

ADOPTED

OCT 14 2025

**Board of Supervisors
James City County, VA**

ORDINANCE NO. 183A-13

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 23, CHESAPEAKE BAY PRESERVATION, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY REPEALING SECTION 23-1, SHORT TITLE; SECTION 23-2, STATEMENT OF INTENT; 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 23-7, DEVELOPMENT CRITERIA FOR RPAS; SECTION 23-8, DETERMINING RESOURCE PROTECTION AREA BOUNDARIES; SECTION 23-9, PERFORMANCE STANDARDS; SECTION 23-9.1, PERFORMANCE STANDARDS FOR RETAINING WALLS; SECTION 23-10, PLAN OF DEVELOPMENT; SECTION 23-11, WATER QUALITY IMPACT ASSESSMENT; SECTION 23-12, WAIVERS FOR NONCOMPLYING STRUCTURES; SECTION 23-13, EXEMPTIONS; SECTION 23-14, EXCEPTIONS; SECTION 23-15; APPLICATIONS FOR EXCEPTIONS; SECTION 23-16, GRANTING WAIVERS OR EXCEPTIONS; SECTION 23-17, APPEALS; SECTION 23-18, VIOLATIONS; PENALTIES; AND BY AMENDING CHAPTER 23 CHESAPEAKE BAY PRESERVATION BY REPLACING WITH NEW SECTION 23-1, SHORT TITLE; SECTION 23-2, STATEMENT OF INTENT; 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 23-7, DEVELOPMENT CRITERIA FOR RPAS; SECTION 23-8, DETERMINING RESOURCE PROTECTION AREA BOUNDARIES; SECTION 23-9, PERFORMANCE STANDARDS; SECTION 23-9.1, PERFORMANCE STANDARDS FOR RETAINING WALLS; SECTION 23-10, PLAN OF DEVELOPMENT; SECTION 23-11, WATER QUALITY IMPACT ASSESSMENT; SECTION 23-11.1, RESILIENCY ASSESSMENT; SECTION 23-12, WAIVERS FOR NONCOMPLYING STRUCTURES; SECTION 23-13, EXEMPTIONS; SECTION 23-14, EXCEPTIONS; SECTION 23-15; APPLICATIONS FOR EXCEPTIONS; SECTION 23-16, GRANTING WAIVERS OR EXCEPTIONS; SECTION 23-17, APPEALS; SECTION 23-18, VIOLATIONS; PENALTIES.

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 repealing Section 23-1, Short title; Section 23-2, Statement of intent; 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 23-7, Development criteria for RPAs; Section 23-8, Determining resource protection area boundaries; Section 23-9, Performance standards; Section 23-9.1, Performance standards for retaining walls; Section 23-10, Plan of development; Section 23-11, Water quality impact assessment; Section 23-12, Waivers for noncomplying structures; Section 23-13, Exemptions; Section 23-14, Exceptions; Section 23-15;

Applications for exceptions; Section 23-16, Granting waivers or exceptions; Section 23-17, Appeals; Section 23-18, Violations; penalties; and by amending Chapter 23 Chesapeake Bay Preservation by replacing with new Section 23-1, Short title; Section 23-2, Statement of intent; 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 23-7, Development criteria for RPAs; Section 23-8, Determining resource protection area boundaries; Section 23-9, Performance standards; Section 23-9.1, Performance standards for retaining walls; Section 23-10, Plan of development; Section 23-11, Water quality impact assessment; Section 23-11.1, Resiliency assessment; Section 23-12, Waivers for noncomplying structures; Section 23-13, Exemptions; Section 23-14, Exceptions; Section 23-15; Applications for exceptions; Section 23-16, Granting waivers or exceptions; Section 23-17, Appeals; Section 23-18, Violations; penalties.

Chapter 23. Chesapeake Bay Preservation

Sec. 23-1. Short title.

~~This chapter shall be known and may be cited as “The Chesapeake Bay Preservation Ordinance” (ordinance).~~

Sec. 23-2. Statement of intent.

~~The Chesapeake Bay Preservation Act (Act), chapter 3.1 of title 62.1 of the Code of Virginia, recognizes that healthy state and local economies are integrally related to each other and the environmental health of the Chesapeake Bay. The purpose of this chapter is to control and regulate runoff at the source to protect against and minimize pollution and deposition of sediment in wetlands, streams and lakes in James City County which are tributaries of the Chesapeake Bay. This chapter is intended to assist in protection of the Chesapeake Bay and its tributaries from nonpoint source pollution from land uses or appurtenances within the Chesapeake Bay drainage area. Regulations in this chapter are necessary for:~~

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

~~This chapter establishes criteria used by James City County in granting, denying or modifying requests to subdivide or develop land in Chesapeake Bay Preservation Areas.~~

Sec. 23-3. Definitions.

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

Act. The Chesapeake Bay Preservation Act, article 2.5 of chapter 3.1 of title 62.1 of the Code of Virginia.

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 management practice (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.

Chesapeake Bay Preservation Act land disturbing activity. As defined in section 8-21 of the county code.

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 in 9VAC25-830-70 et seq. and §§ 62.1-44.15:73 of the Act. The 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.

Erosion and Sediment Control Law. Sections 62.1-44.15:51-66 of the Code of Virginia.

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 $RKLS-T$, 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 "very rapid") as found in the National Soil Survey Handbook of November 1996, in the "Field Office Technical Guide" of the U.S. Department of Agriculture 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.~~

~~Infill. Utilization of vacant land in previously developed areas.~~

~~Local program. Measures by which a local government complies with the Act and this chapter.~~

~~Local program adoption date. Date a local government meets the requirements of subdivisions 1 and 2 of 9VAC25-830-60.~~

~~Land disturbing activity. As defined in the section 8-21 of the county code.~~

~~Manager. The director of the county division of engineering and resource protection.~~

~~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;~~
- ~~(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 404 of the Federal Clean Water Act, in 33 CFR 328.3b.~~

~~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 and (ii) the Virginia~~

~~Stormwater Management Act. 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 are 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 land 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:~~

- ~~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 conveyances 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.~~

~~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 28.2-1300 of the Code of Virginia.~~

~~Tidewater Virginia. Those jurisdictions named in § 62.1-44.15:68 of the Act.~~

~~Virginia Erosion and Sediment Control program authority or VESCP authority. As defined in section 8-21 of the county code.~~

~~Virginia Stormwater Management Act. Article 2.3 of chapter 3.1 of title 62.1 of the Code of Virginia.~~

~~Virginia Stormwater Management Program authority or VSMP authority. As defined in section 8-21 of the county code.~~

~~*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:~~

- ~~(1) Ports;~~
- ~~(2) The intake and outfall structures of power plants, water treatment plants, sewage treatment plants and storm sewers;~~
- ~~(3) Marinas and other boat docking structures;~~
- ~~(4) Beaches and other public water-oriented recreation areas; and~~
- ~~(5) Fisheries or other marine resources facilities.~~

~~*Wetlands.* 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.~~

~~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 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.~~

~~Sec. 23-7. Development criteria for RPAs.~~

~~In addition to the general performance criteria set forth in section 23-9, the criteria in this section are applicable in RPAs.~~

~~(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;~~

~~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 in 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;~~

~~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 such facilities are allowed and constructed in accordance with the Virginia Stormwater Management Act and this chapter, and 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;~~

- ~~e. The facility must be consistent with a comprehensive stormwater program plan developed and approved in accordance with 9VAC25-870-92 or with a VSMP that has been approved prior to July 1, 2012, by the State Water Control Board, the Chesapeake Bay Local Assistance Board prior to its abolition on July 1, 2012, or the Department of Conservation and Recreation;~~
- ~~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,~~
- ~~f. Routine maintenance must be performed on the facility to assure that it continues to function as designed.~~

