

TXT-02-2023 - An ordinance to amend the Zoning Ordinance of Port Royal, Virginia, by repealing Article VI, Chesapeake Bay Preservation Area Overlay District, and repealing Chapter 26, Section 26.819 - Chesapeake Bay Preservation Area Overlay District, and establishing Chapter 26, Article XV, Chesapeake Bay Preservation Area, and establishing Chapter 25, Article XIV, Chesapeake Bay Preservation Area, to amend language related to the Chesapeake Bay Program Review.

## **SECTION 1- Chesapeake Bay Preservation Area**

### **1.1 Purpose and Intent**

- A. This Section is adopted to protect and promote the public health, safety and welfare by implementing the requirements of Sections § 62.1-44.15.67 et seq. of the Code of Virginia and the Chesapeake Bay Preservation Areas and Management Regulations, 9VAC25-830-10, et seq adopted by the Virginia Department of Environmental Quality (hereafter DEQ) and further to:
- (1) protect existing high-quality state waters;
  - (2) restore all other state waters to a condition or quality that will permit all reasonable public uses and will support the propagation and growth of all aquatic life, including game fish, which might reasonably be expected to inhabit such waters;
  - (3) safeguard the clean waters of the Commonwealth from pollution.
  - (4) prevent any increase in pollution;
  - (5) reduce existing pollution; and
  - (6) promote water resource conservation.
- B. This Section establishes the criteria to be used in granting, denying, or modifying requests to use, develop or subdivide land in designated Chesapeake Bay Preservation Areas. In preservation areas, these criteria shall be applied in addition to the requirements of the erosion and sediment control of the County of Caroline, zoning and subdivision requirements of the Town of Port Royal.
- C. This Section is enacted under the authority of Code of Virginia, § 62.1-44.15.51.

### **1.2 Definitions**

The following words and terms used in this Section have the following meanings, unless the context clearly indicates otherwise.

"Act" means the Chesapeake Bay Preservation Act, Article 2.5 (§ 62.1-44.15:67 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

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

"Administrator" means the Zoning Administrator designated by the Town Council of Port Royal or the Zoning Administrator's designee.

"Agricultural lands" means those lands that are currently used and managed primarily for the commercial planting and harvesting of crops; pasture; horticulture; dairying; floriculture; or raising of poultry and/or livestock and consists of a minimum of five acres. Pasture used as an accessory use to a residential use shall not be considered bonafide agriculture land.

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

"Board" means the State Water Control Board. When used outside the context of the promulgation of regulations, including regulations to establish general permits, "board" means the Department of Environmental Quality.

"Board of Supervisors" means the Board of Supervisors of Caroline County, Virginia.

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

"Canopy tree" means a tree that typically reaches 35 feet in height or taller when mature.

"Chesapeake Bay Preservation Area" means any land designated by a local government pursuant to Part III (9VAC25-830-70 et seq.) of this chapter and §62.1-44.15:74 of the Act. A Chesapeake Bay Preservation Area shall consist of a Resource Protection Area and a Resource Management Area.

"Construction footprint" means the area of all existing or proposed impervious surface, including but not limited to buildings, roads and drives, parking areas, sidewalks and the area necessary for construction of such improvements.

"Council" means the Town Council of the Town of Port Royal, Virginia.

"County" means Caroline County, Virginia.

"Daylighted stream" means a stream that had been previously diverted into an underground drainage system and has been redirected into an aboveground channel using natural channel design concepts as defined in § 62.1-44.15:51 of the Code of Virginia, and where the adjacent lands would meet the criteria for being designated as a Resource Protection Area (RPA) as defined by the department under this chapter.

"Department" or "DEQ" means the Department of Environmental Quality.

"DEQ Director" means the Director of the Department of Environmental Quality.

"Development" means the construction or substantial alteration of residential, commercial, industrial, institutional, recreation, transportation, or utility facilities or structures.

"Diameter at breast height (DBH)" means the diameter of a tree measured outside the bark at a point 4.5 feet above the ground.

"Director" means the Director of Planning and Community Development, or his/her designee.

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

"Environmental Site Assessment" means a document and support materials to identify potential adverse areas of development on properties within a CBPA and mitigation measures if appropriate.

"Erosion and Sediment Control Law" means Article 2.4 (§ 62.1-44.15:51 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

"Floodplain" means all lands that would be inundated by flood water as a result of a storm event of a 100-year return interval.

"Health Department" means the Virginia Department of Health, or VDH.

"Highly erodible soils" means 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 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. Sheet and rill erosion occurs when water runs off cultivated topsoil on sloping ground.

"Highly permeable soils" means 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.

"Impervious cover" means a surface composed of any material that significantly impedes or prevents natural infiltration of water into the soil. Impervious surfaces include roofs, buildings, streets, parking areas, and any concrete, asphalt or compacted gravel surface.

"Infill" means utilization of vacant land in previously developed areas.

"Local governments" means counties, cities, and towns. This chapter applies to local governments in Tidewater Virginia, as defined in §62.1-44.15:68 of the Act, but the provisions of this chapter may be used by other local governments.

"Local program" means the measures by which a local government complies with the Act and this chapter.

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

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

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

"Nontidal wetlands" means those wetlands other than tidal wetlands that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, as defined by the U.S. Environmental Protection Agency pursuant to § 404 of the federal Clean Water Act in 33 CFR 328.3b.

"Planning Department" means the Caroline County Department of Planning and Community Development.

"Plan of Development" means any process for site plan, residential plot plan or subdivision plat review in local zoning and land development regulations designed to ensure compliance with §62.1-44.15:74 of the Act and this chapter, prior to issuance of a building permit.

"Public road" means a publicly owned road designed and constructed in accordance with water quality protection criteria at least as stringent as requirements applicable to the 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, and cases where secondary roads are constructed or maintained, or both, by a local government in accordance with the standards of that local government.

"Regulations" means the Chesapeake Bay Preservation Area Designation and Management Regulations, 830-109VAC25-830-10.

