

MEMORANDUM

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

THROUGH: ANNE F. ODELL, DEPUTY CITY MANAGER
ADMINISTRATION/LONG-RANGE PLANNING

FROM: BRENT R. NIELSON, PLANNING DIRECTOR

DATE: JULY 7, 2005

RE: **CHESAPEAKE BAY PRESERVATION ACT (CBPA)
PROPOSED ORDINANCE REVISIONS**

Enclosed for your consideration are proposed revisions to the City's Chesapeake Bay Preservation Act (CBPA) Ordinance that are a result of the City's CBPA annual review as well as recommended changes by the Chesapeake Bay Local Assistance Division (CBLAD) of the Virginia Department of Conservation and Recreation. CBLAD's recommended changes are proposed to help ensure the State's Chesapeake Bay Local Assistance Board finds the City's local CBPA program is in compliance with the State's Bay Act and accompanying regulations.

Background:

Planning staff received several recommendations for changes to the ordinance from applicants, City staff and CBLAD during its last annual program review in March 2005. Most of the changes clarify administrative procedures as well as refine the definition of "surface flow" in accordance with CBLAD guidance. This definition change for surface flow will address comments received by wetland professionals, City staff, and the Chamber of Commerce.

The recommended ordinance revisions are attached for City Council's consideration. CBLAD's Southern Area Review Committee, a subcommittee of the Chesapeake Bay Local Assistance Board, will consider a recommendation for consistency for the City's CBPA program at their August 2005 meeting. The full Board will consider the City's program in September 2005.

Recommended Ordinance Changes:

In summary, the recommended language changes are as follows:

- Classifies wetland restoration activities as exempt in Resource Protection Areas;
- Allows the CBPA planner to administratively approve water-dependent structures in Resource Protection Areas;

- Incorporates CBLAD recommended language as listed in CBPA Council Memo dated April 7, 2005;
- Sets minimum qualifying criteria for proposed additions to principal structures in the 100-foot CBPA buffer;
- Changes the definition of “surface flow” to be consistent with CBLAD policy as set out in CBLAD Information Bulletin Number Six;
- Specifies that outfall structures are included as allowable utility structures in the RPA;
- Changes the reference to the Chesapeake Bay Local Assistance Department to Division of the Virginia Department of Conservation And Recreation; and
- Changes to CBPA Specifications Manual to correspond to changes in Ordinance.

Recommended Action:

Because the proposed CBPA ordinance changes are meant only to clarify existing policy, streamline current administrative procedures, and help to ensure compliance with State regulations, staff recommends approval of the proposed CBPA ordinance revisions.

If you wish to discuss this matter further or need additional information, please contact me.

cc: Ronald S. Hallman, City Attorney
Jan L. Proctor, Deputy City Attorney
Eric Martin, City Engineer
Karen E. Shaffer, Assistant Planning Director
Amy M. Ring, Principal Planner
Scott Meyer, Senior Planner

July 7, 2005

Chesapeake Bay Preservation Area Ordinance
Specifications Manual

Amended _____, 2005

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I. Purpose and Effect

These regulations are adopted and incorporated into Article X of Chapter 26 of the Chesapeake City Code, (“CBPA District ordinance”). They are intended to supplement the CBPA District ordinance with administrative procedures, specifications, guidelines, techniques and remedial actions. Unless otherwise indicated herein, these regulations shall be deemed binding. In case of conflict with any other ordinance or regulation, the more stringent provision will control. These regulations may only be amended by City Council except that the City Manager’s Designee may make minor amendments relating to: i) administrative procedure; ii) nonbinding guidelines; iii) methods of measurement and calculation; iv) contents of plans and applications; v) delegation of approval authority; and vi) other changes that do not substantially affect the extent or conditions of development under the CBPA District ordinance and that are not inconsistent with purpose and intent of such ordinance.

II. Definitions

The following words and terms used in this Manual have the following meanings, unless the context clearly indicates otherwise. Words and terms not defined in this ordinance but defined elsewhere in the Chesapeake City Code or the Chesapeake Zoning Ordinance shall be given the meanings set forth therein.

Accessory structure shall have the meaning prescribed in the Chesapeake Zoning Ordinance, except that no more than one detached structure located within six (6) feet of the principal building shall be permitted. In the case of a

swimming pool, the six (6) foot maximum distance of separation shall be measured from the pool wall closest to the principal building.

Agricultural lands means those lands used for the planting and harvesting of crops or plant growth of any kind in the open; pasture; horticulture; dairying; floriculture; or raising of poultry and/or livestock. The term shall not include property on which qualified silvicultural activities are conducted.

Applicant means any person submitting any application required or permitted pursuant to the provisions of this Manual and the CBPA District ordinance.

Best Management Practices or BMPs means a practice or a combination of practices that is determined by the Department of Public Works to meet or exceed the water quality objectives set out in the CBPA District ordinance and designed in accordance with the Chesapeake Public Facilities Manual.

Board or CBLAB means the Chesapeake Bay Local Assistance Board or succeeding state board or commission.

Buffer or buffer area means an area of natural or established vegetation managed and preserved to protect other components of the Resource Protection Area and state waters from significant degradation due to land disturbance or development.

Chesapeake Bay Preservation Area, CBPA District or District means those areas delineated on the CBPA Map and the IDA Map as one of the following: (a) Resource Protection Area (RPA), (b) Resource Management Area (RMA) and (c) Intensely Developed Area (IDA). The CBPA District shall also include areas designated RPA or RMA as a result of an approved field delineation as provided in City Code Sections 26-516 and 26-517.

Chesapeake Bay Preservation Area Board or CBPA Board means the board established or designated by City Council to 1) consider appeals from administrative determinations; 2) consider requests for exceptions to the provisions of the CBPA District ordinance; 3) impose agreed upon civil penalties for violation of the CBPA District ordinance; and 4) order correction of violations of the CBPA District ordinance through restoration of the CBPA.

Chesapeake Bay Preservation Area Map or CBPA Map means the map adopted by City Council and incorporated into the CBPA District ordinance to delineate the boundaries of the CBPA District. The boundaries of the CBPA District shown on the CBPA Map shall be subject to refinement by approved field surveys as provided in the CBPA District ordinance.

Chesapeake Bay Preservation Area Review Committee or CBPA Review Committee means the administrative committee consisting of City staff appointed by the City Manager's Designee for the primary purpose of 1) reviewing and acting upon certain administrative approvals, exemptions and waivers permitted under the CBPA District ordinance; and 2) making recommendations to the CBPA Board on requests for exceptions to the provisions of the CBPA District ordinance. Other duties are specified in the ordinance.

Chesapeake Bay Preservation Area Specifications Manual, CBPA Specifications Manual, or Manual means this document setting out administrative procedures, specifications, guidelines, techniques and remedial actions. The term shall also include substantial amendments to this document approved by City Council and minor amendments approved by the City Manager's Designee. Minor amendments are those that do not substantially affect the extent or conditions of development permitted under the CBPA District ordinance and that are not inconsistent with the purpose and intent of such ordinance.

City Manager's Designee means any officer, department head or other employee designated by the City Manager to interpret, administer or enforce the CBPA District Ordinance. There may be one or more designees. This term shall also include designees of the City Manager's Designee, which may include the CBPA Review Committee or one or more members of City staff. The City Manager's Designee shall also 1) approve field delineations; 2) resolve CBPA District boundary disputes; 3) determine perennial flow; 4) act on requests for development in the RMA, including RMAs located wholly or partially in the IDA; 5) act on requests for construction access points under Section 26-520.B.7. of the City Code; 6) act on requests to remove vegetation from the RPA buffer under Section 26-520.B.7.c. of the City Code; 7) act on requests for exemptions, waivers and other administrative approvals not expressly delegated to the CBPA Review Committee or the CBPA Board; and 8) modify requirements for water quality impact assessments as permitted by the CBPA District ordinance; 9) review and act upon requests for water-dependent facilities as defined in Section 26-515 of the City Code; and 10) make minor amendments to this CBPA Specifications Manual. Other duties are specified in the CBPA District ordinance.

Construction footprint means the area of all impervious surface, including but not limited to, areas to be improved with buildings, roads, drives, parking areas, sidewalks, pools, decks, porches, sheds, and other structures and improvements, other than fences, subject to the CBPA regulations promulgated by CBLAB.

Development means the construction or substantial alteration of residential, commercial, industrial, institutional, recreational, transportation or utility facilities, buildings or structures, other than fences.

Diameter at Breast Height, or DBH, means the diameter of a tree measured outside the bark at a point four and one-half (4.5) feet above the ground.

Dripline means a vertical projection to the ground surface from the furthest lateral extent of a tree's leaf canopy. Where a tree's leaf canopy has been altered by trimming, pruning or breakage, the dripline shall be determined by the City Arborist.

Highly erodible soils mean soils (excluding vegetation) with an erodibility index (E) 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.

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 or 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 1966 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, but are not limited to, roofs, buildings, structures, (other than fences) streets, roads, drives parking areas, sidewalks and any concrete, asphalt or compacted gravel surface, as well as the area of any swimming pool, as measured by water surfaces, decks and concrete surfaces.

Infill means utilization of vacant land in or primarily surrounded by developed areas.

Intensely Developed Area or IDA means designated redevelopment areas of the City adopted pursuant to the Chesapeake Bay Preservation Act and regulations promulgated by CBLAB thereunder, as designated on the IDA Map.

Land disturbance in the CBPA District means any activity upon land which causes, contributes to, or results in the removal or covering of the vegetation upon such land, or the disturbance of unvegetated soils, including but not limited to, clearing, dredging, filling, grading or excavating. The term shall not include minor activities such as home gardening, individual landscaping and home maintenance, as determined by the City Manager's Designee; nor shall it include bona fide silvicultural activities, which are exempt from the provisions of Chapter 26 of the City Code. Bona fide agricultural operations on agricultural lands located within the CBPA District shall be subject to separate standards, set out in

Chapter 26 of the City Code, from those applicable to other land-disturbing activities.