~~It is not the intent of this subdivision to allow a stormwater management/BMP facility that collects and treats runoff from only an individual lot or some portion of the lot to be located within a resource protection area.~~

- ~~(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 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 reduction of nutrients. All 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;~~
 - ~~e. 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.~~

~~(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 (c)(2)a. 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 VAC50-85) 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 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 (4 VAC 50-85) 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.~~

~~e. 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 buffer functions are maintained or established~~

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

~~The county CBPA map shall be used as a guide to the general location of RPAs. In addition, reference materials that may be used as general guidance for estimating locations of Resource Protection Areas include federal, state 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.~~

~~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 development 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 proposed use or development.~~

- ~~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 24-99(e)(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) Existing vegetation shall be preserved to the maximum extent practicable, consistent with the use 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, 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 existing tree canopy, a sufficient number of trees with a 1 ½ inch caliper shall be planted to restore the full canopy.~~
 - ~~b. Prior to clearing or grading, suitable protective barriers, such as safety 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) All 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.~~
- ~~(5) 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.~~
- ~~(6) All on site sewage disposal systems not requiring a National Pollutant Discharge Elimination System 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 an operator or on-site soil evaluator licensed or certified pursuant to §§ 54.1-2300 et seq. of the Code of Virginia as being qualified to operate, maintain, or design on-site sewage systems, that the septic system has been inspected, is functioning properly, and the tank does not need to have the effluent pumped out of it.~~
- ~~(7) 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 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.~~

- ~~(8) Any Chesapeake Bay Preservation Act land disturbing activity shall comply with the requirements of 9VAC25-870-51 and 9VAC25-870-103 of the Virginia Administrative Code and chapter 8-22(b) of the county code:~~
- ~~a. A stormwater management plan consistent with these requirements must be designed and implemented during the land disturbing activity;~~
 - ~~b. Prior to land disturbance, the stormwater management plan must be approved by the Virginia Stormwater Management Program authority;~~
 - ~~c. Exceptions to technical criteria for regulated land disturbing activities (Part IIB or Part IIC) may be requested in accordance with 9VAC25-870-57 and section 8-28(g) of the county code; and~~
 - ~~d. Long term maintenance of stormwater management facilities shall be provided for and conducted in accordance with 9VAC25-870-58 and section 8-29 of the county code.~~
- ~~(9) For any development or redevelopment BMPs that is designated as a Chesapeake Bay Preservation Act land disturbing activity or is subject to grandfathering provisions of 9VAC25-870-48 of the Virginia Administrative Code and section 8-28(e) of the county code and deemed subject to Part IIC technical criteria of the VSMP Regulations, 9VAC25-870-93 through 99, the following applies:~~
- ~~a. If stormwater management compliance is based in whole or part on the use of existing downstream onsite or offsite structural stormwater management and/or BMP facility, evidence shall be provided that such facilities are currently in good working order and performing at the design levels of service;~~
 - ~~b. The manager may require a review of both the original design and maintenance plans to verify this provision; and~~
 - ~~c. A new maintenance agreement may be required to ensure compliance with this chapter;~~
- ~~(10) 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.~~
- ~~(11) All lands upon which agricultural activities are being conducted shall undergo a soil and water quality conservation assessment. Such assessment shall evaluate the effectiveness of existing practices pertaining to soil erosion and sediment control, nutrient management and management of pesticides, and where necessary, results in a plan that outlines additional practices needed to ensure that water quality protection is accomplished consistent with 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.~~

Sec. 23-9.1 Performance standards for retaining walls.

~~Retaining walls constructed in the CPBA supporting three feet or more of ordinary unbalanced fill, or constructed for the purpose of impounding Class I, II, or III A liquids, or supporting a surcharge other than ordinary unbalanced fill, or located in a flood zone, or that are part of a stormwater BMP shall require a building permit and shall be subject to the following:~~

- ~~(1) Upon completion of the wall construction and prior to the issuance of any final inspections by the office of building safety and permits, certifications of the soil compaction and drainage system by an appropriate licensed design professional and a certification that an appropriate licensed design professional has overseen construction of the wall shall be provided to the director of stormwater and resource protection. In addition, in accordance with USBC Section 111.2 and when required by USBC Section 1704, a Statement of Special Inspections shall be provided by the registered design professional licensed in Virginia and shall be submitted to the office of building safety and permits within seven days of the inspections being performed.~~
- ~~(2) The materials used to construct the wall shall be masonry, stone, vinyl, aluminum, and/or steel. Marine grade timber may only be used for retaining walls located on a single family residential lot when the total wall height is less than six feet.~~
- ~~(3) Should the overall height of the wall exceed six feet of unbalanced fill (i.e., finished grade to finished grade):~~
 - ~~a. The wall shall be broken into multiple stepped walls with a maximum height of six feet for each wall segment, and a minimum horizontal separation between the wall segments of at least nine feet;~~
 - ~~b. Guards for fall protection (e.g., fencing) are required to be installed at the top of the wall;~~
 - ~~e. The total of all wall segments shall not exceed 24 feet in height;~~
- ~~(4) A minimum 12 foot wide access easement shall be located along both the bottom of the wall and along the top of the wall. Such easement shall be able to support a tracked vehicle, shall not be located within any required landscape buffer, shall be exclusive of any public or private right of way, and shall be free of any structures or utilities; provided, however:~~
 - ~~a. no such access easement shall be required at the bottom of the wall when the function of the wall is to impound or retain standing water or liquids, or other similar environmental constraints exist as determined by the director of stormwater and resource protection;~~
 - ~~b. landscaping may be permitted within the easements as approved by the director of stormwater and resource protection.~~
- ~~(5) The design of the retaining wall system shall be such that its construction and removal of the entire wall shall be possible without impacting the foundations or proposed foundations for habitable structures.~~
- ~~(6) The design of the retaining wall system shall include a maintenance plan, which has been prepared by an appropriate licensed design professional. A copy of the retaining wall system maintenance plan shall be submitted to the office of building safety and permits prior to the issuance of any final inspections. The maintenance plan shall include the estimated life cycle of the retaining wall system. Over the anticipated life span of the retaining wall system, the maintenance plan shall also include recommended maintenance at corresponding time intervals.~~

- ~~(7) At each time interval noted within the maintenance plan, an appropriate licensed professional shall complete the recommended maintenance. Within seven days of such maintenance being performed, the individual performing the maintenance shall submit a copy of their report to the office of building safety and permits.~~
- ~~(8) Prior to the issuance of any final inspection, the property owner shall record restrictive covenants noting that there is a retaining wall on the property, identifying the easement(s) required by subsection (4), and committing to maintaining the retaining wall in accordance with the maintenance plan provided by an appropriate licensed design professional, and providing evidence of such maintenance to the county in accordance with the requirements of this section. Such restrictive covenants shall be in a form acceptable to the county attorney.~~
- ~~(9) Exclusions.~~
- ~~a. This section shall not apply to decorative walls or retaining walls less than three feet in height.~~
 - ~~b. This section shall not apply to any dwelling foundation, crawl space, or in the building materials or finishes specific to the construction of a single-family dwelling unit.~~
 - ~~c. This section shall not apply to bulkheads and seawalls that are used to separate the land from tidal waters.~~
 - ~~e. Retaining walls for industrial uses, as enumerated in chapter 24, Zoning, article V, Districts, as amended, are not subject to subsection (3)a. above.~~
- ~~(10) Exceptions.~~
- ~~a. For retaining walls located on a single family residential lot that do not cross a property line, the director of building safety and permits or designee may grant an administrative waiver to the height limit in subsection (3); however, each wall segment shall not exceed six feet and six inches.~~
 - ~~b. Unless otherwise permitted by (10)a. or (10)b, upon application for a height limitation waiver, the payment of appropriate fees, notification of adjacent property owners and following a public hearing, the board of supervisors may grant a height limitation waiver for a single wall taller than six feet in height or for a total wall height of greater than 24 feet, upon finding that:
 - ~~1. Such structure will not obstruct light from adjacent property;~~
 - ~~2. Such structure will not impair the enjoyment of historic attractions and areas of significant historic interest;~~
 - ~~3. Such structure will not impair surrounding developments, adjacent property, or the rural or historic nature of the county;~~
 - ~~4. Such structure will not impair property values in the surrounding area;~~
 - ~~5. The visual impact to adjoining properties and roadways is minimized;~~
 - ~~6. Such structure is adequately designed and served from the standpoint of safety from the perspective of the county fire chief, the director of stormwater and resource protection, and the director of the building safety and permits division;~~~~