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

"Residential Plot Plan" means a drawing that shows only a single parcel of land and the existing and/or proposed structures and features on that parcel of land.

"Resource Management Area" means that component of the Chesapeake Bay Preservation Area that is not classified as the Resource Protection Area.

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

"Silvicultural activities" means forest management activities, including 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" means expansion or modification of a building or development that would result in a disturbance of land exceeding an area of 2,500 square feet in the Resource Management Area only.

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

"Tidal wetlands" means vegetated and nonvegetated wetlands as defined in §28.2-1300 of the Code of Virginia.

"Tidewater Virginia" means those jurisdictions named in §62.1-44.15:68 of the Act.

"Town" means the Town of Port Royal.

"Town Council" means the Town Council of Port Royal

"Understory tree" means a tree that typically reaches 12 feet to 35 feet in height when mature.

"Use" means an activity on the land other than development including, but not limited to, agriculture, horticulture and silviculture.

"Vegetated wetlands" means lands lying between and contiguous to mean low water and an elevation above mean lower water equal to the factor one and one-half times the mean tide range at the site of the proposed project in the County, and upon which is growing any of the following species: saltmarsh cordgrass (*Spartina alterniflora*), saltmeadow hay (*Spartina patens*), saltgrass (*Distichlis spicata*), black needlerush (*Juncus roemerianus*), saltwort (*Salicornia* spp.), sea lavender (*Limonium* spp.), marsh elder (*Iva frutescens*), groundsel bush (*Baccharis halimifolia*), wax myrtle (*Myrica* sp.), sea oxeye (*Borrchia frutescens*), arrow arum (*Peltandra virginica*), pickerelweed (*Pontederia cordata*), big cordgrass (*Spartina cynosuroides*), rice cutgrass (*Leersia oryzoides*), wildrice (*Zizania aquatica*), bulrush (*Scirpus validus*), spikerush (*Eleocharis* sp.), sea rocket (*Cakile edentula*), southern wildrice (*Zizaniopsis miliacea*), cattail (*Typha* spp.), three square (*Scirpus* spp.), buttonbush (*Cephalanthus occidentalis*), bald cypress (*Taxodium distichum*), black gum (*Nyssa sylvatica*), tupelo (*Nyssa aquatica*), dock (*Rumex* spp.), yellow pond lily (*Nuphar* sp.), mardis fleabane (*Pluchea purpurascens*), royal fern (*Osmunda regalis*), marsh hibiscus (*Hibiscus moscheutos*), beggar's tick (*Bidens* sp.), smartweed (*Polygonum* sp.), arrow head (*Sagittaria* spp.), sweet flag (*Acorus calamus*), water hemp (*Amaranthus cannabinus*), reed grass (*Phragmites communis*), or switch grass (*Panicum virgatum*).

"Virginia Stormwater Management Act" means Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

"Water-dependent facility" means a development of land that cannot exist outside of the Resource Protection Area and must be located on the shoreline by reason of the intrinsic nature of its operation. These facilities include (i) ports; (ii) the intake and outfall structures of power plants, water treatment plants, sewage treatment plants, and storm sewers; (iii) marinas and other boat docking structures; (iv) beaches and other public water-oriented recreation areas; and (v) fisheries or other marine resources facilities.

"Water Quality Impact Assessment" means a written assessment or analysis of the potential impacts of proposed land disturbance, development or redevelopment on water quality on RPA lands and other environmentally-sensitive lands.

"Wetlands" includes tidal and nontidal wetlands, vegetated and nonvegetated wetlands.

### **1.3 Applicability**

The CBPA Overlay District shall apply to all lands identified and designated as CBPAs by the Town Council and as generally shown on the CBPA Map dated December 13, 2016. The CBPA Map, together with all explanatory matter thereon, is hereby adopted by reference and included as a part of this Section. The CBPA map identifies the general location of CBPAs and should be consulted by persons contemplating activities within the Town prior to engaging in a regulated activity.

#### **1.3.1 Designation of Resource Protection Areas (RPA).**

A. RPAs shall consist of lands adjacent to water bodies with perennial flow, and include the following features:

- (1) Tidal wetlands;
- (2) Non-tidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow;
- (3) Tidal shores;
- (4) A 100-foot vegetated buffer area located adjacent to and landward of the components listed in 1-3 above, and along both sides of any water bodies with perennial flow.

B. Site specific designation of the RPA boundaries shall be performed by the applicant through a site-specific environmental assessment. Designation of the components listed in subsection 1.3.1.A shall be subject to approval by the Administrator and conducted in accordance with subsections 1.6 or 1.7 and approved by the Administrator.

(1) Delineation by the Applicant

The site-specific boundaries of the RPA shall be determined by an environmental site assessment carried out by the applicant or applicant's agent and approved by the Administrator in accordance with subsection 1.6 or 1.7.C as appropriate. The Administrator shall verify the accuracy of the boundary delineation and may render adjustments in accordance with subsection 1.7.C. In the event the adjusted boundary is contested by the applicant, the applicant may seek relief, as provided in subsection 1.7.I.

#### **1.3.2 Designation of Resource Management Areas (RMA).**

A. RMAs shall include land types that, if improperly used or developed, have potential for causing significant water quality degradation or for diminishing the functional value of the RPA. An RMA shall be shown or mapped contiguous to the entire inland boundary of the RPA and shall include the following features:

- (1) An area contiguous to and landward of an RPA.
- (2) Other lands designated by the Council to protect the quality of state waters, including but not limited to:
  - a. Floodplains;

- b. Highly erodible soils;
  - c. Highly permeable soils;
  - d. Steep slopes in excess of 15%;
  - e. Non-tidal wetlands, not included under the RPA designation
- B. RMAs shall encompass sufficient land area to provide significant water quality protection through the employment of the criteria in subsection 1.6.B and the Town's Comprehensive Plan.
- C. If the boundaries of an RMA include only a portion of a parcel of land, or development project, the Planning Commission may deem the entire parcel or development, outside the RPA, to be in the RMA based upon the components of Section A above.