Lot Coverage means the impervious area of any lot or parcel including, but not limited to buildings, drives, parking areas, sidewalks, patios, decks, and similar structures, other than fences.

Mitigation means acts necessary to prevent, limit or remedy conditions that may degrade water quality. The term shall not be given the same meaning as in federal and state wetlands laws and regulations, unless expressly stated herein.

Non-point source pollution means pollution consisting of constituents such as sediment, nutrients, and organic and toxic substances from diffuse sources, including, but not limited to, runoff from developments or operations on agricultural lands.

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 section 404 of the Federal Clean Water Act, as amended, and as further described in 33 CFR 328.3b, as amended, as determined by the City Manager's Designee.

Noxious weeds mean weeds that are difficult to control effectively, such as Johnson grass, kudzu and multiflora rose, as determined by the City Manager's Designee.

Ordinance means Article X of Chapter 26 of the Chesapeake City Code; this Manual; the CBPA Map and/or the IDA Map.

Perennial flow means water flows continuing throughout the year without interruption, as determined by the City Manager's Designee, in accordance with this Manual.

Perennial water body means 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 a 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. This definition shall not include qualifying roadside drainage ditches in public rights-of-way or easements; active agricultural ditches meeting best management practices approved by the Virginia Dare Soil and Water Conservation District; and certain flood control and BMP

facilities, all in accordance with the standards set out in CBLAB Regulations and guidance documents

Person means an individual, fiduciary, agent, corporation, firm, partnership, limited liability company, association, organization or any other entity or combination thereof.

Plan means a complete set of documents required by the City Manager's Designee, the CBPA Review Committee or the CBPA Board to review applications or requests for land disturbance or for the division or development of property in the District.

Plat means a physical survey setting out in graphic form the division, or proposed division, of property. The features shown on such plat shall be those required by the Chesapeake City Code and the Chesapeake Zoning Ordinance and such additional features as may be required by regulations and policies implementing such ordinances.

Principal building shall have the same meaning as set out in the Chesapeake Zoning Ordinance, except that for purposes of the Ordinance and this Manual, there shall be no more than one detached structure located within six (6) feet of the primary building supporting the principal use.

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. 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.

Redevelopment means the process of developing land which is, or has been, previously developed.

Regional Best Management Facilities or BMPs means stormwater management facilities that drain or treat water from multiple development projects or from a significant portion of a watershed.

Resource Management Area or RMA means that component of the CBPA District that is not classified as the Resource Protection Area. The RMA includes land types that, if improperly disturbed, used or developed, have the potential for causing significant water quality degradation or for diminishing the functional value of the Resource Protection Area.

Resource Protection Area or RPA means that component of the CBPA District comprised of tidal wetlands; tidal shores; nontidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow;

and such other areas 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.

Silvicultural activities means forest management activities, including but not limited to, the harvesting of timber, the construction of roads and trails for forest management purposes, and the preparation of the property for reforestation, that are conducted in accordance with the silvicultural best management practices developed and enforced by the State Forester pursuant to Section 10.1-1105 of the Code of Virginia, as amended, and that are located on property qualifying as "real estate devoted to forest use" under Section 58.1-3230 of the Code of Virginia, as amended.

Substantial alteration means expansion or modification of a building or structure (other than fences), or any other development that would result in a disturbance of land exceeding 2,500 square feet in the RMA.

Surface flow means the flow of water normally associated with wetland hydrology. The term pertains to the saturation or inundation of the surface of the ground which occurs during the growing season, consistent with federal wetlands regulations, and which is observable for a prolonged duration, consistent with current federal wetlands regulations, as determined by the of not less than fourteen (14) days. Groundwater must be observable at the uppermost mineral or organic soil layer, including peat, mucky peat or muck but not merely organic litter or "duff". Mere runoff shall not be deemed surface flow.

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 Section 28.2-1300 of the Code of Virginia, as amended.

Tree group or tree stand means a group of two or more trees which have trunks or canopies in close proximity to one another.

Water-dependent facility means development of land that cannot exist outside of the Resource Protection Area (RPA) and must be located on the shoreline by reason of the intrinsic nature of the proposed activity or use. These facilities include, but are not limited to, (i) ports; (ii) the intake and outfall structures of power plants, water treatment plants and storm sewers; (iii) marinas and other boat docking structures; (iv) beaches and other public water-oriented recreation areas; (v) public observation decks; (vi) fisheries or other marine resource facilities; and (vii) shoreline protection measures; and viii) approved wetlands restoration areas; all as approved by the CBPA Review Committee City Manager's Designee.

Wetlands mean tidal and nontidal wetlands, as defined in Chapter 26 of the City Code.

III. City Manager's Designee

City Manager's Designee is a term used in the CBPA District ordinance to mean any officer, department head or other employee designated by the City Manager to interpret, administer or enforce the ordinance, including this Manual. There may be one or more designees. This term may also refer to designees of the City Manager's Designee, including the CBPA Review Committee or one or more members of City staff.

The following is a list of the City Manager's Designees and their assigned duties:

1. The Director of Planning, or his designee, shall serve as the City Manager's Designee responsible for the following:
 - a. Interpret and implement the CBPA District ordinance, including this Manual;
 - b. Appoint City staff members to serve on the CBPA Review Committee, including the City Arborist; two staff members from the Planning Department; two staff members from the Public Works Department; one staff member from the Department of Economic Development; one staff member from the Division of Zoning Administration; and one staff member from the City Attorney's Office (non-voting).
 - c. Review and approve RPA field delineations, under Section 26-517 of the City Code;
 - d. Review and approve determinations of perennial flow and perennial water bodies jointly with the Director of Public Works, in accordance with Section 26-517 of the City Code, CBLAB Regulations and CBLAB Guidance Documents.
 - e. Review and resolve conflicts in CBPA boundaries under Section 26-517 of the City Code;
 - f. Review and act upon requests for land disturbance, development or redevelopment within the RMA, including RMAs that are located wholly or partially in the IDA;
 - g. Review and act upon access points during construction under Section 26-520.B.4.a. of the City Code;

- h. Determine whether existing vegetation can be removed from the RPA buffer under the provisions of Section 26-520.B.7.e-1.
 - i. Modify and evaluate Water Quality Impact Assessments under Section 26-523 of the City Code;
 - j. Review and act upon requests for approval of water-dependent facilities, as defined in Section 26-515 of the City Code.
 - j-k. Make minor modifications to this Manual; and
 - k-l. Any and all duties assigned in the CBPA District ordinance or by the City Manager.
2. The Chesapeake Bay Preservation Area (CBPA) Review Committee is assigned the following duties:
- a. Review and act upon applications for land disturbance, development and redevelopment activities conducted wholly or partially in the RPA, including portions in the IDA;
 - b. Review and act upon requests for ~~water-dependent and other~~ conditionally permitted uses in the RPA and IDA under Section 26-519 of the City Code;
 - c. Review and act upon requests for “grandfathered” RPA buffer encroachments under Section 26-520.B.7. of the City Code;
 - d. Review and act upon IDA buffer encroachments under Section 26-521 of the City Code.
 - e. Review and act upon requests for nonconforming waivers under Section 26-525 of the City Code;
 - f. Review and act upon requests for exemptions under section 26-526 of the City Code;
 - g. Make recommendations to the CBPA Board for exception requests; and
 - h. Any and all duties assigned in the CBPA District ordinance or by the City Manager or the City Manager’s Designee.
3. The Chesapeake Wetlands Board shall serve as the CBPA Board and shall have the following duties:

- a. Hear and decide requests for exceptions;
 - b. Hear and decide appeals of decisions rendered by the City Manager's Designee or the CBPA Review Committee;
 - c. Impose agreed upon civil charges for violations under Section 26-528.G. of the City Code;
 - d. Order restoration of the CBPA District under Section 26-528.H. of the City Code; and
 - e. Any and all duties assigned to the CBPA Board in the CBPA District ordinance or by City Council.
4. The City Arborist shall serve as the City Manager's Designee in performing the following duties:
- a. Determine noxious weeds;
 - b. Review and approval of tree canopy calculations for buffer encroachments under Sections 26-520 and 26-521 of the City Code;
 - c. Review and act upon CBPA landscaping requirements;
 - d. Authorize removal of dead or dying trees and specify any required replacement of trees;
 - e. Assist in developing restoration requirements; and
 - f. Any and all duties assigned in the CBPA District ordinance or by the City Manager's Designee.
5. The Public Works Director shall serve as the City Manager's Designee in performing the following duties:
- a. Review and act upon CBPA stormwater calculations;
 - b. Review and approve stormwater management facilities and BMPs;
 - c. Issue certification by memorandum that existing stormwater management facilities have sufficient capacity and are in good working order;

- d. **Make determinations jointly with the Planning Director regarding designation of perennial flow and perennial water bodies pursuant to Section 26-517 of the City Code.**
 - e. **Make determinations regarding the practicability of using low-impact paving alternatives in the IDA.**
 - f. **Any and all duties assigned the Director or Department of Public Works in the CBPA District ordinance or by the City Manager or the City Manager's Designee.**
- 6. The Environmental Code Enforcement Administrator shall serve as the City Manager's Designee in performing the following duties:**
- a. **Conduct inspections and issue notices of violation to all persons causing or permitting violations of the CBPA District ordinance, including these regulations and any stipulations imposed as a condition of approval;**
 - b. **Issue stop work orders to all persons causing or permitting violations of the CBPA District ordinance;**
 - c. **Order correction of violations by restoration of the property as necessary to protect water quality and take other corrective action, such as issuing criminal summons or seeking injunctive relief; and**
 - d. **Any and all duties relating to enforcement of the CBPA District ordinance, including this Manual, orders and conditions of approval.**

In conducting enforcement duties, the Environmental Code Enforcement Administration may request the assistance of the Departments of Planning and Public Works to the extent deemed appropriate to effectively enforce the CBPA District ordinance and this Manual.