- ~~7. The on going costs of maintenance or repair of such structure would not unduly burden a property owner or homeowners association;~~
 - ~~8. Such structure would not be contrary to the public health, safety or general welfare; and~~
 - ~~9. Such structure is necessary due to unusual character of the property, including dimensions or other environmental considerations.~~
- ~~c. Upon application and the payment of appropriate fees, the board of adjustments and appeals may grant an exception for the use of a material other than listed in subsection (2), upon finding that:~~
- ~~1. The use of the alternative material will not impair the enjoyment of historic attractions and areas of significant historic interest;~~
 - ~~2. The use of the alternative material will not impair surrounding developments, adjacent property, or the rural or historic nature of the county;~~
 - ~~3. The use of the alternative material will not impair property values in the surrounding area;~~
 - ~~4. The visual impact to adjoining properties and roadways is minimized as determined by the director of planning;~~
 - ~~5. Such structure is adequately designed and served from the standpoint of safety from the perspective of the county fire chief, the director of stormwater and resource protection, and the director of the building safety and permits division;~~
 - ~~6. The on going costs of maintenance or repair of such alternative material would not unduly burden a property owner or homeowners association;~~
 - ~~7. Such alternative material would not be contrary to the public health, safety or general welfare; and~~
 - ~~8. Such materials will not materially shorten the life span of the retaining wall system when compared to the full list of other materials permitted in subsection (2) so as to unduly burden a property owner or homeowners association.~~

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 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 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 the county code or subdivision plans in accordance with ~~chapter 19~~ of the county 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. 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;~~
 - ~~2. Tidal shores;~~
 - ~~3. Nontidal wetlands 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 water body with perennial flow;~~
 - ~~5. Nontidal wetlands not included in item 3 (i.e., RMA wetlands);~~
 - ~~6. 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 currently approved for use by the Army Corps of Engineers.~~
- ~~e. 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 a complete building permit application is 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.~~

~~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.~~
- ~~5. The clearing plan shall clearly delineate the location, size, and description of existing and proposed retaining walls subject to the performance standards found in section 23-9.1.~~

~~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 1 ½ inches caliper at the time of planting.~~

~~e. 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 ~~chapter 8~~ of the county code and in conjunction with site plan or subdivision plan preliminary approval. A stormwater management plan is not required for individual single family detached residential structures that utilize an agreement in lieu of a stormwater management plan in accordance with section 8-25(a) of the county code. Performance assurances shall be provided that all stormwater management and/or BMP facilities 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 must meet the requirements of section 8-25 of the county code.~~
 - ~~b. Plan must be submitted and reviewed in accordance with 9VAC25-870-108 and section 8-27(a) of the county code;~~
 - ~~c. Prior to land disturbance, the stormwater management plan must be approved by the VSMP authority;~~
 - ~~d. Exceptions to technical criteria for regulated land disturbing activities (Part IIB or Part IIC) may be requested in accordance with 9VAC25-870-57 and section 8-28(g) of the county code; and~~
 - ~~e. Long term maintenance of stormwater management facilities shall be provided for and conducted in accordance with 9VAC25-870-58 and section 8-29 of the county code.~~~~
- ~~(5) *Erosion and sediment control plan.* An erosion and sediment control plan consistent with the requirements of the Erosion and Sediment Control Law and regulations and ~~chapter 8~~ of the county code must be designed and implemented during land disturbing activities. Prior to land disturbance, this plan must be approved by the VESCP authority.~~
- ~~(6) *Landscaping plan.* Landscaping plan in accordance with ~~chapter 24~~ of the county 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.~~~~

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.

~~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 may grant a waiver for noncomplying structures on legal nonconforming lots or parcels to provide for alterations or expansions to such nonconforming structures provided that:
 - ~~(b) There will be no increase in nonpoint source pollution load;~~
 - ~~(c) 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~~
 - ~~(d) 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.~~~~
 - ~~(e) 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,~~
 - (f) ~~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 12 months from the date issued.~~

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 public roads and their appurtenant structures in compliance with (i) the Erosion and Sediment Control Law (sections 62.1-44.15:51:66 of the Code of Virginia) and the Stormwater Management Act (section 62.1-44.15:24-50 of the Code of Virginia), (ii) an erosion and sediment control plan and a stormwater management plan approved by the Virginia Department of Environmental Quality, 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:~~

- 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 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 for 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.~~

- ~~(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.

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 section 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:
 - ~~(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) 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.~~
- ~~(3) Exceptions to section 23-9 may be made provided the findings as noted in section 23-14(e) are made.~~

Sec. 23-15. Applications for exceptions.

~~Applications for 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;~~
- ~~(4) Location and description of any existing private water supply or sewage system;~~
- ~~(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 set forth in Appendix A—Fee Schedule for Development Related Permits shall accompany each application to cover the cost of processing;~~
- ~~(7) For exceptions that must be granted by the manager, a nonrefundable processing fee set forth in Appendix A—Fee Schedule for Development Related Permits shall accompany each application to cover the cost of processing. This fee shall be collected for any administrative approval, waiver, exception, exemption, variance and buffer modification which may be necessary through the plan of development process as outlined in sections 23-5, 23-7(a), 23-7(e), 23-9, 23-10, 23-12, 23-13, and 23-14(e).~~
- ~~(8) Payment of any permit fees established in section 23-15 shall be waived for the county, any entity created solely by the county and those regional entities to which the county is a party provided that: (1) The other parties to the regional entity similarly waive fees; and (2) The regional entity has locations in more than one locality.~~

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~~

- (e) 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 request for review to the 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 request. 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 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, exception or appeal 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 no later than 30 days from the rendering of such decision, order or requirement.

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.
- (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.

Chapter 23. Chesapeake Bay Preservation

Sec. 23-1. Short title.

This chapter shall be known and may be cited as “The Chesapeake Bay Preservation Ordinance” (ordinance).

Sec. 23-2. Statement of intent.

The Chesapeake Bay Preservation Act (Act), chapter 3.1 of title 62.1 of the Code of Virginia, recognizes that healthy state and local economies are integrally related to each other and the environmental health of the Chesapeake Bay. The purpose of this chapter is to control and regulate runoff at the source to protect against and minimize pollution and deposition of sediment in wetlands, streams and lakes in James City County which are tributaries of the Chesapeake Bay. This chapter is intended to assist in protection of the Chesapeake Bay and its tributaries from nonpoint source pollution from land uses or appurtenances within the Chesapeake Bay drainage area. Regulations in this chapter are necessary for:

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

This chapter establishes criteria used by James City County in granting, denying or modifying requests to subdivide or develop land in Chesapeake Bay Preservation Areas.