#### **1.4 Land Use**

Permitted uses, special exception permit uses, accessory uses and special regulations shall be as established by the underlying zoning district unless specifically modified by the requirements of this Section.

#### **1.5 Lot Sizes**

Lot sizes shall be subject to the requirements of the underlying zoning district, except that any lot created after the effective date of this Section shall have sufficient area outside the RPA to accommodate the proposed development, subject to the general performance standards in subsection 1.6.B, when the proposed development is not otherwise allowed in the RPA.

#### **1.6 CBPA Performance Standards.**

- A. Purpose and Intent.
- (1) 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 effective in holding soil in place and preventing site erosion. Indigenous vegetation, with its adaptability to local conditions without the use of harmful fertilizers or pesticides, filters stormwater runoff. Minimizing impervious cover enhances rainwater infiltration and effectively reduces stormwater runoff potential.
  - (2) The intent of these requirements is to prevent a net increase in nonpoint source pollution from new development; achieve a 10% reduction in nonpoint source pollution from redevelopment; and achieve 40% reduction in nonpoint source pollution from agricultural uses.
- B. General Performance Standards for Development and Redevelopment.
- (1) Land disturbance shall be limited to the area necessary to provide for the proposed use or development designated by the zoning district of the parcel.

- (a) The limits of land disturbance shall be strictly defined by the construction footprint, which shall be clearly shown on submitted plans and physically marked on the development site.
  - (b) Ingress and egress during construction shall be limited to one access point, unless otherwise approved by Planning Commission.
  - (c) The construction footprint shall be reviewed and approved through the plan of development process set forth in subsection 1.8.
- ~~(2)~~ Indigenous vegetation shall be preserved to the maximum extent practicable consistent with the proposed development and in accordance with the Virginia Erosion and Sediment Control Handbook.
- (a) Existing trees over six (6) inches diameter at breast height (DBH) and other woody vegetation shall be preserved outside the approved construction footprint.
  - (b) Existing trees over six (6) inches diameter at breast height (DBH) shall be preserved within the construction footprint to the greatest extent possible.
  - (c) Prior to commencement of development, including clearing, grading and/or filling, any tree(s) to be preserved shall be identified and protected from construction activities, with suitable protective barriers identified in the CBPA tree protection requirements, which shall be erected and maintained five (5) feet outside the dripline of any tree or stand of trees to be preserved, and shall remain throughout construction.
  - (d) Dead, diseased or dying trees or trees weakened by age, storm, fire, or other injury may be removed when approved by the Administrator.
- (3) Land development shall minimize impervious cover consistent with the proposed use or development.
- (a) Parking and access shall be provided as set forth in the Zoning Ordinance.
  - (b) Impervious coverage shall be limited to the lot coverage permitted under the zoning district requirements for the parcel as noted on the approved plan of development or site plan. The required yards of any parcel shall be maintained in open space. Such area shall not be disturbed and is to retain indigenous vegetation to the extent practical consistent with the use or development proposed. The owner/developer may propose equivalent undisturbed open space areas subject to the approval of the Administrator.

17.2 Where best management practices, not subject to Virginia DEQ Stormwater coverage, are utilized which require regular or periodic maintenance in order to continue their functions, a maintenance agreement from the owner or developer shall be provided to the County and recorded in the records of the Office of the Clerk of the Circuit Court.

17.3 Any land disturbing activity that exceeds 2,500 square feet shall comply with the requirements of Chapter 45 of the Caroline County Code.



17.4 All land disturbance exceeding 2,500 square feet shall be subject to the appropriate plan of development process required by the Town of Port Royal Zoning Ordinance, or subdivision plat approval in accordance with the Town of Port Royal Subdivision Ordinance. A Water Quality Impact Assessment, as defined in subsection 1.7, pursuant to subsection 1.6.D may be required.

17.5 All on-site sewage disposal systems not requiring a VPDES permit shall:

~~A.~~ be pumped out at least once every five years.

B. have a reserve sewage disposal site of equivalent capacity to the primary sewage disposal site, except that, this requirement shall not apply to any parcel recorded prior to October 1, 1989, if the parcel does not have sufficient area to accommodate a reserve sewage disposal site, as determined by the local Health Department.

17.6 Stormwater runoff shall be controlled by the use of best management practices consistent with the water quality protection provisions of the Virginia Stormwater Management Regulations (4VAC 3-20-10, et seq.) as approved by DEQ.

17.7 Post-development nonpoint source pollution runoff loads shall not exceed the pre-development load; based on the calculated average land cover condition of the County.

17.8 No land disturbing activities shall be initiated until all required federal or state wetlands permits have been obtained and evidence of such has been submitted to the Administrator.

17.9 Land used for bona fide agricultural activities shall have a soil and water quality conservation assessment prepared by the Hanover-Caroline Soil and Water Conservation District. The plan shall be based upon the Field Office Technical Guide of the U.S. Department of Agriculture Soil Conservation Service and accomplish water quality protection consistent with this Ordinance.

C. RPA Development Criteria.

The following additional criteria shall be required in all RPAs:

(1) Development may only be allowed if it meets one or more of the following criteria:

- a. The development is water dependent;
- b. The development constitutes redevelopment;
- c. The development is a road or driveway crossing that satisfies the conditions of subsection 1.6.C.4 or;
- d. The development is a new use subject pursuant to the provisions of subsection 1.6.C.2.
- e. The development is a regional flood control or stormwater management facility, per 9VAC25-830-140 1 e of the Regulations.