- 7. The Chairman of the Board of the Virginia Dare Soil and Water Conservation District, or his designee, may voluntarily serve as the City Manager's Designee in performing the following duties:**
- a. **Review and act upon requests to encroach into the 100 foot RPA buffer for agricultural activities in accordance with Section 26-520.B.7.d. of the City Code; and**
 - b. **Coordinate with the Environmental Coordinator to issue notices of violation and implement compliance schedules for all persons causing or permitting violations of the CBPA ordinance on agricultural lands.**

IV. Chesapeake Bay Preservation Area (CBPA) Review Committee

The Chesapeake Bay Preservation Area (CBPA) Review Committee has been formed to review land-disturbance, development, and redevelopment activities conducted wholly or partially within the RPA, including portions in the IDA. Land disturbance, development, and redevelopment plans in the RPA shall be submitted to the CBPA Review Committee for review, and depending on the nature of the request, to make recommendations to the CBPA Board or to take final action. The City Manager's Designee (Director of Planning) shall appoint the members of the CBPA Review Committee, including a chairperson to schedule applications and conduct meetings. The CBPA Review Committee may adopt rules of procedure to guide its conduct.

The CBPA Review Committee shall take final action on proposed land-disturbance, development or redevelopment in the RPA where 1) requested under City Code section 26-519; 2) requested under section 26-520.B.7.b.(2) or b.(3) of the CBPA ordinance; 3) requested for the IDA under Section 26-521 of the City Code; 4) requested under section 26-525 of the City Code; 5) requested under section 26-526 of the City Code; and 6) any other approvals delegated under the City Code or by the City Manager's Designee. Final decisions shall be in writing and shall state conditions of approval or reasons for denial. Any final action of the CBPA Review Committee may be appealed to the CBPA Board in writing within ten (10) days of the date of the written determination.

V. CBPA Review Committee Application Requirements

A. Unless exempted below the applicant shall provide the following materials to the CBPA Review Committee for all applications:

- 1. A plan, survey, or plat of the property, prepared by a certified surveyor, landscape architect, or engineer, drawn to scale, which displays all existing buildings, roads, stormwater and flood control facilities, existing trees and shrubs, and structures, including but not limited to, porches, stoops, steps, bay windows, sheds, patios, roof overhangs, sidewalks, driveways, decks, and pools. The plan, survey or plat shall also show the proposed building, structure, addition, parking area, road, driveway, sidewalk, deck, patio, pool, landscape area, sign, shed, and other facility, feature or area of any land disturbance other than fences, to be conducted, constructed or located on the property. The plan, survey or plat shall also depict delineated RPA and the relation of each existing and proposed building, structure or other facility, including BMPs and areas of land disturbance, in the CBPA District.**

2. A completed CBPA application must be submitted prior to formal consideration, approved by the CBPA Review Committee, must be submitted. The CBPA Review Committee will not take action on applications which the City Manager's Designee deemed incomplete or which are contingent on rezonings or other legislative approval.
 3. A building permit application shall be submitted for any building, structure, development or redevelopment within the District for which a building permit is required under the Chesapeake City Code or the Chesapeake Zoning Ordinance, other than fences.
 4. A water quality impact assessment, meeting the requirements of section 26-523 of the City Code shall be required for any land-disturbance, development or redevelopment activity within the RPA. This requirement may be modified by the City Manager's Designee for the activities listed in section 26-519 of the City Code.
 5. The applicant shall provide sixteen (16) copies of each of the materials listed in items 1 through 4 above.
- B. An application for a nonconforming waiver under Section 26-525 of the City Code shall be made to CBPA Review Committee upon forms furnished by the Planning Department and shall include 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 or construction;
 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 RPA, including the one hundred (100) foot RPA buffer;
 4. Location and description of any existing private water supply or sewage system.

VI. Delineation of the Resource Protection Area (RPA)

The RPA delineation is required for all development within the Chesapeake Bay Preservation Area District. ~~Two methods are to be utilized for all RPA delineations within the City of Chesapeake.~~ For all tidal areas, the RPA shall be measured from the four-foot (4') elevation mark, based upon 1929 National Geodetic Survey (NGS) vertical datum, 1972 adjustment or by the three-foot elevation for the NAVD 88 Source. The RPA delineation shall follow this four-foot

or three foot elevation line and the 100-foot buffer shall be measured from that line. The vertical datum that is used shall be clearly noted on the development plan.

For all non-tidal areas wetlands connected by surface flow to tidal wetlands or to a perennial water body, the RPA shall be based on an approved delineation, with the 100 foot buffer to be measured from the landward edge of the delineated wetlands area. shall, the RPA shall be measured from the toe of bank. The RPA delineation shall follow the toe of bank line and the one-hundred (100) foot buffer shall be measured from that line.

The delineation of the RPA shall also include any necessary determinations of “perennial water bodies,” using the most recent U.S. Geological Survey (7 1/2 minute topographic quadrangle map (scale 1:24,000)). The U.S. Geological Survey may only be rebutted by an in-field survey using a scientifically valid system of field indicators of perennial flow, approved by the City Manager’s Designee. The determination of the City Manager’s Designee in accepting an in-field survey shall also conform with CBLAB regulations and guidance documents. In addition, the City Manager’s Designee may require an in-field survey where observable conditions or mapping sources indicated that an RPA feature may exist.

In cases where the RPA is determined by a perennial water body (with no surface flow connection to non-tidal wetlands), the RPA shall be measured from the landward top edge of the stream, ditch or other water body.

The RMA area is the area adjacent to the RPA, as designated on the CBPA Map adopted by City Council. The RMA area must be delineated on the site plan for all development within the CBPA District.

All lots greater than 12,000 square feet in total lot area created by recordation of a subdivision plat on or after March 1, 2002, shall have at least seventy-five (75%) of the required lot area located landward of the RPA one hundred (100) foot buffer. All lots 12,000 square feet or less in total lot area created by recordation of a valid subdivision plat on or after March 1, 2002 shall have at least eighty percent (80%) of the required lot area located landward of the RPA one hundred (100) foot buffer. In no event shall lot area reductions given for open space dedication under section 19-700 et seq. of the Zoning Ordinance be applied to lots located wholly or partially in the RPA.

VII. CBPA Canopy Requirements

A. Definitions and minimum sizes for large canopy trees, small canopy trees and woody shrubs shall be the same as set out in the Chesapeake Landscape Specification Manual. Conversion rates shall be as follows:

two small canopy trees or ten mulched shrubs (18-24 inches minimum height at planting or of a 3 gallon size) may be substituted for one large canopy tree. Notwithstanding this conversion rate, at least two-thirds of the required canopy coverage shall consist of large canopy trees. Also, there shall be no more than 20% of any single species of large canopy tree on a site. For new development, the calculation area, as defined in the Chesapeake Landscape Specification Manual, shall be based on the gross square footage of the lot or parcel being developed or improved. For additions, the gross square footage shall be determined based on the extent to which the addition encroaches in the RPA or RMA. All fractions in calculations made under this section shall be rounded up or down to the nearest whole number. An fraction .5 or greater shall be rounded up. Any fraction less than .5 shall be rounded down.

- B.** The RPA landscaping requirement is a minimum fifty percent (50%) tree canopy coverage. The required minimum canopy coverage is determined using the square footage of the lot or parcel being developed, or in the case of an addition, the square footage of such addition to the extent that it encroaches in the RPA, multiplying that number by 0.5 (50%) and then dividing by 400 (canopy coverage of a large canopy tree). The resulting number will be the number of trees required for planting or preservation within the RPA, if possible, and where not possible, elsewhere on the property Example: A 15,000 square foot lot for a single-family residence on a lot within the RPA would require nineteen (19) large canopy trees. Take $(15,000 \times 0.5 = 7,500 / 400 = 19)$.
- C.** The RMA landscaping requirement for other than commercial or industrial sites is a minimum twenty percent (20%) tree canopy coverage, with a cap of twenty (20) large canopy trees, for single-family residential lots and a minimum fifteen percent (15%) tree canopy coverage for townhouse and multifamily developments. The required minimum canopy coverage is determined by using the square footage of the lot for development or, in the case of additions, the square footage of such addition to the extent that it encroaches into the RMA, multiplying that number by 0.2 (20%) and then dividing by 400 (canopy coverage of a large canopy tree). The resulting number will be the number of trees required for planting or preservation within the RMA. Example: A 15,000 square foot lot for a single-family residence on a lot within the RMA would require eleven (11) large canopy trees. $(15,000 \times 0.2 = 3,000/400 = 7.5$ or 8).
- D.** Landscaping requirements for commercial or industrial sites within the RMA is ten percent (10%) tree canopy coverage, calculated, planted and preserved in the same manner as specified in subparagraph C. above.
- E.** For lots which are only partially in the RMA or RPA, only the percentage of lot area in the RMA and/or RPA will be multiplied by 10%, 15%, 20% or 50%,

as the case may be, respectively, except that in the case of additions, the calculation will remain the same with only that portion of the addition encroaching into the RMA and/or RPA being used to calculate the canopy coverage.