Sec. 23-3. Definitions.

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

Accessory structures or uses. Any structure located on a lot or parcel not identified as a principal structure as defined herein. Accessory structures include, but are not limited to, detached garages, gazebos, free standing decks, storage buildings or tool sheds, guest houses, and similar forms of development that are incidental and subordinate to the principal structure. Accessory uses include, but are not limited to, in-ground pools, patios, terraces, tennis courts, synthetic turf, and other impermeable landings that do not permit infiltration to groundwater. Any modification or expansion to an accessory use must be reviewed and approved using a formal exception process.

Act. The Chesapeake Bay Preservation Act, article 2.5 of chapter 3.1 of title 62.1 of the Code of Virginia.

Adaptation measure. A project, practice, or approach to mitigate or address an impact of climate change including sea-level rise, storm surge, and flooding including increased or recurrent flooding.

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.

Applicant. Any person submitting any application required or permitted pursuant to any of the provisions of this Ordinance, and any person on whose behalf such an application is submitted.

Best management practice (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.

Best management practice, structural. A best management practice that requires the design and certification of a licensed design professional.

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.

Canopy tree. A tree that reaches 35 feet in height or taller when mature.

Channelward: in the direction of the channel or waterway.

Chesapeake Bay Preservation Act land-disturbing activity. As defined in section 8-2 of the county code.

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 in 9VAC25-830-70 et seq. and §§ 62.1-44.15:73 of the Act. The CBPA shall consist of Resource Protection Areas (RPAs) and Resource Management Areas (RMAs).

Development. The construction, substantial alteration, or installation of residential, commercial, industrial, institutional, recreational, transportation, or utility facilities or structures, or any land disturbance associated therewith.

Diameter at breast height (DBH). The diameter of a tree measured at a point four and one-half (4-1/2) feet above the existing grade, or the natural surface or contour of a site.

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

Erosion and Sediment Control Law. Sections 62.1-44.15:51-66 of the Code of Virginia.

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

Floodplain. As defined in section 24-2 of the county code.

Freeboard. As defined in section 24-2 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 $RKLS-T$, 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 “very rapid”) as found in the National Soil Survey Handbook of November 1996, in the “Field Office Technical Guide” of the U.S. Department of Agriculture 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.

Infill. Utilization of vacant land in previously developed areas.

Land Disturbance or Land disturbing activity. As defined in section 8-2 of the county code.

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

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

Local program. Measures by which a local government complies with the Act and this chapter.

Local program adoption date. Date a local government meets the requirements of subdivisions 1 and 2 of 9VAC25-830-60.

Manager. The director of the county division of stormwater and resource protection or designee.

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

Nature-based solution. An approach that reduces the impacts of sea-level rise, flooding, and storm events through the use of environmental processes and natural systems.

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

Nontidal wetlands. 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 404 of the Federal Clean Water Act, in 33 CFR 328.3b.

Noxious weeds. A complete list is provided from the Department of Conservation and Recreation, Division of Natural Heritage publication entitled Virginia Invasive Plant Species List. As defined in Va. Code §3.2-800, any living plant, or part thereof, declared by the Board of Agriculture and Consumer Services through

regulations to be detrimental to crops, surface waters, including lakes, or other desirable plants, livestock, land, or other property, or to be injurious to public health, the environment, or the economy, except when in-state production of such living plant, or part thereof, is commercially viable or such living plant is commercially propagated in Virginia. Including, but not limited to plants such as Johnson grass, kudzu, and multiflora rose.

Other structural and organic materials. Materials or features that provide added protection or stability for the natural shoreline habitat components of a living shoreline that attenuate wave energy and do not interfere with natural coastal processes or the natural continuity of the land-water interface. They may be composed of a variety of natural or man-made materials, including rock, concrete, or vegetation-based fiber such as coir logs, oyster shells, and geotextiles; however, structural features shall be free from contaminants, including structural metal such as rebar, and shall be adequately secured to prevent full or partial dislodging or detachment due to wave action or other natural forces as per Va. Code § 28.2-104.1. This term is referenced in the definition for Living Shoreline.

Person. An individual, fiduciary, corporation, firm, partnership, association, organization, or any other entity or combination thereof.

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

Principal structure. A primary structure that is necessary to use the land in the manner permitted by the underlying zoning classification. For the purposes of this ordinance the term principal structure shall not include appurtenances including (i) a required parking area as set forth in the chapter 24 of this code, (ii) a driveway connecting the required parking area to the public right-of-way, and (iii) a sidewalk connecting any outside entrance or exit of the principal structure to the required parking area.

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 and (ii) the Virginia Stormwater Management Act. 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.

Resilience. The capability to anticipate, prepare for, respond to, and recover from significant multi-hazard threats with minimum damage to social well-being, health, the economy, and the environment.

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 are 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 land 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:

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 conveyances to one or more waterways.

Shrub. A woody plant smaller than 12 feet when mature, usually having multiple permanent stems branching from or near the ground.

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.

Special flood hazard area (SFHA). The land in the flood plain subject to a one (1) percent or greater chance of flooding in any given year.

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

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 28.2-1300 of the Code of Virginia.

Tidewater Virginia. Those jurisdictions named in § 62.1-44.15:68 of the Act.

Understory tree. A tree that reaches 12 to 35 feet in height when mature.

Use. An activity on the land other than development including agriculture, horticulture, and silviculture.

Virginia Erosion and Stormwater Management Act or VESMA. Article 2.3 of chapter 3.1 of title 62.1 of the Code of Virginia.

Virginia Erosion and Stormwater Management Program authority or VESMP authority. As defined in chapter 8 of the county code.

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:

- (1) Ports;
- (2) The intake and outfall structures of power plants, water treatment plants, sewage treatment plants and storm sewers;
- (3) Marinas and other boat docking structures;
- (4) Beaches and other public water-oriented recreation areas; and
- (5) Fisheries or other marine resources facilities.

Wetlands. 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.

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 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.

Sec. 23-7. Development criteria for RPAs.

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

- (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 resiliency assessment set forth in section 23-11.1 of this ordinance shall be required for any proposed land development during the plan on development or other project review process in the RPA.

- (2) 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;
 - c. Any non-water-dependent component is located outside of the RPA; and
 - d. Access to the water-dependent facility will be provided with the minimum disturbance necessary. Where practicable, a single point of access will be provided.
- (3) 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 in this chapter.
- (4) 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;
 - 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.
- (5) 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 such facilities are allowed and constructed in accordance with the Virginia Stormwater Management Act and this chapter, and 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 comprehensive stormwater management plan developed and approved in accordance with 9VAC25-875-660;
 - 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,

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

It is not the intent of this subdivision to allow a stormwater management/BMP facility that collects and treats runoff from only an individual lot or some portion of the lot to be located within a resource protection area.

- (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 planting of trees shall be incorporated into the reestablishment of the 100-foot buffer, as appropriate to site conditions and in such a manner to maximize the buffer function. Inclusion of native species in tree planting is preferred. 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 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 reduction of nutrients. All 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, shoreline erosion control projects, or adaptation measures. Such buffer modifications shall be permitted under the following conditions, and consistent with the requirements of this ordinance.