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

- a. It does not conflict with the comprehensive plan;
- b. It complies with the development criteria set forth in subsection 1.6.B
- c. Any component that is not water-dependent is located outside of the RPA, and;

- d. Access to the water-dependent facility will be provided with the minimum disturbance necessary, and where practicable, a single point of access will be provided.
- (3) Redevelopment of isolated redevelopment sites shall be permitted provided there is no increase in the amount of impervious cover and no further encroachment within the RPA. Redevelopment shall conform to all applicable erosion and sediment control in Chapter 45 of the County Code, and with all applicable stormwater management requirements of other state and federal agencies. Redevelopment efforts shall include the establishment of buffers and other water quality measures to improve water quality whenever possible.
- (4) Roads and driveways not exempt under subsection may be constructed in or across RPAs provided the following conditions are met:
- a. The Planning Commission finds that there are no reasonable alternatives to aligning the road or drive in or across the RPA;
  - b. The Planning Commission finds 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;
  - c. The Planning Commission finds the design and construction of the road or driveway satisfy all applicable criteria of this Section and the Regulations; including submission of a Water Quality Impact Assessment and;
  - d. The Planning Commission reviews the plan for the road or driveway proposed in or across the RPA in coordination with the plan of development process in subsection 1.8.
- (5) A water quality impact assessment as outlined in subsection 1.7 shall be required for any proposed land disturbance, when required by the Planning Commission for development in the RMA due to the unique characteristics of the site or intensity of development, in accordance with the general performance standards in subsection 1.6.B.
- (6) Buffer Area Requirements.
- A 100-foot vegetated buffer area that is effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff shall be retained if present and established where it does not exist.
- The buffer area shall be located adjacent to and landward of all RPA components and along both sides of any water body with perennial flow. The full 100-foot buffer area shall be designated as the landward component of the RPA, in accordance with subsections 1.3, 1.3.2, and 1.9. The 100-foot buffer area may not be reduced in width, notwithstanding permitted uses, encroachments, and vegetation clearing, as set forth in this subsection.
- The 100-foot buffer area shall be deemed to achieve a seventy-five (75) percent reduction of sediments and a forty (40) percent reduction of nutrients.
- (7) Permitted Modifications:

- a. Indigenous vegetation may only be removed to provide for reasonable sight lines, access paths, and general woodlot management, subject to approval by the Planning Commission as follows:
  - 1) Trees may be pruned or removed as necessary to provide the sight lines and vistas, provided that where removed, they shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff. The plant list as found in the DEQ Riparian Buffers Modification & Mitigation Manual shall be used as a guide for choosing replacement vegetation, and a minor WQIA may be required to confirm the equivalency of replacement vegetation.
  - 2) Any path shall be constructed and surfaced so as to effectively control erosion.
  - 3) Dead, diseased, or dying trees or shrubbery may be removed and thinning of trees permitted as determined in writing by a certified arborist, or licensed landscape architect. Noxious weeds may be removed as permitted by the Planning Commission.
  - 4) For shoreline erosion control projects, trees and woody vegetation may be removed, provided necessary control techniques are employed, and appropriate vegetation established to protect or stabilize the shoreline in accordance with the best available technical advice and applicable permit conditions.

(8) Permitted Encroachments.

- a. When the application of the buffer areas will result in the loss of a buildable area on a parcel recorded prior to October 1, 1989, encroachments into the buffer area may be allowed as set forth in subsection 1.9 and the following criteria:
  - 1) Encroachments shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities;
  - 2) Where practical a vegetative area equal to the area of encroachment that will maximize water quality protection and mitigate the effects of the encroachment shall be established elsewhere on the lot or parcel;
  - 3) The encroachment may not extend into the seaward 50 feet of the buffer area.
- b. 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. Encroachments into the buffer may be allowed as follows:
  - 1) Bona fide agricultural activities may encroach into the landward 50 feet of the 100-foot wide buffer area when at least one agricultural best

management practice, which, in the opinion of the Hanover/Caroline Soil and Water Conservation District, addresses the more predominant water quality issue on the adjacent land – erosion control or nutrient management – is being implemented on the adjacent land, provided that the combination of the undisturbed buffer area and the best management practice achieves water quality protection, pollutant removal, and water resource conservation at least the equivalent of the 100-foot wide buffer area. If nutrient management is identified as the predominant water quality issue, a nutrient management plan, including soil test, must be developed consistent with the “Virginia Nutrient Management Training and Certification Regulations (4 VAC 5-15-10 et seq.) administered by the Virginia Department of Conservation and Recreation.

- 2) Agricultural activities may encroach within the landward 75 feet of the 100-foot wide buffer area when agricultural best management practices which address erosion control, nutrient management, and pest chemical control, are being implemented on the adjacent land. The erosion control practices must prevent erosion from exceeding the soil loss tolerance level, referred to as “T”, as defined in the “National Soil Survey Handbook” of November 1996 in the “Field Office Technical Guide” of the U. S. Department of Agriculture Natural Resource Conservation Service. A nutrient management plan, including soil test, must be developed consistent with the “Virginia Nutrient Management Training and Certification Regulations (4 VAC 5-15-10 et seq.) administered by the Virginia Department of Conservation and Recreation. In conjunction with the remaining buffer area, this collection of best management practices shall be presumed to achieve water quality protection at least the equivalent of that provided by the 100-foot wide buffer area.
  - 3) The buffer area is not required to be designated adjacent to agricultural drainage ditches if the adjacent agricultural land has at least one best management practices in place in accordance with a conservation plan approved by the Hanover/Caroline Soil and Water Conservation District.
  - 4) All agricultural BMPs and soil and water quality conservation plans shall be based on the Field Office Technical Guide of the U.S. Department of Agriculture - Soil Conservation Service.
  - 5) In cases where the landowner or his 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 chapter, the district shall report the noncompliance to the Town. The landowner shall be required to correct the problems within a specified period of time not to exceed 18 months from the initial notice of deficiencies to the landowner.
- c. When agricultural or silvicultural uses within the buffer area cease, and the lands are proposed to be converted back 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.

## 1.7 Water Quality Impact Assessment (WQIA)

### Purpose and Intent

#### A. The purpose of a WQIA is to:

- (1) identify the impacts of proposed land disturbance, development or redevelopment on water quality and lands within RPAs and other environmentally sensitive lands;
- (2) ensure that, where land disturbance, development or redevelopment does take place within RPAs and other sensitive lands within the Town's designated CBPA lands, it will occur on those portions of a site and in a manner that will be least disruptive to the natural functions of RPAs and other sensitive lands;
- (3) to protect individuals from investing funds for improvements proposed for location on lands unsuited for such development because of high ground water, erosion, or vulnerability to flood and storm damage;
- (4) provide for administrative relief from terms of this Section when warranted and in accordance with the requirements contained herein; and
- (5) specify mitigation measures to address water quality protection.