- F. Landscaping requirements for the Intensely Developed Area (IDA) within the CBPA is a minimum twenty percent (20%) canopy coverage. This canopy coverage is determined by using the square footage of the lot for development or, in the case of additions, the square footage of such addition to the extent that it encroaches into the CBPA, multiplying that number by 0.2 (20%) and then dividing by 400 (canopy coverage of a large canopy tree). The resulting number will be the number of trees, 6-8 feet in height at planting required for planting or preservation within the CBPA. Example: A 15,000 square foot lot for a single-family residence on a lot within the RMA would require eight (8) large canopy trees or 16 small canopy trees ($15,000 \times 0.2 = 3,000/400 = 7.5$ or 8).
- G. Existing trees at least six to eight feet in height preserved on the parcel will be counted towards meeting the canopy coverage requirements set out above. In addition, trees planted or preserved under Article 19 of the Zoning Ordinance that are at least 6-8 feet in height will be counted towards the required canopy coverage.
- H. Tidal and sub-aqueous areas will be excluded from the tree canopy requirement calculations.
- I. All required tree canopy coverage shall be preserved in perpetuity, including natural understory and groundcover. Techniques for the preservation of natural understory and groundcover set out in CBLAB guidance documents shall be followed. Preservation shall further be ensured through notation on final approved site plans, construction plans and subdivision plats and, if deemed necessary by the approval authority, by a recorded preservation easement. The removal of dead or diseased trees and vegetation may be approved by the City Arborist, provided that such trees or vegetation are replaced to meet the tree canopy coverage, including natural understory and groundcover, requirements herein. The tree canopy coverage, including natural understory and groundcover, shall be maintained and preserved by the landowner.

VIII. Low Impact Design Standards for Intensely Developed Area (IDA)

Development in the IDA shall comply with the following low impact design standards. These standards also recommended for all permitted developments in the CBPA District whenever possible.

- A. All land disturbance, construction, development and redevelopment in the IDA shall minimize impervious cover so as to promote infiltration of stormwater into the ground.
- B. Grid and modular pavements, permeable asphalt, or other semi-permeable or permeable materials, and other BMPs designed to control stormwater run-off and non-point source pollution, shall be used for required parking areas, roads, and driveways, unless otherwise approved by the Director of Public Works or designee based on a determination that the use of such surfaces is impracticable or not permitted by law.
- C. Existing plants and trees shall be preserved to the greatest extent practicable;
- D. All clearing and grading shall be minimized to the greatest extent practicable;
- E. Stormwater runoff treatment shall be installed, if not already existing, in accordance with the Stormwater Management ordinance and the PFM. Stormwater management should incorporate bioretention areas to treat runoff from the entire site, where practicable;
- F. Pervious parking materials should be used where feasible for all driveways and parking areas not required under the Chesapeake Zoning Ordinance; and
- G. Landscaping requirements shall meet the twenty percent (20%) tree canopy coverage requirements in Section VII.F. above.
- H. Development and redevelopment in the IDA shall also adhere to the extent practicable to the 2000 CBLAD Guidance Document entitled "Better Site Design: An Assessment of the Better Site Design Principles for Communities Implementing Virginia's Chesapeake Bay Preservation Act." The document is available on the CBLAD website.

ADOPTED this _____ day of _____, 2005.

 Mayor

ATTEST:

 Clerk of the Council

July 7, 2005

AN ORDINANCE AMENDING CHAPTER 26 OF THE CHESAPEAKE CITY CODE, ENTITLED "ENVIRONMENT," SECTIONS 26-515, 26-517, 26-518, 26-519, 26-520, 26-522, 26-523.D., 26-525, 26-526 AND 26-527 THEREOF, AND TO AMEND THE CHESAPEAKE BAY PRESERVATION AREA ORDINANCE SPECIFICATIONS MANUAL, TO MODIFY REGULATIONS PERTAINING TO THE CHESAPEAKE BAY PRESERVATION AREA (CBPA).

BE IT ORDAINED by the Council of the City of Chesapeake, Virginia, that Chapter 26 of the Chesapeake City Code Sections 26-515, 26-517, 26-518, 26-519, 26-520, 26-523.D., 26-525, 26-522, 26-526 and 26-527 thereof, and the Chesapeake Bay Preservation Area Ordinance Specifications Manual, be amended and reordained as follows:

ARTICLE X. CHESAPEAKE BAY PRESERVATION AREA DISTRICT

Sec. 26-515. Definitions.

The following words and terms used in this ordinance have the following meanings, unless the context clearly indicates otherwise. Words and terms not defined in this ordinance but defined elsewhere in the Chesapeake city code or the Chesapeake zoning ordinance shall be given the meanings set forth therein.

Accessory structure shall have the meaning prescribed in the Chesapeake Zoning Ordinance, except that no more than one detached structure located within six (6) feet of the principal building shall be permitted under this Ordinance. In the case of a swimming pool, the six (6) foot maximum distance of separation shall be measured from the pool wall closest to the principal building.

Agricultural lands means those lands used for the planting and harvesting of crops or plant growth of any kind in the open; pasture; horticulture; dairying;

floriculture; or raising of poultry and/or livestock. The term shall not include property on which qualified silvicultural activities are conducted.

Applicant means any person submitting any application required or permitted pursuant to the provisions of this ordinance.

Best Management Practices or BMPs means a practice or a combination of practices that is determined by the department of public works to meet or exceed the water quality objectives set out below and designed in accordance with the Chesapeake Public Facilities Manual.

Board or CBLAB means the Chesapeake Bay Local Assistance Board or succeeding state board or commission.

Buffer or buffer area means an area of natural or established vegetation managed and preserved to protect other components of the Resource Protection Area and state waters from significant degradation due to land disturbance or development.

Chesapeake Bay Preservation Area, CBPA District or District means those areas delineated on the CBPA Map and the IDA Map as one of the following: (a) Resource Protection Area (RPA), (b) Resource Management Area (RMA) and (c) Intensely Developed Area (IDA). The CBPA District shall also include areas designated RPA or RMA as a result of an approved field delineation as provided in sections 26-516 and 26-517 below.

Chesapeake Bay Preservation Area Board or CBPA Board means the board established or designated by city council to 1) consider appeals from administrative determinations, 2) consider requests for exceptions to the

provisions of this ordinance, 3) impose agreed upon civil penalties for violation of this ordinance, and 4) order correction of violations of this ordinance through restoration of the CBPA District.

Chesapeake Bay Preservation Area Map or CBPA Map means the map adopted by city council and incorporated into this ordinance to delineate the boundaries of the District. The boundaries of the CBPA District shown on the CBPA Map shall be subject to refinement by approved field surveys as provided in this ordinance.

Chesapeake Bay Preservation Area Review Committee or CBPA Review Committee means the administrative committee consisting of city staff appointed by the City Manager's Designee for the primary purpose of 1) reviewing and acting upon certain administrative approvals, exemptions and waivers, as permitted under this ordinance, and 2) making recommendations to the CBPA Board on requests for exceptions to the provisions of this ordinance.

Chesapeake Bay Preservation Area Specifications Manual or CBPA Specifications Manual means the documents setting out administrative procedures, specifications, guidelines, techniques and remedial actions, adopted with this ordinance and incorporated herein. The term shall also include any and all substantive amendments approved by city council and minor amendments approved by the City Manager's Designee. Minor amendments are defined as those that do not substantially affect the extent or conditions of development permitted under this ordinance and that are not inconsistent with the purpose and intent of such ordinance. Examples are set forth in section 26-518.E. below.

City Manager's Designee means any officer, department head or other employee designated by the City Manager to interpret, administer or enforce this ordinance. There may be one or more designees. This term shall also include designees of the City Manager's Designee, which may include the CBPA Review Committee or one or more members of City staff. The City Manager's Designee shall also 1) resolve CBPA District boundary disputes; 2) approve delineations, including determinations of perennial flow and perennial water body 3) act on requests for development in the RMA, including RMAs located wholly or partially in the IDA; 4) act on requests for construction access points under section 26-520.B.7.a- below; 5) act on requests to remove vegetation from the RPA buffer under section 26-520.B.7.c.1. ~~below~~; 6) act on requests for exemptions, waivers and other administrative approvals not expressly delegated to the CBPA Review Committee or the CBPA Board; 7) ~~waive or~~ modify requirements for water quality impact assessments; 8) act on requests for approval of water dependent facilities as defined herein; and 9) make minor amendments to the CBPA Specifications Manual.

Construction footprint means the area of all impervious surface, including but not limited to, areas to be improved with buildings, roads, drives, parking areas, sidewalks, pools, decks, porches, sheds, and other structures and improvements, other than fences, subject to the CBPA regulations promulgated by CBLAB.

Development means the construction or substantial alteration of residential, commercial, industrial, institutional, recreational, transportation or utility facilities, buildings or structures, other than fences.

Diameter at Breast Height, or DBH, means the diameter of a tree measured outside the bark at a point four and one-half (4.5) feet above the ground, as determined by the City Arborist.

Dripline means a vertical projection to the ground surface from the furthest lateral extent of a tree's leaf canopy. When a tree's leaf canopy has been altered by trimming, pruning or breakage, the dripline shall be determined by the City Arborist.

Highly erodible soils means soils (excluding vegetation) with an erodibility index (E) 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.

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 or 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 1966 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, but are not limited to, roofs, buildings, structures, other than fences, streets, roads, drives parking areas, sidewalks and any concrete, asphalt or compacted gravel surface, as well as the area of any swimming pool, as measured by water surface, decks and concrete surfaces.

Infill means utilization of vacant land in or primarily surrounded by developed areas.

Intensely Developed Area or IDA means designated redevelopment areas of the city adopted pursuant to the Chesapeake Bay Preservation Act and regulations promulgated by CBLAB thereunder, as designated on the IDA Map.

Land disturbance in the CBPA District means any activity upon land which causes, contributes to, or results in the removal or covering of the vegetation upon such land, or the disturbance of unvegetated soils, including but not limited to, clearing, dredging, filling, grading or excavating. The term shall not include minor activities such as home gardening, individual landscaping and home maintenance, as determined by the City Manager's Designee; nor shall it include bona fide silvicultural activities, which are exempt from the provisions of this ordinance. Bona fide agricultural operations on agricultural lands located within the CBPA District shall be subject to separate standards, set out below, from those applicable to other land-disturbing activities.