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

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

- 1. When trees are proposed for removal to provide for site lines, vistas, and access paths they shall be replaced with trees as appropriate to site conditions and in such a manner as to maximize the buffer function and to protect the quality of state waters;

2. Trees may not be removed where reasonable sight lines, vistas, or access paths can be created by pruning of the trees alone.
 3. Trees may not be pruned or removed from the buffer area until a written determination is obtained from the manager that the proposed activity is in accordance with the requirements of this ordinance.
- c. Access paths shall be constructed and surfaced so as to effectively control erosion;
- d. 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, 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. Vegetation may not be removed from any RPA component listed in section 23-10(2)(a)(1) through (3) or within a perennial stream;
1. All dead or diseased trees must be checked by the manager prior to their removal.
 2. When questions arise concerning the health of trees proposed to be removed, the property owner shall be responsible for providing documentation from a certified arborist as to the health and viability of the trees. Such documentation shall be subject to review and approval of the manager.
 3. No unauthorized land disturbance in the buffer area may occur or result from the removal of dead or diseased trees or noxious weeds.
 4. Dead or diseased trees must be replaced with 1-inch DBH minimum caliper trees at a 1:1 rate or with 15-inch minimum height shrubs at a 3:1 rate, absent conditions that suggest a higher or lower replacement ratio.
 5. Removal of noxious weeds is permitted in the buffer area provided they are replaced with vegetation equally adapted for the growing environment.
 6. Replacement vegetation should be protected by a surety bond and is subject to inspection one year after planting to ensure survival.
 7. For removal of trees larger than six (6) inches DBH, a buffer modification plan is required.
 - a. The buffer modification plan shall be reviewed and approved by the manager prior to removal of tree(s).
 - b. Tree restoration shall be required within six (6) months of removal. A subsequent inspection for the replanting of tree(s) shall be performed by the manager. If in the opinion of the manager, the replanting requirements may lead to further future structural damage to the principal building, the replanting requirement may be reduced or waived.
 - c. Site clearing shall be allowed only to provide necessary access, positive site drainage, water quality BMPs, and the installation of utilities, as approved by the manager through the plan of development review process outlined under section 23-10 of this ordinance.
 - d. A buffer modification plan violation is a violation and is subject to section 23-18.

- e. For shoreline erosion-control projects, trees and woody vegetation may be removed, necessary control techniques employed and appropriate vegetation established to protect or stabilize the shoreline and restore the function of the buffer in accordance with the best available technical advice and applicable permit conditions or requirements.
 1. The removal of mature trees for the installation and maintenance of proposed shoreline erosion control projects shall only be permitted as necessary and consistent with the best available technical advice, approved project plans, and applicable permit conditions or requirements.
 2. Where vegetation is proposed for removal within the buffer area as part of a shoreline erosion control project, a water quality impact assessment with vegetative mitigation equal to the area of encroachment is required. Trees shall be incorporated, as appropriate to the site conditions and the project specifications. In addition, vegetation in the form of a mixture of grasses, sedges, flowers, and shrubs can be used by property owners to provide natural stabilization of shorelines. Inclusion of native species is preferred.
 3. Existing trees, proposed plantings, and clearing limits must be shown on the state and/or federal Wetlands Permit and/or Water Quality Impact Assessment.
 4. Shoreline erosion control within the RPA shall be consistent with the Wetlands Act (Chapter 13 Title 28.2), the Virginia Marine Resources Commission (VMRC) Tidal Wetlands Guidelines which provide for “minimum standards for the protection and conservation of wetlands,” and “ensure protection of shorelines and sensitive coastal habitat from sea level rise and coastal hazard.”
- f. Adaptation measures proposed for location within the Resource Protection Area, shall meet the following conditions:
 1. The selected adaptation measure shall be a nature-based solution that uses environmental processes, natural systems, or natural features identified as being appropriate for existing site conditions.
 2. An identified adaptation measure shall be selected from one of the following sources: Chesapeake Bay program approved BMP list, the Virginia Stormwater BMP Clearinghouse, the VMRC Tidal Wetlands Guidelines, or be a project that is eligible for funding by the Virginia Community Flood Preparedness Fund Grant.
 - a. Adaptation measures should consist of trees, vegetation, stone or enhance existing natural elements.
 3. Adaptation measures approved for use in the RPA shall be designed, installed, and maintained in accordance with the applicable specifications for the selected adaptation measure.
 4. Adaptation measures should be placed channelward of the proposed development whenever possible and should maximize the preservation of mature trees and other natural vegetation to minimize adverse impacts to the RPA and to maximize water quality benefits.

5. The use of fill as a component of an adaptation measure may be permitted, provided it meets the following conditions:
 - a. The grading and slope created by the use of fill shall be no greater than necessary based upon the project specification and implemented in a manner that minimize the impact of run-off.
 - b. Fill shall have the necessary biogeochemical characteristics, including sufficient organic content, to support the growth of vegetation and adequate permeability to allow infiltration consistent with project specifications. The applicant shall:
 - i. Provide documentation specifying the proposed depth, extent, and type of fill material proposed for use.
 - c. The use of fill shall not exacerbate stormwater run-off, and lateral flow onto adjacent properties shall be controlled.
 - i. Any impacts on the management of stormwater upland of the resource protection area created by the use of fill shall be mitigated, as necessary.
 - d. The use of fill for an adaptation measure shall not negatively impact septic systems and drainfields located within the RPA. Where present, the proximity of the adaptation measure using fill should be considered such that the fill will not interfere with the proper function or maintenance of either of these features.
 - e. The use of fill shall be consistent with any applicable local, state, or federal floodplain requirements. The applicant shall provide documentation to verify that proposed adaptation measures do not conflict with any constraints or requirements of floodplain management or flood control provision, including federal floodplain management regulations found in Title 40 CFR Part 60. The allowance of fill under these provisions does not negate those independent requirements.
6. The preservation of existing natural vegetation shall be maximized, including mature trees, and land disturbance consistent with design specifications shall be minimized.
7. Adaptation measures shall comply with all federal, state and local requirements, including any required permits and conditions such as the need for a Water Quality Impact Assessment.
8. Nothing in these provisions shall be construed to authorize approval or allowance of an adaptation measure in contravention of floodplain management requirements, including Article VI Division 3 Floodplain Area Regulations.

(2) Permitted buffer encroachments.

- a. When application of the buffer would result in the loss of an adequate 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. Where established, such vegetated area shall include the planting of trees as appropriate to site conditions. Inclusion of native species in tree planting is preferred; and
 3. The encroachment may not extend into the seaward 50 feet of the buffer area.
 4. Encroachments into the buffer area processed through an administrative review shall be subject to the findings required by section 23-14 of this ordinance but without the requirement for a public hearing, such findings to be made instead by the manager.
- 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 (c)(2)a. 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 VAC50-85) 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 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 (4 VAC 50-85) 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.
 - d. If specific problems are identified pertaining to agricultural activities that are causing pollution of the nearby water body with perennial flow or violate performance standards pertaining to the vegetated buffer area, the manager, in cooperation with the soil and water conservation district, shall recommend a compliance schedule to the landowner and require the problems to be corrected consistent with that schedule. This schedule shall expedite environmental protection while considering the seasons and other temporal considerations so that the probability for successfully implementing the corrective measures is greatest.
 - e. In cases where the landowner or the landowner's agent or operator has refused assistance from the local soil and water conservation district in complying with or documenting compliance with the agricultural requirements of this ordinance, the district shall report the noncompliance to the manager. The manager shall require the landowner to correct the problems within a specified period not to exceed 18 months from their initial notification of the deficiencies to the landowner. The local government, in cooperation with the district, shall recommend a compliance schedule to the landowner. This schedule shall expedite environmental protection while considering the seasons and other temporal considerations so that the probability for successfully implementing the corrective measures is greatest.
- (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 with woody vegetation. In reestablishing the buffer, management measures shall be undertaken to provide woody vegetation that ensures the buffer functions are maintained or established. The planting of trees shall be incorporated into the reestablishment of the 100-year buffer, as appropriate to site conditions and in such a manner to maximize the buffer function. Inclusion of native species in tree planting is preferred.
- a. A comprehensive planting plan for the entire buffer area that will ensure survivability of vegetation and viability of the newly established buffer shall be submitted and approved by the manager prior to approval of a new land use or development plan (including subdivision) for the property.
 - b. The comprehensive planting plan should provide for the planting of a standard buffer adjacent to all impacted RPA features and along all water bodies with perennial flow on the site. The planting plan should also provide for management measures such as proper monitoring and maintenance of the installed woody vegetation that ensures the buffer functions set forth in this ordinance.
 - c. If, prior to plan of development approval, the manager determines that the 100-foot buffer is adequately vegetated and meets the pollutant removal criteria listed within this subsection, replanting additional vegetation may not be necessary. In these cases, the full 100-foot RPA buffer should be allowed to naturally regenerate, and no land disturbing activities should be permitted within this area.