#### B. Applicability

A WQIA shall be required:

- (1) for any proposed land disturbance, development or redevelopment within an RPA;
- (2) for any buffer modification or encroachment permitted in subsections 1.6.C (7) or (8);
- (3) for any development in an RMA deemed necessary by the Planning Commission due to the unique site characteristics or intensity of the proposed use or development.

WQIAs are further defined as minor or major.

#### C. Minor Water Quality Impact Assessments

- (1) A minor WQIA shall be required for any proposed land disturbance, development or redevelopment of 5,000 square feet or less or which proposes to modify or encroach into the landward 50 feet of the 100-foot buffer area. A minor assessment shall demonstrate that the undisturbed buffer area, enhanced vegetative plantings and any required 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 nonpoint source pollution the equivalent of the full undisturbed 100-foot buffer area. A minor assessment shall include a site-drawing to scale, prepared by a licensed engineer or licensed surveyor, which shows the following:

- (1) the location of the RPA and its components,
- (2) the location and nature of the proposed encroachment including: type of paving material; areas of clearing or grading; the location, type and amounts of impervious cover, and sewage disposal systems;
- (3) the type and location of proposed BMP's to mitigate the proposed encroachment.
- (4) the location of existing onsite vegetation, including the number and type of trees and other vegetation to be removed in the buffer to accommodate the encroachment or modification.
- (5) A re-vegetation plan that supplements the existing buffer vegetation in a manner that provides for pollutant removal, erosion and runoff control.

#### D. Major Water Quality Impact Assessments (WQIA)

A major WQIA shall be required for any development which (i) exceeds 5,000 square feet of land disturbance within CBPA's and proposes to modify or encroach into the landward 50 feet of the 100-foot buffer area; (ii) proposes to disturb any portion of any component of an RPA or any portion of the buffer area within 50 feet of any other component of an RPA; or (iii) is located solely in an RMA and is deemed necessary by the Planning Commission. The information required in this subsection shall be considered a minimum, unless the Planning Commission determines that some of the elements are unnecessary due to the scope and nature of the proposed use and development of land.

The following elements shall be included in a major WQIA

- (1) All information required in a minor water quality study
- (2) A hydrogeological analysis that includes:
  - a. A description of the existing topography, soils, hydrology, and geology of the site and adjacent lands and which includes:
    - 1) the location of all slopes in excess of 15%;
    - 2) the location and type of highly permeable, impermeable or highly erodible soils;
    - 3) the depth to bedrock;
    - 4) the depth to seasonal water table;
    - 5) the identification of any soils unsuitable for development.
  - b. A description the impacts of the proposed development on the topography, soils, hydrology and geology on the site and adjacent land.
  - c. Identification of the following:
    - 1) the disturbance or destruction of wetlands and justification for such action;
    - 2) any disruptions or reductions in the supply of water to wetlands, streams, lakes, rivers or other water bodies;
    - 3) any disruptions to existing hydrology including wetland and stream circulation patterns;
    - 4) the source location and description of proposed fill material;

- 5) the location of dredging and location of dumping area for such material;
  - 6) an estimation of pre- and post-development pollutant loads in runoff;
  - 7) an estimation of the percent increase in impervious surface on site and the type(s) of surfacing materials used;
  - 8) the percentage of the site to be cleared;
  - 9) the proposed phasing or construction schedule of the project;
  - 10) a listing of all requisite permits from all applicable agencies necessary to develop the project.
- d. A description of the proposed mitigation measures for the potential hydrogeological impacts. Potential mitigation measures include, but are not limited to:
- 1) additional erosion and sediment controls beyond these normally required, including; minimizing the extent of the cleared area, perimeter controls, reduction of runoff velocities, measures to stabilize disturbed areas, schedule and personnel for site inspection;
  - 2) a stormwater management system for nonpoint source quality or quantity control;
  - 3) the creation of wetlands onsite or appropriate offsite location to replace the square footage or acreage of the wetlands lost;
  - 4) minimizing cut and fill.
- (3) A vegetative section that:
- a. Identifies and delineates the location of all woody plant material on site, including all trees on site six (6) inches or greater diameter at breast height or, where there are groups of trees, such groups may be outlined.
  - b. Describes the impacts of the development on the existing vegetation including:
    - 1) the general limits of clearing, based on all proposed improvements, including buildings, drives and utilities;
    - 2) a clear delineation of all trees and woody vegetation to be removed;
    - 3) a description of plant species to be disturbed or removed.
  - c. Describes the proposed mitigation measures, including:
    - 1) a design plan and replanting schedule for trees and vegetation removed, including a list of proposed plants and trees to be added;
    - 2) a demonstration that the re-vegetation plan will supplement the existing buffer vegetation in a manner that provides for pollutant removal and erosion and runoff control.

- 3) a demonstration that the design of the plan will preserve, to the greatest extent possible, any significant trees and vegetation on the site and will provide maximum erosion control and overland flow benefits from such vegetation.
- 4) a demonstration that indigenous plants are to be used to the greatest extent possible.

#### E. WQIA Submission and Review Requirements.

- (1) All information required in this subsection shall be certified as complete and accurate by a professional engineer or a certified land surveyor.
- (2) A minor WQIA shall be prepared and submitted by the Applicant and reviewed by the Planning Commission in conjunction with subsection 1.7 of this Section.
- (3) A major WQIA shall be prepared and submitted by the Applicant and reviewed by the Planning Commission in conjunction with the Plan of Development Process in subsection 1.8.
- (4) The Planning Commission may request review by the DEQ Office of Local Government Assistance or other appropriate agencies. Upon receipt of a major WQIA, the Planning Commission will determine if such review is warranted and may request DEQ to review the study and respond with written comments. Any comments by DEQ will be incorporated into the final review by the Planning Commission provided that such comments are provided by DEQ within 30 days of the request.