Lot Coverage means the impervious area of any lot or parcel including, but not limited to, buildings, drives, parking areas, sidewalks, patios, decks, and similar structures, other than fences.

Mitigation means acts necessary to prevent, limit or remedy conditions that may degrade water quality. The term shall not have the same meaning as in federal and state wetlands protection laws and regulations, unless expressly stated herein.

Non-point source pollution means pollution consisting of constituents such as sediment, nutrients, and organic and toxic substances from diffuse sources, including, but not limited to, runoff from developments or operations on agricultural lands.

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 section 404 of the Federal Clean Water Act, as amended, and as further described in 33 CFR 328.3b, as amended, as determined by the City Manager's Designee in accordance with the CBPA Specifications Manual.

Noxious weeds means weeds that are difficult to control effectively, such as Johnson grass, kudzu and multiflora rose, as determined by the City Manager's Designee.

Ordinance means this Article X of Chapter 26; the CBPA Specifications Manual; the CBPA Map and/or the IDA Map.

Perennial flow means water flows continuing throughout the year without interruption, as determined by the City Manager's Designee.

Perennial water body means 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 embankments 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 a 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. This definition shall not include qualifying roadside drainage ditches in public rights-of-way or easements; active agricultural ditches meeting best management practices approved by the Virginia Dare Soil and Water Conservation District; or certain flood control and BMP facilities, all as described in the CBPA Specifications Manual.

Person means an individual, fiduciary, agent, corporation, firm, partnership, limited liability company, association, organization or any other entity or combination thereof.

Plan means a complete set of documents required by the City Manager's Designee, the CBPA Review Committee or the CBPA Board to review applications or requests for land disturbance or for the division or development of property in the District.

Plat means a physical survey setting out in graphic form the division, or proposed division, of property. The features shown on such plat shall be those required by the Chesapeake city code and the Chesapeake zoning ordinance and such additional features as may be required by regulations and policies implementing such ordinances.

Principal building shall have the meaning prescribed in the Chesapeake Zoning Ordinance, except that there shall be no more than one detached structure located within six (6) feet of the building supporting the principal use.

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. 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.

Redevelopment means the process of developing land which is, or has been, previously developed.

Regional Best Management Facilities or BMPs means stormwater management facilities that drain or treat water from multiple development projects or from a significant portion of a watershed.

Resource Management Area or RMA means that component of the CBPA District that is not classified as the Resource Protection Area. The RMA includes land types that, if improperly disturbed, used or developed, have the potential for

causing significant water quality degradation or for diminishing the functional value of the Resource Protection Area.

Resource Protection Area or RPA means that component of the CBPA District comprised of tidal wetlands; tidal shores; non-tidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow; a one-hundred (100) foot vegetation buffer and such other areas 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.

Silvicultural activities means forest management activities, including but not limited to, the harvesting of timber, the construction of roads and trails for forest management purposes, and the preparation of the property for reforestation, that are conducted in accordance with the silvicultural best management practices developed and enforced by the State Forester pursuant to section 10.1-1105 of the Code of Virginia, as amended, and that are located on property qualifying as "real estate devoted to forest use" under section 58.1-3230 of the Code of Virginia, as amended.

Substantial alteration means expansion or modification of a building or structure, or any other development, that would result in a disturbance of land exceeding 2,500 square feet in the RMA.

Surface flow means the flow of water normally associated with wetland hydrology. The term pertains to the saturation or inundation of the surface of the ground which occurs during the growing season, as specified in federal wetlands

regulations, and which is observable for a prolonged duration, ~~consistent with current federal wetlands regulations, as determined by the City Manager's Designee~~ of not less than fourteen (14) days. Groundwater must be observable at the uppermost mineral or organic soil layer, including peat, mucky peat, or muck but not merely organic litter or “duff”. Mere runoff shall not be deemed surface flow

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 section 28.2-1300 of the Code of Virginia, as amended.

Tree group or tree stand means a group of two or more trees which have trunks or canopies in close proximity to one another.

Water-dependent facility means development of land that cannot exist outside of the Resource Protection Area (RPA) and must be located on the shoreline by reason of the intrinsic nature of the proposed activity or use. These facilities include, but are not limited to, (i) ports; (ii) the intake and outfall structures of power plants, water treatment plants and storm sewers; (iii) marinas and other boat docking structures; (iv) beaches and other public water-oriented recreation areas; (v) public observation decks; (vi) fisheries or other marine resource facilities; ~~and~~ (vii) shoreline protection measures; and (viii) wetlands restoration areas that have received preliminary or final approval from all regulating federal and state agencies, provided that the restoration area does not function as a BMP; all as approved by the City Manager's Designee;

Wetlands means tidal and nontidal wetlands, as defined in this chapter.

Sec. 26-517. Interpretation of CBPA Boundaries.

Any person contemplating development or land-disturbing activities within the city should consult the CBPA Map prior to engaging in the proposed activity. The CBPA District boundaries are shown as approximate on the CBPA Map and may vary slightly from the actual location on the ground. The precise location of the RPA and RMA as shown on an approved field delineation shall control. In any event, the applicant for any land disturbance, development or construction in the CBPA District shall have the following responsibilities:

1. *Delineation of the RPA:* ~~The applicant shall delineate specific boundaries of the RPA through the performance of an environmental site assessment, and field survey to be approved by the City Manager's Designee in accordance with section 26-524 of this ordinance. Delineation of the RPA shall also include designation of perennial water bodies, by reference to In delineating the RPA, the applicant shall include the perennial water bodies designated on the U.S. Geological Survey (7 1/2 minute topographic quadrangle map); Designation on the U.S. Geological Survey may be rebutted only ~~or~~ by use of a scientifically valid system of in-field indications of perennial flow approved by the City Manager's Designee. In addition, the City Manager's Designee may require a field survey using an~~

approved scientifically valid system where site conditions or mapping sources indicate that an RPA feature may exist.

2. ***Resolution of Conflict of District Boundaries:*** Where the applicant has provided a delineation of the specific boundaries of the RPA, the City Manager's Designee may verify the accuracy of the boundary delineation. The City Manager's Designee may make adjustments to the applicant's RPA delineation where deemed necessary to correct error or to otherwise meet the intent and purposes of this ordinance. In the event the applicant contests the adjusted RPA delineation, the applicant may seek relief from the CBPA Board in accordance with the provisions of section 26-527 of this ordinance.

Sec. 26-518. Administrative approvals.

A. The City Manager shall designate one or more administrators (City Manager's Designee) to 1) interpret, implement and enforce this ordinance, and 2) grant administrative approvals, waivers and exemptions not expressly delegated to the CBPA Review Committee or the CBPA Board.

B. The City Manager's Designee may also approve land-disturbance and development activities occurring entirely within the RMA, including RMAs that are located wholly or partially in the IDA, subject to the applicable performance standards of this ordinance.

C. The City Manager's Designee may approve RPA delineations and shall interpret CBPA District boundaries in accordance with section 26-517 above.

D. The City Manager’s Designee may approve determinations of perennial flow in accordance with the definitions of “perennial flow” and “perennial water body” in section 26-515 above and the methods of determination in section 26-517 above.

E. The City Manager’s Designee may review and act upon access points during construction in accordance with section 26-520.B.7.a. below.

F. The City Manager’s Designee may determine whether existing vegetation can be removed from the RPA buffer under the provisions of section 26-520.B.7.c.1. below.

G. The City Manager’s Designee may evaluate and modify the requirements for a water quality impact assessment under section 26-523 of this ordinance.

H. The City Manager’s Designee may review and act upon requests for water-dependent facilities as defined in this Ordinance, provided that i) the facility is a permitted use, ii) the facility complies with all performance criteria in this Ordinance; iii) all non water-dependent components are located outside the RPA; and iv) access to the water-dependent facility is provided with the least amount of land disturbance necessary.

H.I. The City Manager’s Designee may approve minor amendments to the CBPA Specifications Manual. Minor amendments shall mean changes in administrative procedure; nonbinding guidelines; methods of measurement and calculation; contents of plans and applications; delegation of approval authority; and other similar changes that do not substantially affect the extent or conditions

of development under this ordinance and that are not inconsistent with this ordinance.

I.J. In exercising the authority granted in this ordinance, the City Manager's Designee may request all information reasonably necessary to make an informed decision on a request for relief and may attach conditions or stipulations to approvals.

J.K. In exercising the authority provided in this ordinance, the City Manager's Designee shall have the right to enter upon private property for any purpose relating to the administration and enforcement of this ordinance. Reasonable notice shall be given where feasible.

K.L. In exercising the authority provided in this ordinance, the City Manager's Designee may delegate his duties, in whole or in part, to the CBPA Review Committee or to other City staff members.

L.M. Any final decision rendered by the City Manager's Designee shall be in writing and shall state any conditions or stipulations of approval or reasons for denials. The applicant may appeal any final action of the City Manager's Designee in writing to the CBPA Board within ten (10) days of the written determination.

M.N. The Chesapeake Bay Preservation Area (CBPA) Review Committee consists of city staff members appointed by the City Manager's Designee to review land-disturbance, development, and redevelopment activities conducted wholly or partially within the RPA, including portions of the RPA in the IDA. Land disturbance, development, and redevelopment plans in the RPA, including portions in the IDA, shall be submitted to the CBPA Review Committee for review,

and depending on the nature of the request, the Committee shall make recommendations to the CBPA Board or take final action. Application requirements for review by the CBPA Review Committee are set out in the CBPA Specifications Manual and may be amended from time to time by the City Manager's Designee. Each application to the CBPA review committee shall be submitted with a processing fee of \$125.00 per lot for which relief is requested, except that the fee for exception requests and appeals to the CBPA board shall be as provided in section 26-527.F. of this chapter.