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

The county CBPA map shall be used as a guide to the general location of RPAs. In addition, reference materials that may be used as general guidance for estimating locations of resource protection areas include federal, state 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.

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 development 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 proposed use or development.
- 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)c 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 24-101(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) Existing vegetation shall be preserved to the maximum extent practicable, consistent with the use or development permitted by an approved plan of development.
- a. Mature trees shall be protected during development and only removed where necessary, including to provide for the proposed use or development.

- b. 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, 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 existing tree canopy, a sufficient number of trees with a 1-½ inch caliper shall be planted to restore the full canopy.
 - c. Prior to clearing or grading, suitable protective barriers, such as safety 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) All 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.
- (5) 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.
- (6) Conventional on-site sewage treatment systems not requiring a Virginia Pollutant Discharge Elimination System (VPDES) permit shall be pumped out at least once every five (5) years.
 - a. Owners of conventional on-site sewage disposal systems must submit a copy of each pump-out report or maintenance report to the stormwater and resource protection division within 30 days of completion. In lieu of a pump-out report, owners of conventional on-site sewage disposal systems must submit maintenance documentation, certified by an operator or on-site soil evaluator licensed or certified under Chapter 23 (§ 54.1-2300 et seq.) of Title 54.1 of the Code of Virginia as being qualified to operate, maintain, or design on-site sewage systems, that the septic system has been inspected, is functioning properly, and that - as of the date of inspection - pump-out of the effluent was not deemed necessary.
- (7) Owners of alternative onsite sewage systems (AOSS) shall continue to submit maintenance reports directly to the Virginia Department of Health as required by state law (Code of Virginia § 32.1-164; 12 VAC 5-613-150) and are not required to provide duplicate records to the county.
- (8) 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 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.
- (9) Prior to initiating grading or other on-site activities on any portion of a lot or parcel, all wetlands permits required by federal, state and 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.

- (10) All lands upon which agricultural activities are being conducted shall undergo a soil and water quality conservation assessment. Such assessment shall evaluate the effectiveness of existing practices pertaining to soil erosion and sediment control, nutrient management and management of pesticides, and where necessary, results in a plan that outlines additional practices needed to ensure that water quality protection is accomplished consistent with 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.

Sec. 23-9.1 Performance standards for retaining walls.

Retaining walls constructed in the CPBA supporting three feet or more of ordinary unbalanced fill, or constructed for the purpose of impounding Class I, II, or III-A liquids, or supporting a surcharge other than ordinary unbalanced fill, or located in a flood zone, or that are part of a stormwater BMP shall require a building permit and shall be subject to the following:

- (1) Upon completion of the wall construction and prior to the issuance of any final inspections by the office of building safety and permits, certifications of the soil compaction and drainage system by an appropriate licensed design professional and a certification that an appropriate licensed design professional has overseen construction of the wall shall be provided to the director of stormwater and resource protection. In addition, in accordance with USBC Section 111.2 and when required by USBC Section 1704, a Statement of Special Inspections shall be provided by the registered design professional licensed in Virginia and shall be submitted to the office of building safety and permits within seven days of the inspections being performed.
- (2) The materials used to construct the wall shall be masonry, stone, vinyl, aluminum, and/or steel. Marine-grade timber may only be used for retaining walls located on a single-family residential lot when the total wall height is less than six feet.
- (3) Should the overall height of the wall exceed six feet of unbalanced fill (i.e., finished grade to finished grade):
- a. The wall shall be broken into multiple stepped walls with a maximum height of six feet for each wall segment, and a minimum horizontal separation between the wall segments of at least nine feet;
 - b. Guards for fall protection (e.g., fencing) are required to be installed at the top of the wall;
 - c. The total of all wall segments shall not exceed 24 feet in height;
- (4) A minimum 12-foot-wide access easement shall be located along both the bottom of the wall and along the top of the wall. Such easement shall be able to support a tracked vehicle, shall not be located within any required landscape buffer, shall be exclusive of any public or private right-of-way, and shall be free of any structures or utilities; provided, however:
- a. no such access easement shall be required at the bottom of the wall when the function of the wall is to impound or retain standing water or liquids, or other similar environmental constraints exist as determined by the director of stormwater and resource protection;

- b. landscaping may be permitted within the easements as approved by the director of stormwater and resource protection.
- (5) The design of the retaining wall system shall be such that its construction and removal of the entire wall shall be possible without impacting the foundations or proposed foundations for habitable structures.
- (6) The design of the retaining wall system shall include a maintenance plan, which has been prepared by an appropriate licensed design professional. A copy of the retaining wall system maintenance plan shall be submitted to the office of building safety and permits prior to the issuance of any final inspections. The maintenance plan shall include the estimated life-cycle of the retaining wall system. Over the anticipated life span of the retaining wall system, the maintenance plan shall also include recommended maintenance at corresponding time intervals.
- (7) At each time interval noted within the maintenance plan, an appropriate licensed professional shall complete the recommended maintenance. Within seven days of such maintenance being performed, the individual performing the maintenance shall submit a copy of their report to the office of building safety and permits.
- (8) Prior to the issuance of any final inspection, the property owner shall record restrictive covenants noting that there is a retaining wall on the property, identifying the easement(s) required by subsection (4), and committing to maintaining the retaining wall in accordance with the maintenance plan provided by an appropriate licensed design professional, and providing evidence of such maintenance to the county in accordance with the requirements of this section. Such restrictive covenants shall be in a form acceptable to the county attorney.
- (9) Exclusions.
 - a. This section shall not apply to decorative walls or retaining walls less than three feet in height.
 - b. This section shall not apply to any dwelling foundation, crawl space, or in the building materials or finishes specific to the construction of a single-family dwelling unit.
 - c. This section shall not apply to bulkheads and seawalls that are used to separate the land from tidal waters.
 - d. Retaining walls for industrial uses, as enumerated in chapter 24, Zoning, article V, Districts, as amended, are not subject to subsection (3)a. above.
- (10) Exceptions.
 - a. For retaining walls located on a single-family residential lot that do not cross a property line, the director of building safety and permits or designee may grant an administrative waiver to the height limit in subsection (3); however, each wall segment shall not exceed six feet and six inches.
 - b. Unless otherwise permitted by (10)a. or (10)b, upon application for a height limitation waiver, the payment of appropriate fees, notification of adjacent property owners and following a public hearing, the board of supervisors may grant a height limitation waiver for a single wall taller than six feet in height or for a total wall height of greater than 24 feet, upon finding that:
 - 1. Such structure will not obstruct light from adjacent property;

