressing an interest in the matter shall be notified by the board not less than ten days

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prior to the date of the hearing. Published notice of the board's public meetings shall state that appeals from decision under the Chesapeake Bay Preservation Ordinance may be heard.

(b) In rendering its decision, the board shall balance the hardship to the property owner with the purpose, intent and objectives of this chapter. The board shall not decide in favor of the appellant unless it finds:

- (1) The hardship is not generally shared by other properties in the vicinity;
 - (2) The Chesapeake Bay, its tributaries and other properties in the vicinity will not be adversely affected; and
 - (3) The appellant acquired the property in good faith and the hardship is not self-inflicted
- (c) The board may impose conditions to the granting of any waiver or exception as it may deem necessary in the public interest, and may, to ensure compliance with the imposed conditions, require a cash escrow, bond with surety, letter of credit or other security as is acceptable to the county attorney.
- (d) *An owner of a property subject to a board decision, order, or requirement may appeal to the Circuit Court of James City County.*

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Sec. 23-18. Violations; penalties.

(a) Without limiting the remedies which may be obtained under this section, any person who violates any provision of this chapter or who violates, fails, neglects, or refuses to obey any variance or permit condition authorized under this chapter shall, upon such finding by the circuit court, be assessed a civil penalty not to exceed \$5,000.00 for each day of violation. Such penalties may, at the discretion of the court assessing them, be directed to be paid into the treasury of the county for the purpose of abating environmental damage to or restoring Chesapeake Bay Preservation Areas within the county, in such a manner as the court may direct by order

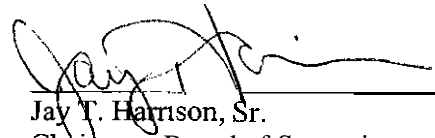
(b) Without limiting the remedies which may be obtained under this section, and with the consent of any person who has violated any provision of this chapter, or who has violated, failed, neglected, or refused to obey any variance or permit condition authorized under this chapter, the county may provide 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 \$10,000.00 for each violation. Such civil charges shall be paid into the treasury of the county for the purpose of abating environmental damage to or restoring Chesapeake Bay Preservation Areas in the county. Civil charges shall be in lieu of any appropriate civil penalty that could be imposed under subdivision (a) of this section. Civil charges may be in addition to the costs of any restoration required by the Board of *Supervisors*.

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(c) In addition to, and not in lieu of, the penalties prescribed in sections (a) and (b) hereof, the county may apply to the circuit court for an injunction against the continuing violation of any of the provisions of this ordinance and may seek any other remedy authorized by law.

State law reference - Virginia Code § 10.1-2109(E)

This ordinance shall become effective January 1, 2004.



Jay T. Harrison, Sr.
Chairman, Board of Supervisors

| SUPERVISOR | VOTE |
|------------|------|
| MCGLENNON | AYE |
| BROWN | AYE |
| GOODSON | AYE |
| KENNEDY | AYE |
| HARRISON | AYE |

ATTEST:



Sanford B. Wanner
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 25th day of November, 2003