N.O. The CBPA Review Committee shall take final action on proposed land-disturbance, development and redevelopment in the RPA where 1) requests are made to conduct permitted development under section 26-519 below; 2) ~~requests are made for tree canopy coverage reductions in the RMA for qualifying commercial and industrial sites under section 26-520.B.3 below;~~ 3) requests for buffer encroachments are made under section 26-520.B.7.b.(2) or b.(3) of this ordinance; 4) 3) requests are made for RPA development in the IDA under sections 26-520.B.7. and 26-521.A.2. of this ordinance; 5) 4) requests are made for nonconforming uses, buildings and structures under section 26-525 of this ordinance; and 6) 5) requests are made for exemptions under section 26-526 of this ordinance. The CBPA Review Committee may attach conditions or stipulations to approvals. Final decisions shall be in writing and shall state conditions of approval or reasons for denial. All final action of the CBPA Review Committee may be appealed to the CBPA Board in writing within ten (10) days of the date of the written determination.

O.P. The CBPA Review Committee shall also review all requests for exceptions under section 26-527 below and make recommendations to the CBPA Board for action.

P.Q. The CBPA Review Committee shall also take action on all matters delegated by the City Manager's Designee.

Q.R. Members of the CBPA Review Committee shall have the right to enter upon private property for purposes of performing its duties under this ordinance. Reasonable notice shall be given whenever feasible.

Sec. 26-519. Permitted development in the resource protection area (RPA).

A. In addition to the performance standards set forth in this ordinance, including any water quality impact assessment required by section 26-523 below, the criteria in this section are applicable in the RPA.

B. Land disturbance and development may be allowed in the RPA, subject to the approval of the CBPA Review Committee, where the applicant shows the proposed activity or development is one or more of the following:

- ~~1.~~** ~~New or expanded water-dependent activities meeting the requirements in section 26-519.C. below;~~
- 2.1.** Redevelopment activities outside the IDA meeting the requirements in section 26-519.D. below;
- 3.2.** Development or redevelopment activities within the IDA meeting the requirements in section 26-519.E. below;
- 4.3.** Roads or driveways meeting the requirements set forth in section 26-519.F. below;

~~5.4.~~ Flood control or stormwater management facilities meeting the requirements set forth in section 26-519.G. below; or

~~6.5.~~ Bona fide agricultural activities conducted on agricultural lands meeting the requirements set forth in section 26-519.H. below.

~~7.~~ Wetlands restoration activities in the CBPA District meeting the requirements in section 26-519.I. below.

~~C.~~ A new or expanded water-dependent facility may be permitted in the RPA provided that the following criteria are met:

- ~~1.~~ The facility does not conflict with the Comprehensive Plan;
- ~~2.~~ The facility complies with the performance standards set out in this ordinance, including without limitation, buffer standards for shoreline erosion control projects in section 26-520.B.7.c.(1)(d) of this ordinance;
- ~~3.~~ Any nonwater-dependent component of the facility is located outside the RPA;
- ~~4.~~ Access to the water-dependent facility is provided with the minimum amount of land disturbance necessary, as determined by the CBPA Review Committee. Where practicable, access shall be limited to a single point of access; and
- ~~5.~~ Approval is obtained from the CBPA Review Committee, as provided in section 26-518 of this ordinance.

~~D.C.~~ Redevelopment outside the IDA shall be permitted in the RPA only under the following conditions:

1. There is no increase in impervious cover;
2. There is no further encroachment within the RPA than existed under the previous development;
3. The development complies with the performance standards in this ordinance, including, without limitation, buffer standards in section 26-520.B.7 of this ordinance; and
4. Approval is obtained from the CBPA Review Committee, as provided in section 26-518 of this ordinance.

E.D. Redevelopment and development activities within the IDA shall be permitted in the RPA only under the following conditions:

1. The activity complies with the performance standards in section 26-521 of this ordinance; and
2. A ten percent (10%) reduction in the post-development nonpoint source pollution load is achieved. The CBPA Review Committee may waive or modify this requirement for sites that originally incorporated best management practices (BMPs) for stormwater runoff quality control, provided that all of the following provisions are satisfied:
 - (a) The approved BMPs are designed, constructed and maintained to prevent any net increase in nonpoint source pollution runoff.
 - (b) Runoff pollution loads must have been calculated and the BMPs selected for the express purpose of controlling nonpoint source pollution.

(c) If BMPs are structural, a professional engineer certifies to the City that the facilities are currently functioning and performing at the designed levels of service.

- 3. Approval is obtained from the CBPA Review Committee, as provided in section 26-518 of this ordinance.**

F.E. Roads and driveways not otherwise exempt under Section 26-526 below, may be constructed in or across the RPA, only if each of the following conditions set out below are met: As used herein, the term “driveway” may include private commercial drive aisles and entrance improvements approved by the Director of Public Works and planter islands required by the City Arborist. The term shall not include parking spaces, parking facilities, signs, or any other accessory building, structure or improvement requiring disturbance of the RPA.

- 1. The Director of Public Works or designee makes a finding that there are no reasonable alternatives to aligning the road or driveway in or across the RPA;**
- 2. The alignment and design of the road or driveway are optimized, consistent with other applicable requirements, to minimize encroachment in the RPA and adverse effects on water quality;**
- 3. The design and construction of the road or driveway satisfy all applicable criteria of this ordinance, including submission of a water quality impact assessment;**
- 4. The road or driveway complies with the standards in the Chesapeake city code and the Chesapeake Public Facilities Manual; and**

5. Approval is obtained from the CBPA Review Committee, as provided in section 26-518 of this ordinance.

G.F. Flood control and BMPs that drain or treat water from multiple developments or from a significant portion of a CBPA watershed may be permitted in the RPA, provided that:

1. The Director of Public Works or designee has conclusively established that the location of the facility within the RPA is the optimum location;
2. The size of the facility is the minimum necessary to provide necessary flood control, stormwater treatment or both;
3. The facility complies with the Chesapeake city code, including without limitation, the stormwater management ordinance and regulations adopted thereunder, and the Chesapeake Public Facilities Manual;
4. The facility meets the performance standards set forth in this ordinance; and
5. Approval is obtained from the CBPA Review Committee, as provided in section 26-518 of this ordinance.

Notwithstanding the foregoing, it is not the intent of this ordinance to permit flood control or BMPs in the RPA where such facilities only collect and treat runoff from an individual lot or a portion of an individual lot. Any maintenance, alteration, use or improvement to an existing stormwater facility, including man-made drainage facilities existing at the time of the effective date of this ordinance,

that does not degrade the quality of surface water discharge, as determined by the public works director or designee, may be exempted from the requirements of this subsection.

H.G. Property upon which bona fide agricultural activities are being conducted, including but not limited to, crop production, pasture, and dairy and feedlot operations, or property otherwise defined as agricultural lands in this ordinance, shall be permitted in the RPA subject to the following conditions:

1. Such activities shall meet the applicable performance standards set out in section 26-520 below;
2. Such activities shall be conducted in accordance with a soil and water quality conservation assessment conducted and approved by the Virginia Dare Soil and Water Conservation District; and
3. Where the permitted agricultural land uses, including any exempt silvicultural activities, within the buffer cease, a full one hundred (100) foot vegetated buffer shall be established. The established buffer shall be subject to the buffer performance standards set forth in section 26-520.B.7. below.

~~I. Wetlands restoration activities may be permitted in the CBPA District, provided that all of the following criteria are met:~~

- ~~1. The facility has received preliminary or final approval from state, local and federal agencies;~~
- ~~2. The facility is designed to enhance or protect water quality through the restoration or preservation of wetlands;~~

- ~~3. The facility is not a BMP; and~~
- ~~4. Approval is obtained from the CBPA Review Committee as provided in section 26-518 of this ordinance.~~

Sec. 26-520. General performance standards for the RPA, RMA and IDA.

A. The city council has determined that natural ground cover, especially woody vegetation, is most effective in holding soil in place and preventing site erosion. Natural vegetation, with its adaptability to local conditions without the use of harmful fertilizers or pesticides, serves the important function of filtering stormwater runoff. Additionally, minimizing impervious cover enhances rainwater infiltration and effectively reduces stormwater runoff. In order to minimize the potential for erosion and sedimentation, reduce nutrients and toxics, and increase rainwater infiltration, the following performance standards are hereby established and shall apply to all land disturbance, development and redevelopment activity in the CBPA District (RMA, RPA and IDA). The purpose and intent of the following standards is to set forth minimum requirements for all such activities and prevent a net increase in nonpoint source pollution from new development; reduce nonpoint source pollution from existing development; and reduce nonpoint source pollution from the use of agricultural lands.

B. General performance standards for land disturbance, development and redevelopment in the CBPA District are as follows:

- 1. Limitations on Land Disturbance.**

In order to meet the CBLAB Regulations, land disturbance shall be limited to the area necessary to provide for the proposed use, building, structure

or development, as follows determined by the appropriate approval authority. At a minimum, the following shall apply:

a. All developments exceeding 2,500 square feet of development area shall include an approved erosion and sediment control plan in the plan of development submitted under section 26-524 of the ordinance.

a.b. The limits of land disturbance, including clearing or grading, shall be defined by a construction footprint shown on an approved plan. These limits shall also be physically delineated on the development site by fencing or other device required by the designated approval authority.

b.c. Ingress and egress during construction shall be limited to one access point shown on the approved plan, unless otherwise approved by the City Manager's Designee based on a clear showing of necessity.

2. Preservation of Existing Vegetation.

Existing vegetation shall be preserved in the CBPA District to the maximum extent practicable. The following minimum standards apply:

a. Existing woody vegetation, including, but not limited to, trees over one and a half (1 ½) inches in diameter at breast height (DBH), shall be preserved outside the construction footprint. Diseased trees or trees weakened by age, storm, fire or other injury may be removed, after approval by the City Arborist,

subject to the minimum canopy coverage requirements in section 26-520.B.3. below.