2. Such structure will not impair the enjoyment of historic attractions and areas of significant historic interest;
 3. Such structure will not impair surrounding developments, adjacent property, or the rural or historic nature of the county;
 4. Such structure will not impair property values in the surrounding area;
 5. The visual impact to adjoining properties and roadways is minimized;
 6. Such structure is adequately designed and served from the standpoint of safety from the perspective of the county fire chief, the director of stormwater and resource protection, and the director of the building safety and permits division;
 7. The on-going costs of maintenance or repair of such structure would not unduly burden a property owner or homeowners association;
 8. Such structure would not be contrary to the public health, safety or general welfare; and
 9. Such structure is necessary due to unusual character of the property, including dimensions or other environmental considerations.
- c. Upon application and the payment of appropriate fees, the board of adjustments and appeals may grant an exception for the use of a material other than listed in subsection (2), upon finding that:
1. The use of the alternative material will not impair the enjoyment of historic attractions and areas of significant historic interest;
 2. The use of the alternative material will not impair surrounding developments, adjacent property, or the rural or historic nature of the county;
 3. The use of the alternative material will not impair property values in the surrounding area;
 4. The visual impact to adjoining properties and roadways is minimized as determined by the director of planning;
 5. Such structure is adequately designed and served from the standpoint of safety from the perspective of the county fire chief, the director of stormwater and resource protection, and the director of the building safety and permits division;
 6. The on-going costs of maintenance or repair of such alternative material would not unduly burden a property owner or homeowners association;
 7. Such alternative material would not be contrary to the public health, safety or general welfare; and
 8. Such materials will not materially shorten the life span of the retaining wall system when compared to the full list of other materials permitted in subsection (2) so as to unduly burden a property owner or homeowners association.

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 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 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 the county code or subdivision plans in accordance with chapter 19 of the county 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. 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;
 2. Tidal shores;
 3. Nontidal wetlands 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 water body with perennial flow;
 5. Nontidal wetlands not included in item 3 (i.e., RMA wetlands);
 6. 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 currently approved for use by the Army Corps of Engineers.
 - 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 a complete building permit application is 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.

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.
5. The clearing plan shall clearly delineate the location, size, and description of existing and proposed retaining walls subject to the performance standards found in section 23-9.1.

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 1-½ 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 consistent with the requirements of the chapter 8 of the county code must be designed and implemented during land disturbing activities. Prior to land disturbance, this plan must be approved by the VESMP authority.
- (5) Erosion and sediment-control plan. An erosion and sediment control plan consistent with the requirements of the Erosion and Sediment Control Law and regulations and chapter 8 of the county code must be designed and implemented during land disturbing activities. Prior to land disturbance, this plan must be approved by the VESCP authority.
- (6) 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
- (7) A water quality impact assessment according to section 23-11 of this ordinance.
- (8) A resiliency assessment according to section 23-11.1 of this ordinance.

Sec. 23-11. Water quality impact assessment.

- (a) The purpose of a water quality impact assessment is to: (i) identify the potentially adverse impacts of proposed development on water quality and lands within the Chesapeake Bay Preservation Areas consistent with the goals and objectives of this Ordinance; (ii) ensure that, where use, development or redevelopment takes place within Chesapeake Bay Preservation Areas, it will be located on those portions of a site in a manner that will be least disruptive to the natural functions of Resource Protection Areas and other sensitive lands; and (iii) specify means to avoid, minimize or mitigate the impacts of development for water quality protection.
- (b) A water quality impact assessment must demonstrate that the undisturbed buffer area, enhanced by vegetative plantings and any other best management practices will result in the removal of no less than 75 percent of sediments and 40 percent of nutrients from post-development stormwater runoff and will

retard runoff, prevent erosion, and filter non-point source pollution equivalent to an undisturbed 100-foot buffer area.

- (c) A water quality impact assessment shall be required for any proposed land disturbance, development or redevelopment within a Resource Protection Area consistent with this Section, and for any other development in Chesapeake Bay Preservation Areas that may warrant such assessment because of the unique characteristics of the site or intensity of the proposed use or development.
- (d) A water quality impact assessment shall include the following information:
- (1) A narrative that describes the nature of the proposed RPA encroachment, provides justification for the proposed impacts to the RPA, and addresses the findings required in section 23-14 of this ordinance.
- (a) An analysis of the anticipated reduction in buffer function due to the proposed land development, its impact on the buffer area, proposed mitigation or adaptation measures, and the anticipated effect of the proposed project on water quality.
- (b) A description of the extent and nature of any proposed disturbance or disruption of wetlands.
- (c) Impacts of the proposed development on topography, soils, surface and groundwater hydrology on the site and adjacent lands.
- (d) Source location and description of proposed excavation and fill material.
- (e) For any water-dependent activity, the location of, and potential adverse impacts upon, shellfish beds, submerged aquatic vegetation, and fish spawning and nursery areas.
- (f) A statement of any anticipated future land disturbance within the RPA.
- (g) All federal, state, and local permits required for the development of the site.
- (2) A site drawing to scale which depicts the following:
- (a) Delineation of the RPA components, including the 100-foot buffer area and the location of any water body with perennial flow.
- (b) Existing topography, soils information (including depth to groundwater and infiltration rate), where appropriate), surface and groundwater hydrology, wetlands and, if necessary, drainage patterns from adjacent lands.
- (c) Location and nature of the proposed encroachment into the buffer area, including limits of clearing or grading and the area of land disturbance; location of any structures, driveways, or other impervious cover; type(s) of paving material(s); area of proposed impervious cover; and location of proposed utilities, including sewage disposal systems or reserve drainfield sites.
- (d) Location and area (in square feet) of existing impervious cover.
- (e) Existing vegetation, including the number and type of trees and other vegetation to be removed in the RPA to accommodate the proposed buffer encroachment or modification.
- (f) Proposed vegetative mitigation plan.

- (g) Type and location of proposed additional best management practices that may be necessary to mitigate for the proposed encroachment.
- (h) Type and location of proposed adaptation measures necessary to address the impacts of storm surge, sea level rise, and flooding.

Sec. 23-11. 1 Resiliency assessment

- (a) Submittal of a resiliency assessment that considers the potential impacts of sea level rise, storm surge, and flooding on buffer function in light of a proposed RPA encroachment is required during the review of a plan of development or other review process. Such an assessment is to be based upon the RPA as delineated at the time of the proposed land development and is required in addition to all other requirements of this and other local ordinances. At a minimum the resiliency assessment should contain the following information:
 - (1) A scaled drawing or aerial image of the proposed project that includes the RPA boundary, required setbacks, existing topography, and a graphic depiction of the anticipated impacts of sea level rise, flooding, and storm surge on the parcel and the proposed project, based upon a review of approved models and forecasts, to include the following:
 - (a) For sea level rise, use the 2017 National Oceanographic and Atmospheric Administration (NOAA) Intermediate-High scenario projection curve or any subsequently updated version thereof on the project site.
 - (b) For storm surge, use the most up to date NOAA hydrodynamic Sea, Lake, and Overland Surges Hurricanes (SLOSH) model on the project site.
 - (c) For flooding, use the most up to date Special Flood Hazard Area and the Limit of Moderate Wave Action (LiMWA) model on the project site according to the Virginia Flood Risk Information System (VFRIS) model in conjunction with the requirements and application of Article VI Division 3 Floodplain Area Regulations.
 - (d) The anticipated impacts shall be based upon a thirty (30) year timeframe, unless the applicant demonstrates that the lifespan of the project proposed for development is less than thirty (30) years based upon the information in section 23-11.1(2) as approved by the manager. Where a lifespan of less than 30 years is proposed, the applicant shall provide documentation of proposed building materials, anticipated quality of construction, design specifications, and other materials or information in support of a predicted lifespan of less than 30 years for the project.
 - (2) A report that analyzes the results of the data and graphic research, and provides the following information:
 - (a) Define the intended service life of the proposed structure(s).
 - (b) Identification of any proposed impact directly from proposed impervious cover or structures in the RPA and the extent of such impact.
 - (c) Identification of extent of impact on the current buffer area including impacts to existing vegetation from the landward movement of water and vegetative migration.