#### F. Evaluation Procedure.

- (1) Upon the completed review of a minor WQIA, the Planning Commission will determine if the proposed modification or encroachment into to the buffer area is consistent with the provisions of this subsection, and make a finding based upon the following criteria:
  - a. The necessity of the proposed encroachment and the ability to place improvements elsewhere on the site to avoid disturbance of the buffer area;
  - a. Whether impervious surface is minimized;
  - b. Whether proposed mitigation measures, including the revegetation plan and site design, result in minimal disturbance to all components of the RPA, including the 100-foot buffer area
  - c. Whether proposed mitigation measure will work to retain all buffer area functions: pollutant removal, erosion and runoff control;
  - d. Whether proposed best management practices, where required, achieve the requisite reductions in pollutant loadings;
  - e. Whether the development, as proposed, meets the purpose and intent of this Section;
  - f. Whether the cumulative impact of the proposed development, when considered in relation to other development in the vicinity, both existing and proposed, will not result in a significant degradation of water quality.



- (2) Upon review of a major WQIA, the Planning Commission shall determine whether the proposed development is consistent with the purpose and intent of this Section and make a finding based upon the following criteria:
  - a. the proposed development is water-dependent or redevelopment;
  - b. the disturbance of wetlands will be minimized;
  - c. the development will not result in significant disruption of the hydrology of the site;
  - d. the development will not result in significant degradation to aquatic vegetation or life;
  - e. the development will not result in unnecessary destruction of plant materials on site;
  - f. the proposed erosion and sediment control plans are adequate to reduce runoff and prevent off-site sedimentation;
  - g. the proposed stormwater management plans are adequate to control the stormwater runoff to achieve “no net increase” in pollutant loadings;
  - h. the proposed re-vegetation of disturbed areas will provide optimum erosion and sediment control benefits as well as runoff control and pollutant removal equivalent of the full 100-foot undisturbed buffer area;
  - i. the design, location and maintenance of any proposed **on-site septic** drainfield will be in accordance with requirements of subsection 1.6.B.7;
  - j. the development, as proposed, is consistent with the purpose, spirit and intent of the CBPA Overlay District;
  - k. the cumulative impact of the proposed development, when considered in relation to other existing and proposed development in the vicinity will not result in a significant degradation of water quality.
- (3) The Planning Commission shall require additional mitigation where potential impacts are not adequately addressed.
- (4) If the Planning Commission finds the proposal is inconsistent with the purpose and intent of this Section when the impacts cannot be mitigated, it shall be denied.

### **1.8 Plan of Development Process.**

Any development or redevelopment exceeding 2,500 square feet of land disturbance shall be accomplished through a plan of development process prior to site clearing or grading or the issuance of any building permit.

#### **A. Required Information.**

In addition to the requirements of the Port Royal Zoning and Subdivision Ordinances, the plan of development process shall consist of the plans and studies identified below, which may be coordinated or combined, as deemed appropriate by the Administrator.

- (1) A landscape plan, except where a residential plot plan is accepted.
- (2) A stormwater management plan, except where a residential plot plan is accepted and calculations show stormwater management is not required.
- (3) An erosion and sediment control plan in accordance with Chapter 45 “Erosion and Sediment Control Regulations” of the Code of Caroline County. For single family

- dwelling or accessory structures thereto, with no RPA encroachment, an agreement in lieu of a plan may be accepted by the Town.
- (4) A Water Quality Impact Assessment for all development or redevelopment exceeding 2,500 square feet of land disturbance.

The Planning Commission may determine that some of the information above is unnecessary due to the scope and nature of the proposed development.

#### B. Residential Plot Plans

A residential plot plan for individual single-family homes, additions and accessory buildings shall be required and submitted to the Zoning Administrator for review and approval of the Zoning Ordinance.

#### Environmental Site Assessment

An environmental site assessment shall be submitted in conjunction with a final site plan or subdivision plat. The assessment shall include delineation of the boundaries of the CBPA.

#### C. Landscape Plan.

A landscape plan shall be prepared with a site plan and/or subdivision plat, or as a condition of rezoning or special exception permit approval. Landscape plans shall be prepared and/or certified by design professionals practicing within their areas of competence as prescribed by the Code of Virginia.

##### (1) Contents of the Plan.

- a. The landscape plan shall be drawn to scale and clearly delineate the location, size, and description of existing and proposed plant material. All existing groups of trees on the site six (6) inches or greater diameter at breast height (DBH) shall be shown on the landscape plan, or where there are groups of trees, said stands may be outlined instead. The specific number of trees six (6) inches or greater DBH to be preserved outside of the building envelope shall be indicated on the plan. Trees and other woody vegetation proposed to be removed to create the desired construction footprint shall be clearly delineated on the landscape plan.
- b. Any RPA buffer area shall be clearly delineated and any plant material to be added to establish or supplement the buffer area, as required by this Section, shall be shown on the landscape plan.
- c. Within the buffer area, trees and other woody vegetation to be removed for sight lines, vistas, access paths, and best management practices, as provided for in this Section, shall be shown on the plan. Vegetation required by Section 1.6.C (6) to replace any existing trees within the buffer area shall also be shown on the landscape plan.
- d. Trees and other woody vegetation to be removed for shoreline stabilization projects and any replacement vegetation required by this Section shall be shown on the landscape plan.
- e. Identification of grade changes or other work adjacent to trees to be preserved which would adversely affect them shall be shown on the landscape plan.

- f. Specifications shall be provided as to how grade, drainage, and aeration will be maintained around such trees.
- g. Specifications shall be provided for the protection of existing trees and other vegetation during clearing, grading, and all phases of construction shall be shown of the landscape plan.

(2) Plant Specifications.