- b. Clearing shall be allowed only to provide approved and necessary access, positive site drainage, water quality best management practices (BMPs), and the installation of utilities subject to approval of the City Manager's Designee and meeting the minimum canopy coverage requirements in Section 26-520.B.3. below.
- c. Prior to clearing or grading, approved protective barriers shall be erected five (5) feet outside of the dripline of any tree or stand of trees to be preserved. These protective barriers shall remain in place throughout all phases of construction. The storage of equipment, materials, debris or fill shall not be allowed within the areas protected by the barrier.

3. Canopy Requirements.

In order to meet CBLAB requirements for a woody vegetated one-hundred (100) foot wide RPA buffer and to satisfy CBLAB general performance standards for the RMA, the following minimum landscaping requirements shall apply:

- a. The RPA landscaping requirement is a minimum fifty percent (50%) tree canopy coverage, calculated in accordance with the CBPA Specifications Manual.

- (1) Install and maintain a plastic filter in the outflow pipe from the septic tank to filter solid material from the effluent while sustaining adequate flow to the drainfield to permit normal use of the septic system. Such a filter must comply with standards established in the Sewage Handling and Disposal Regulations administered by the Virginia Department of Health; or
 - (2) Submit documentation every five years to the Chesapeake Department of Health, certified by a sewage handler permitted by the Commonwealth of Virginia Department of Health, that the system has been inspected, is functioning properly, and the tank does not need to have the effluent pumped. Such certification shall indicate the date by which pump out must be accomplished in the future.
- b. For new construction, on-site sewage treatment systems not requiring a VPDES permit shall also provide a reserve sewage disposal site with a capacity at least equal to that of the primary sewage disposal site. This reserve sewage disposal site requirement shall not apply to any lot or parcel recorded prior to October 1, 1989, if the lot or parcel is not sufficient in area to accommodate a reserve sewage disposal site, as determined by the Chesapeake Department of Health.

6. Stormwater Runoff Requirements.

- a. For any land disturbance, development or redevelopment, stormwater runoff shall be controlled by the use of best management practices (BMPs) that will achieve reductions in non-point source pollution equivalent to the default established by the Chesapeake Bay Local Assistance Department Division of the Virginia Department of Conservation and Recreation (CBLAD) of 0.45 pounds of phosphorus per acre per year or based upon the average land cover loads for a watershed established by the Director of Public Works or designee.
- b. The approved BMPs are designed, constructed and maintained to prevent any increase in the non-point source pollution runoff.
- c. Runoff pollution loads must have been calculated and BMPs selected for the express purpose of controlling non-point source pollution. All pollution loading calculations must be in accordance with the Chesapeake city code and the Chesapeake Public Facilities Manual and approved by the Director of Public Works or designee.
- d. Upon submittal of a plan, survey or plat for activities in the CBPA District, the Director of Public Works or designee will determine whether the site lies within an area under a

stormwater or drainage master plan that provides for adequate treatment of nonpoint source pollution. If the site does not fall under a previously submitted and approved stormwater or drainage plan, the subdivider or developer must prepare a stormwater management plan in accordance with the Chesapeake city code and the requirements set forth in the Chesapeake Public Facilities Manual.

7. RPA Buffer Area Requirements.

- a. To minimize the adverse effects of land-disturbance, development and redevelopment activities on the RPA, state waters and aquatic life, a one hundred (100) foot wide buffer area of woody vegetation shall be retained if present or established if it does not exist with a minimum tree canopy coverage of fifty percent (50%), calculated in accordance with the CBPA Specifications Manual.**
- b. The buffer area shall be located adjacent to and landward of other RPA components and along both sides of any water body with perennial flow. The one hundred (100) foot buffer area shall be designated as the landward component of the RPA. The one hundred (100) foot buffer area shall be deemed to achieve a 75 percent reduction of sediments and a 40 percent reduction of nutrients. The one hundred (100) foot**

buffer area shall not be subject to encroachment except as follows:

- (1) Agricultural lands as provided in section 26-520.B.7.d. of this ordinance.**
- (2) When the preservation of the one hundred (100) foot buffer area will result in the loss of a reasonable buildable area on a lot or parcel recorded prior to January 21, 1992, the CBPA Review Committee may permit encroachments in the buffer area in accordance with the following criteria:**
 - (a) Encroachments into the buffer area shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities, as determined by the CBPA Review Committee;**
 - (b) Where practicable, a vegetated area that will maximize water quality protection, mitigate the effects of the buffer encroachment, and equal the area of encroachment into the buffer area shall be established elsewhere on the lot or parcel; and**
 - (c) The encroachment may not extend into the seaward fifty (50) feet of the buffer area.**
- (3) Encroachment into the landward fifty (50) feet of the one hundred (100) foot buffer area for lots created by**

recordation of a valid subdivision plat after January 21, 1992 and prior to March 1, 2002, may be permitted through approval by the CBPA Review Committee, provided that the landowner is able to show:

- (a) The encroachment into the landward fifty (50) feet of the one hundred (100) foot buffer has been approved by the Department of Public Works as part of a valid final site plan or a final subdivision plan approved prior to March 1, 2002;**
- (b) If the prior approval of the encroachment included the use of a best management practice (BMP), the BMP continues to function effectively or will be re-established, repaired, and maintained as necessary to ensure that it will function effectively, as determined by the Department of Public Works;**
- (c) The encroachment is the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities, as determined by the CBPA Review Committee;**
- (d) Where practicable, a vegetated area greater than or equal to the area of encroachment will be established elsewhere on the lot to maximize**

water quality protection and mitigate the effects of the encroachment, and

- (e) The encroachment does not extend into the seaward fifty (50) feet of the buffer area.**
 - (f) The criteria in (a) and (b) above may be satisfied by a written memorandum from the Department of Public Works that prior approval of the buffer encroachment has been given based on the location of appropriate best management practices landward of the one hundred (100) foot buffer area as necessary to collectively achieve water quality protection, pollutant removal and water resource conservation at least the equivalent of the full one hundred (100) foot buffer area and that where established, the approved BMP continues to function effectively.**
- (4) Encroachment into the one hundred (100) foot buffer area in the IDA to the extent permitted under section 26-521 of this ordinance.**
 - (5) Exceptions, exemptions and nonconforming waivers granted under sections 26-524 through 26-526 of this ordinance.**

c. The one hundred (100) foot vegetated buffer area shall be continuously maintained to meet each of the following additional performance standards:

(1) In order to maintain the functional value of the one hundred (100) foot buffer area, existing vegetation shall be retained. The City Manager's Designee may authorize removal of existing vegetation in the RPA only to provide for reasonable sightlines, access paths, general wood lot management, and best management practices, including those that prevent upland erosion and concentrated flows of storm water, pursuant to the following:

(a) Trees may be pruned or removed as necessary to provide for sightlines and vistas, provided that any trees removed are replaced to provide fifty (50%) tree canopy coverage as required in section 26-520.B.3.a. above.

(b) Access paths shall be constructed and surfaced so as to effectively control erosion.

(c) Dead, diseased or dying trees or shrubbery and noxious weeds (such as Johnson grass, kudzu, and multiflora rose), may be removed and thinning of trees may be allowed with the

approval of the City Arborist, provided that any trees removed shall be replaced to provide fifty (50%) tree canopy coverage as required in section 26-520.B.3.a. above.

(d) For shoreline erosion control projects, trees and woody vegetation may be removed, provided that necessary control techniques are employed, and appropriate vegetation established to protect or stabilize the shoreline in accordance with the best available practices and applicable permit conditions or requirements.

(2) Prior to any land disturbing activity, a protective barrier, consisting of TP-1 safety fencing, shall be installed around the perimeter of the required one-hundred (100) foot buffer area and shall remain in place during the entire construction period. Perimeter protective barriers shall only be required if the limits of land disturbance are entirely within the RMA. If RPA disturbance is approved, protective barriers shall be placed in designated locations to protect the portions of the RPA that are not to be disturbed.

(3) Natural growth of understory and groundcover shall also be preserved to form tropic layers of vegetation.

d. On agricultural lands, the one hundred (100) foot buffer area shall be managed to prevent runoff and appropriate measures taken to prevent noxious weeds from invading the vegetation. Encroachments into the agricultural one hundred (100) foot buffer area may be permitted by the City Manager's Designee only as follows:

(1) Agricultural activities may encroach into the landward fifty (50) feet of the 100 foot buffer when at least one agricultural best management practice which, in the opinion of the Virginia Dare 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 land adjacent to the buffer, 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 one hundred (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 consistent with the Virginia Nutrient Management Training and Certification Regulations administered by the Virginia Department of Conservation and Recreation.

(2) **Agricultural activities may encroach within the landward seventy-five (75) feet of the one hundred (100) foot buffer area when agricultural BMPs which address erosion control, nutrient management, and pest chemical control, are being implemented on the land adjacent to the buffer. The erosion control practices must be sufficient to prevent erosion from exceeding the soil loss tolerance level, referred to as “T,” as defined in the “National Soil Survey Handbook” of November 1996, in the “Field Office Technical Guide” of the U. S. Department of Agriculture Natural Resource Conservation Service. A nutrient management plan, including soil tests, must be developed, consistent with the Virginia Nutrient Management Training and Certification Regulations 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 one hundred (100) foot buffer area.**

(3) The one hundred (100) foot buffer area is not required adjacent to agricultural drainage ditches having perennial flow if at least one best management practice (BMP) is installed which, in the opinion of the Virginia Dare Soil and Water Conservation District Board, addresses the more predominant water quality issue on the land

adjacent to the ditch, either by erosion control or nutrient management.

Sec. 26-522. Relationship of CBPA standards to other ordinances.

A. This ordinance shall supplement, and where more stringent, supersede

other applicable ordinances, regulations and policies of the city. The following shall apply to all land disturbance, development and redevelopment in the CBPA District, notwithstanding anything to the contrary in the other portions of the Chesapeake city code and Chesapeake zoning ordinance.