- (d) Describe the extent to which anticipated impacts can be or have been mitigated by altering the location design, size, or orientation of proposed structures or impervious cover, by preserving and/or supplementing existing buffer areas as provided for in section 23-11 of this Ordinance, and/or by considering other limiting site conditions including required setbacks and parcel size, and/or by proposing an adaptation measure in accordance with the provisions of section 23-11.
 - (e) Identification of the utilization of existing local programs that already take potential impacts into account through the building permit or site design review processes, such as freeboard requirements enacted through Article VI Division 3 Floodplain Area Regulations.
- (3) The manager will review the report from (2) along with the water quality impact assessment and determine whether the anticipated impacts necessitate an alteration or conditions to the proposed project or implementation of an adaptation measure for approval.
- (a) In considering whether a requirement for project alteration or adaptation measure is appropriate, the manager will ensure that the proposed alteration or adaptation measure is practical, achievable, and necessary to mitigate the identified impact.
 - (b) Where possible, consideration will be given to modifying the proposed development size or location, such that the extent of land disturbance or impervious cover can be reduced to avoid or minimize the area or areas of the parcel that the assessment indicates will be impacted.
 - (c) If the resiliency assessment reveals that impacts on the parcel can be addressed by structural design or siting alterations, then supplemental information on the potential alterations shall be provided for consideration by manager. Supplemental information may include additional sketches or plans, including plan and section views, building specifications, and other supporting materials.
 - (d) Approval may be conditioned on the implementation of the proposed alterations, conditions, or adaptation measure.
 - (e) The resiliency assessment may also indicate that no alterations, conditions, or adaptation measures are required, in which case the applicant may proceed through the remainder of the approval process.
- (4) Should an impact from sea-level rise, storm surge, or flooding be identified that exceeds available design alterations, approval of the proposed project should then be conditioned with the requirement for an adaptation measure and the following information provided:

- (a) Describe the proposed adaptation measure(s) for the site as selected from one of the sources listed in section 23-11.1(a) of this ordinance and submit documentation of the proposed adaptation measure and its suitability for use on the site, such as design specifications, construction methods and materials that will provide shoreline stabilization until vegetation is established, and a proposed maintenance plan.
 - (b) Describe how the selected adaptation measure meets the requirement for being a nature-based solution.
 - (c) Describe how the selected adaptation measure(s) comply with applicable regulatory or permitting requirements. Submit a water quality impact assessment pursuant to section 23-11 of this ordinance and a site plan pursuant to section 23-10 of this Ordinance detailing the proposed placement of the adaptation measure, existing and proposed topography and vegetation, proposed limits of clearing and grading, and mitigation for the area of land disturbance within the RPA. Additionally, provide documentation of as-built documentation of the final design and installation, including photographs, and final inspection is required upon completion of installation.
- (5) The resiliency assessment may be submitted as a standalone document as part of the plan of development process or it may be submitted as part of a water quality impact assessment pursuant to section 23-11 of this ordinance for those projects disturbing less than 2,500 square feet.

Sec. 23-12. Waivers for noncomplying structures.

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 may 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
 - 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.
- 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 12 months from the date of issuance if the manager documents that no substantial work has commenced. The manager shall notify the permittee of the revocation of the waiver in writing.

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 public roads and their appurtenant structures in compliance with (i) the Erosion and Sediment Control Law (sections 62.1-44.15:51:66 of the Code of Virginia) and the Stormwater Management Act (section 62.1-44.15:24-:50 of the Code of Virginia), (ii) an erosion and sediment control plan and a stormwater management plan approved by the Virginia Department of Environmental Quality or the VESMP authority, as required, 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:
 - a. To the degree practicable, 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 proposed utility installation;

Sec. 23-14. Exceptions.

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, and shall examine the impacts of sea level rise, storm surge, and flooding on the project through the performance of a resiliency assessment pursuant to section 23-11.1.
- (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 section 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:

 - (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.
 - (6) Other findings, as appropriate to the manager are met.
- (d) 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.
 - (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 exceptions.

Applications for exceptions shall be made in writing to the board or the manager as appropriate in accordance with section 23-14, 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;
- (4) Location and description of any existing private water supply or sewage system;
- (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 set forth in Appendix A-Fee Schedule for Development Related Permits shall accompany each application to cover the cost of processing;
- (7) For exceptions that must be granted by the manager, a nonrefundable processing fee set forth in Appendix A-Fee Schedule for Development Related Permits shall accompany each application to cover the cost of processing. This fee shall be collected for any administrative approval, waiver, exception, exemption, variance and buffer modification which may be necessary through the plan of development process as outlined in sections 23-5, 23-7(a), 23-7(c), 23-9, 23-10, 23-12, 23-13, and 23-14.
- (8) Payment of any permit fees established in section 23-15 shall be waived for the county, any entity created solely by the county and those regional entities to which the county is a party provided that: (1) The other parties to the regional entity similarly waive fees; and (2) The regional entity has locations in more than one locality.
- (9) No application for relief from sections 23-7 or 23-9 of this code shall be considered complete where a resiliency assessment, as outlined in section 23-11.1 of this code has not occurred or the proposed adaptation measure allows for the use of fill in a resource protection area in contravention to the requirements of section 23-7(c)(1)(f).

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 staff, the director of planning and other interested parties. Waivers or exceptions granted will become null and void 12 months from the date of issuance if the manager documents that no substantial work has commenced. The manager shall notify the permittee of the revocation of the waiver in writing.

- (a) The manager shall act on a complete application for an administrative waiver or exception as described in section 23-15 within 35 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.

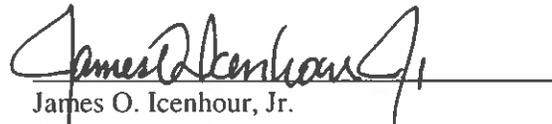
Sec. 23-17. Appeals.

- (a) An owner of property subject to an administrative decision, order or requirement under this chapter may appeal by submitting a written request for review to the 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 request. 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 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, exception or appeal 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 no later than 30 days from the rendering of such decision, order or requirement.

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.
- (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.
- (d) Upon notice from the manager that any activity is being conducted in violation of any of the provisions of this ordinance, such activity shall immediately be stopped. An order to stop work shall be in writing

and shall state the nature of the violation and the conditions under which the activity may be resumed. No such order shall be effective until it shall have been tendered to the owner of the property upon which the activity is conducted or his agent or to any person conducting such activity. Any person who shall continue an activity ordered to be stopped, except as directed by the stop work order, shall be guilty of a violation of this ordinance.


James O. Icenhour, Jr.
Chair, Board of Supervisors

ATTEST:


Teresa J. Saeed
Deputy Clerk to the Board

	VOTES			
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>	<u>ABSENT</u>
HIPPLE	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
NULL	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
LARSON	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
MCGLENNON	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ICENHOUR	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Adopted by the Board of Supervisors of James City County, Virginia, this 14th day of October, 2025.

Ch23CBPA-rev-ord