- a. All plant materials necessary to supplement the buffer area or vegetated areas outside the construction footprint shall be installed according to standard planting practices and procedures.
- b. All supplementary or replacement plant materials shall be living and in a healthy condition. Plant materials shall conform to the standards of the most recent edition of the American Standard for Nursery Stock, published by the American Association of Nurserymen.
- c. Where areas to be preserved, as designated on an approved landscape plan, are encroached upon during the development process, replacement of existing trees and other vegetation will be achieved at a ratio of three (3) planted tree to one (1) removed. Replacement trees shall be a minimum one and one-half (1.5) inches DBH at the time of planting. At the discretion of the Administrator, replacement may be achieved at ratios of one (1) to one (1) at 3.5 inch at DBH, or two (2) to one (1) at 2 .5 inches DBH.

(3) Maintenance.

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

D. Stormwater Management Plan.

- (1) A stormwater management plan for parcels in excess of one acre, or as part of a common plan of development, shall be submitted for review and approval to DEQ. in conjunction with site plan or subdivision plan approval.
- (2) A stormwater management plan for parcels of 2500 square feet to one acre, shall be submitted for review and approval by the County as a part of the plan of development process in conjunction with a site plan or residential plot plan.
  - a. Contents of the Plan

The stormwater management plan shall contain sufficient information and supporting references to communicate the information required by this Section. At a minimum, the stormwater management plan shall contain the following:

- 1) the location and design of all planned stormwater control devices

- 2) procedures for implementing nonstructural stormwater control practices and techniques
- 3) pre- and post-development nonpoint source pollutant loadings with supporting documentation of all utilized coefficients and calculations
- 4) for facilities, verification of structural soundness, including a Professional Engineer or Class IIIB Surveyor Certification

b. All engineering calculations shall be performed in accordance with procedures outlined in the current edition of the Virginia Stormwater Management Handbook.

c. The plan shall establish a long-term schedule for inspection and maintenance of stormwater management facilities that includes all maintenance requirements and persons responsible for performing maintenance. A maintenance agreement shall be executed between the responsible party and Town of Port Royal.

#### F. Erosion and Sediment Control Plan

An erosion and sediment control plan shall be prepared in accordance with Chapter 45 of the "Erosion and Sediment Control Plan" of the Code of Caroline County, and submitted with an application for site plan or subdivision plat approval.

#### G. Final Site Plans and Subdivision Plats

Final site plans or subdivision plats shall be reviewed and approved as provided in the Town Zoning or Subdivision Ordinances as appropriate.

##### (1) Installation and Bonding Requirements.

- a. Where buffer areas, landscaping, stormwater management facilities or other specifications of an approved plan are required, no certificate of occupancy shall be issued until the installation of required plant materials or facilities is completed, in accordance with the approved site plan.
- b. When the occupancy of a structure is desired prior to the completion of the required landscaping, stormwater management facilities, or other specifications of an approved plan, a certificate of occupancy may be issued if the applicant provides surety in a form and amount satisfactory to the Administrator equal to the remaining plant materials, related materials and installation costs of the required landscaping or facilities and/or maintenance costs for any required stormwater management facilities during the construction period.
- c. All required landscaping shall be installed and approved by the first planting season following issuance of a certificate of occupancy or a surety may be forfeited to the Town.
- d. All required stormwater management facilities or other specifications shall be installed and approved within eighteen (18) months of project commencement. Should the applicant fail, after proper notice, to initiate, complete or maintain

appropriate actions required by the approved plan, surety may be forfeited to the Town. The Town may collect from the applicant the amount by which the reasonable cost of required actions exceeds the amount of the surety held.

- e. After all required actions of the approved site plan have been completed, the applicant must submit a written request for a final inspection. If the requirements of the approved plan have been completed to the satisfaction of the Administrator, such unexpected or unobligated portion of the surety held shall be refunded to the applicant or terminated within sixty (60) days following the receipt of the applicant's request for final inspection. The Administrator may require a certificate of substantial completion from a Professional Engineer or Class IIIB Surveyor before making a final inspection.

#### H. Administration.

Administration of the plan of development process shall be in accordance with the Town of Port Royal Zoning Ordinance or Town of Port Royal Subdivision Ordinance, as appropriate.

#### I. Denial of Plan, Appeal of Conditions or Modifications.

In the event any component of the plan of development process as it relates to this Section is disapproved or recommended conditions and/or modifications by the Planning Commission are unacceptable to the applicant, the applicant may appeal such administrative decision to the Town Council. In granting an appeal, the Town Council shall find the plan to be in accordance with all applicable ordinances and include necessary elements to mitigate any detrimental impact on water quality and upon adjacent property and the surrounding area, or such plan meets the purpose and intent of the performance standards in this Section. If the Town Council finds that the applicant's plan does not meet the above criteria, it shall deny the plan.

### **1.9 Nonconforming Uses and Structures**

The lawful use of a building, structure or land approved which existed on May 12, 1992 or which exists at the time of any amendment to this Section, which is not in conformity with the provisions of this Section, may continue in accordance with the Town of Port Royal Zoning Ordinance and this Section. If a conflict exists between the Town of Port Royal Zoning Ordinance and this Section, The Town of Port Royal Zoning Ordinance shall control.

No change or expansion of a nonconforming use or structure shall be allowed except as provided in this Section:

- A. The Administrator may grant a nonconforming use and/or structures a waiver for principal structures on legal nonconforming parcels to provide for remodeling and alterations to such nonconforming structures provided that:
  - (1) There will be no increase in nonpoint source pollution load;
  - (2) There shall be no development or land disturbance in excess of 2,500 square feet.

- B. A nonconforming use and/or structure waiver is granted by the Planning Commission for the expansion of a nonconforming principal structure subject to the provisions of the Town of Port Royal Zoning Ordinance, provided that the following findings are made:
- (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 Section to other property owners in similar situations;
  - (3) The waiver is in harmony with the purpose and intent of this Section 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 degradation of water quality;
  - (6) Other findings, as appropriate and required by the Town are met and;
  - (7) This provision shall not apply to accessory structures.
- C. An application for a nonconforming use and/or waiver shall be made to the Administrator on forms furnished by the Town and which contains the following information:
- (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, and boundary of the Resource Protection Area;
  - (4) Location and description of any existing private water supply or sewage system.
  - (5) Proposed location of any land disturbance and the area in square feet.
- D. A nonconforming use and development waiver shall become null and void twelve months from the date issued if no substantial work has commenced. The applicant must request a re-issuance of the waiver prior to the end of the 12-month period.

### **1.10 Exemptions**

The following activities and uses are exempt from the requirements of this Section:

A. Exemptions for Public Utilities, Railroads, Public Roads, and 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 accordance with (i) regulations promulgated pursuant to the Erosion and Sediment Control Law (§ 10.1-560 et seq. of the Code of Virginia) and the Stormwater Management Act (§ 10.1-603.1 et seq. of the Code of Virginia), (ii) an erosion and sediment control plan and a stormwater management plan approved by the Virginia Department of Conservation and Recreation, or (iii) local water quality protection criteria at least as stringent as the above state requirements are deemed to comply with this Section. The exemption of public roads is further conditioned on the following:
- (2) The road alignment and design has been optimized, consistent with all applicable requirements, to prevent or otherwise minimize the encroachment in the Resource Protection Area and to minimize the adverse effects on water quality.

B. Exemptions for Local Utilities and other service lines.

Construction, installation, and maintenance of water, sewer, natural gas lines, underground and telecommunications and cable television lines owned and/or permitted by the Town shall be exempt from the CBPA District provided:

- (1) The location of such utilities and facilities should be outside RPAs to the extent possible;
- (2) No more land shall be disturbed than necessary to provide for the utility installation;
- (3) All construction, installation, and maintenance of utilities and facilities shall be in compliance with all applicable state and federal requirements and permits and shall be designed and conducted in a manner that protects water quality; and
- (4) Any land disturbance exceeding an area of 2,500 square feet shall comply with Chapter 45 of the County Code.

C. Exemptions for Silvicultural Activities.

Silvicultural activities shall be exempt from the requirements of this Section provided that the operations adhere to the water quality protection procedures prescribed by the Virginia Department of Forestry (January 1997 edition of the "Best Management Practices Handbook for Forestry Operations").

D. Exemptions for Activities in Resource Protection Areas.

Land disturbing activities for water wells, passive recreation facilities (boardwalks, trails, pathways, etc.), historic preservation and archeological activities may be exempt provided it is demonstrated to the satisfaction of the Planning Commission that:

- (1) Any other required permits, have been issued;
- (2) The applicant demonstrates that the proposed use will not deteriorate water quality;
- (3) The proposed use does not conflict with nearby planned or approved uses; and
- (4) Any land disturbance exceeding 2,500 square feet in area shall comply with Chapter 45 of the County Code.

**1.11 Exceptions**

- A. A request for an exception to the requirements of this District shall be made in writing to the Planning Commission. It shall identify the impacts of the proposed exception on water quality and on lands in the RPA through the performance of a WQIA as specified in subsection 1.7.
- B. A public hearing shall be conducted in accordance with §15.2-2204 of the Code of Virginia.

- C. The Commission shall review the request and the WQIA. The Commission may grant the exception provided it finds:
- (1) Granting the request will not confer upon the applicant any special privileges that are denied by this Section to other property owners in the CBPA District;
  - (2) The request is not based upon conditions or circumstances that are self-created or self-imposed, nor does the request arise from conditions or circumstances either permitted or nonconforming related to adjacent parcels;
  - (3) The request is the minimum necessary to afford relief;
  - (4) The request is consistent with the purpose and intent of the CBPA District, and not injurious to the neighborhood or otherwise detrimental to the public health, safety and general welfare and is not of substantial detriment to water quality; and;
  - (5) Reasonable and appropriate conditions can be and are imposed to prevent the request from causing a degradation of water quality.
- D. If the Planning Commission cannot make the required findings or refuses to grant the exception, the Planning Commission shall provide written findings and rationale for the decision to the applicant.

#### **1.12 Conflict of Article with other Regulations**

Where the requirements of this Section conflict with any other provision of this Ordinance or other existing and applicable Town, County, state or federal regulations, the more stringent restrictions shall apply.

#### **1.13 Severability**

In the event any portion of this Section is declared void for any reason, such decision shall not affect the remaining portion of the Section, which shall remain in full force and effect, and for this purpose, the provisions of this Section are hereby declared to be severable.

#### **1.14 Penalties.**

- A. Any person who: (i) violates any provision of this Section or (ii) violates or fails, neglects, or refuses to obey any final notice, order, rule, regulation, or variance or permit condition issued by the Town and authorized under this Section shall, upon such finding by an appropriate circuit court, be assessed a civil penalty not to exceed \$5,000 for each day of violation. Such civil penalties may, at the discretion of the court assessing them, be directed to be paid into the treasury of the Town for the purpose of abating environmental damage to or restoring Chesapeake Bay Preservation Areas therein, in such a manner as the court may direct by order, except that if the violator is the Town or its agent, the court shall direct the penalty to be paid into the state treasury.



- B. Nothing in this Section shall be deemed to limit the authority of the Town to apply to the Caroline County Circuit Court for injunctive relief to enjoin a violation or threatened violation of this Section, or to seek damages in a civil action, including but not limited to the recovery of any cost(s) incurred for any conservation action undertaken by the Town to preserve the Chesapeake Bay Preservation Area in accordance with this subsection.
  
- C. With the consent of any person who: (i) violates any provision of this Section related to the protection of water quality in Chesapeake Bay Preservation Areas or (ii) violates or fails, neglects, or refuses to obey any notice, order, rule, regulation, or variance or permit condition issued by the Town and authorized under this subsection, the Town 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 for each violation. Such civil charges shall be paid into the treasury of the Town in which the violation occurred for the purpose of abating environmental damage to or restoring Chesapeake Bay Preservation Areas therein, except that where the violator is found to be the Town or its agent, the civil charges shall be paid into the state treasury. Civil charges shall be in lieu of any appropriate civil penalty that could be imposed under subsection (A) above. Civil charges may be in addition to the cost of any restoration required or ordered by the Town.