- 1. Lot size shall be subject to the requirements of the underlying zoning district, provided that all lots shall have sufficient area outside the RPA to accommodate an intended development, in accordance with the performance standards set out in this ordinance. For purposes of this section, all lots greater than 12,000 square feet in total lot area created by recordation of a subdivision plat on or after March 1, 2002, shall have at least seventy-five percent (75%) of the required lot area located landward of the one hundred (100) foot RPA buffer. All lots 12,000 square feet or less in total lot area created by recordation of a valid subdivision plat on or after March 1, 2002, shall have at least eighty percent (80%) of the required lot area located landward of the one hundred (100) foot RPA buffer. The lot area outside the one hundred (100) foot RPA buffer shall be delineated on the final site plan and/or final subdivision plat.**

In no event shall lot area reductions given for open space dedication under section 19-700 et seq. of the Zoning Ordinance be applied to lots located wholly or partially in the RPA.

- 2. The following notes shall be included on all final subdivision plats and final site plans for property in the CBPA District:**
 - a. All land disturbance, uses, development and redevelopment in the Chesapeake Bay Preservation Area District are required to retain an undisturbed vegetated one hundred (100) foot buffer area around RPA features, such as wetlands, shorelines and along waterbodies with perennial flow;**
 - b. On-site sewage treatment systems with one drainfield shall be pumped out at least once every five (5) years, subject to the provisions in section 26-520.B.5. of the City Code;**
 - c. Only certain specified activities may be permitted in the RPA, such as approved water-dependent facilities; redevelopment; roads and driveways; flood control and stormwater management facilities; bona fide agricultural activities; and wetlands restoration activities, as approved by the CBPA Review Committee pursuant to section 26-519 of this ordinance.**
 - d. Canopy coverage as required by section 26-520.B.3. of the City Code including the natural growth of understory and groundcover, shall be continuously preserved and maintained.**

Dead, diseased and dying trees may be removed and replaced as approved by the City Arborist, subject to the canopy coverage requirements.

e. Any stipulations attached to a CBPA approval by the City Manager's Designee, the CBPA Review Committee or the CBPA board. In the event the stipulations appear to be inconsistent with one or more of the notes required above, the language used in the notes shall be harmonized in order that the more stringent requirement will control.

3. Prior to initiating grading, clearing, construction or other on-site activities on any portion of a lot or parcel in the District, all required wetlands permits required by federal, state, and local laws and regulations shall be obtained and evidence of such submitted to the zoning administrator or director of public works, as applicable, prior to the issuance of a building permit or land-disturbing permit.
4. All clearing or grading activities disturbing more than 2,500 square feet in the CBPA shall require an erosion and sediment control plan in accordance with Chapter 26 of the city code and all regulations adopted thereunder.
5. All land disturbance, development or redevelopment in the CBPA shall comply with the Stormwater Management Ordinance in Chapter 26 of the city code and all regulations adopted thereunder.

6. No building permits or land-disturbing permits may be issued for land disturbance, construction, development or redevelopment in the CBPA District without evidence of approval by the designated approval authority.

B. The performance criteria set out in this ordinance shall apply to all divisions of land in the CBPA under chapter 70 of the city code; land disturbance activities in the CBPA under chapter 26 of the city code; and all development uses, and construction, other than fences, under the Chesapeake zoning ordinance.

Sec. 26-523. Water quality impact assessments.

D. No WQIA is required for bond fide agricultural activities conducted on agricultural lands meeting the criteria in section 26-519.H of this ordinance.

Sec. 26-525. Nonconforming uses, buildings and structures.

A. The permitted use of any lawfully nonconforming building or structure which existed on January 21, 1992 and which is not in compliance with the provisions of the CBPA District may be continued, provided that there is no change in use, expansion of the lawfully nonconforming building or structure, or alteration of lot lines.

B. Notwithstanding the foregoing, the CBPA Review Committee may grant a waiver for lawfully nonconforming buildings or structures, other than accessory structures, ~~as defined in the Chesapeake zoning ordinance,~~ on lawfully nonconforming lots or parcels to provide for remodeling, alterations or additions to such nonconforming buildings or structures provided that:

1. There will be no increase in nonpoint source pollution load;
2. Any land disturbance exceeding an area of 2,500 square feet complies with all erosion and sediment control requirements of the Chesapeake city code and regulations adopted thereunder and with the Chesapeake Public Facilities Manual;
3. The request for the waiver is the minimum necessary to afford relief;
4. Granting the waiver will not confer upon the applicant any special privileges that are denied to other property owners in similar situations;
5. The waiver is in harmony with the purpose and intent of this ordinance and does not result in water quality degradation;
6. The waiver is not based on conditions or circumstances that are self-created or self-imposed;
7. The waiver is granted only for principal buildings, as defined in the Chesapeake Zoning Ordinance, with the exception that no more than one detached structure located within six (6) feet of the principal building shall be entitled to a waiver under this subsection. In the case of a swimming pool, the six foot maximum distance of separation shall be measured from the pool wall closet to the principal building.
- 7.8. Reasonable and appropriate conditions are imposed, as warranted, that will prevent the waiver from causing a degradation of water quality; and

8.9. Other findings and conditions, as appropriate and required by the CBPA Review Committee, are met.

C. For purposes of this section, a lawfully nonconforming lot is one shown on an approved subdivision plat that was recorded in the Clerk's Office for the Chesapeake Circuit Court prior to inclusion of any portion of the lot in the CBPA District.

D. The CBPA Review Committee may also grant a waiver for new construction on unimproved nonconforming lots or parcels, provided that a final construction plan has been approved for the development of the lot prior to December 31, 2003 and further provided that the criteria in this section are met. In no event shall a waiver be granted for encroachment by any building or structure other than the principal building, as defined in this Ordinance; nor shall a waiver be granted for encroachment beyond the landward 50 feet of the one hundred (100) foot wide RPA buffer.

E. An application for a nonconforming waiver under this section shall be made with forms furnished by the CBPA Review Committee and shall include the information listed in the CBPA Specifications Manual, as well as other requested information.

F. Notwithstanding anything to the contrary in this ordinance, any nonconforming waiver issued under this section shall expire if the enlargement or alteration of the nonconforming building or structure is not completed within two years of the date the approval was issued.

G. In no case shall this provision apply to an ~~addition to~~ accessory structures, as defined in this Ordinance.

Sec. 26-526. Exemptions.

A. Exemptions may be granted administratively by the City Manager's Designee upon submittal of a complete application and a determination that all conditions listed herein or otherwise imposed will be met.

B. Exemptions for public utilities, railroads, public roads and other facilities may be granted from the requirements of this ordinance for the following:

- 1. Construction, installation, operation, and maintenance of public roads; electric, natural gas, fiber-optic, cable and telephone transmission lines; and railroads, including appurtenant structures, in accordance with the following requirements:**
 - a. A water quality impact assessment is submitted and meets the evaluation criteria in section 26-523 above;**
 - b. Appurtenant structures shall include, but are not limited to, bridges, culverts, guard rails, drainage facilities, lighting and traffic control devices, fences and berms, as approved by the CBPA Review Committee.**
- 2. Construction, installation and maintenance of water, sewer, outfall structures, natural gas, underground telecommunications, and cable television lines owned or permitted by a local government or**

regional service authority shall be exempt without meeting the requirements in subsection 26-526.B.1. above, provided that:

- a. To the degree possible, such utilities and facilities are located outside the RPA;**
- b. No more land is disturbed than necessary to provide for the proposed utility installation;**
- c. All construction, installation, and maintenance of such utilities and facilities are in compliance with all applicable state and federal requirements and permits and designed and conducted in a manner that protects water quality; and**
- d. Any land disturbance that exceeds an area of 2,500 square feet complies with the erosion and sediment control ordinance in chapter 26 of the Chesapeake city code, including regulations adopted thereunder, and with the Chesapeake Public Facilities Manual.**

C. Exemptions for qualifying silvicultural activities may be granted from the requirements of this ordinance, provided that such activities adhere to water quality protection procedures prescribed by the Virginia Department of Forestry in the January 1997 Edition of “Forestry Best Management Practices for Water Quality in Virginia.”

D. The following land disturbances may also be exempt from the requirements of this ordinance: (i) water wells; (ii) passive recreation facilities such as boardwalks, trails and pathways; and (iii) historic preservation and

archaeological activities, provided that the applicant demonstrates to the satisfaction of the CBPA Review Committee that:

1. Any required permits, except those to which the requested exemption specifically applies, have been issued;
2. Sufficient and reasonable proof is submitted that the intended use or development will not degrade water quality;
3. The intended land disturbance, use, or development or redevelopment does not conflict with adjacent and nearby planned, approved or existing developments or uses;
4. Any land disturbance exceeding an area of 2,500 square feet complies with the city's erosion and sediment control ordinance in chapter 26 of the Chesapeake city code, including regulations adopted thereunder and with the Chesapeake Public Facilities Manual; and
5. Review and approval has been given by the CBPA Review Committee.

Sec. 26-527. Exceptions and appeals.

A. When an applicant can demonstrate that the application of this ordinance to a lot or parcel located within the CBPA District would unreasonably restrict the utilization of the property under its existing zoning classification, the applicant may submit a CBPA exception application to the CBPA Review Committee. The CBPA Review Committee shall refer the application to the CBPA Board with recommendations based on the criteria in subsection C. below.

B. All prohibited development within the RPA shall require a CBPA exception. The exception application shall identify the impacts of the proposed development on water quality and on lands within the RPA through the performance of a water quality impact assessment (WQIA), conforming with the provisions of section 26-523 of this ordinance.

C. An exception shall not be granted by the CBPA Board unless each of the following specific findings are made:

- 1. The requested exception to the criteria is the minimum necessary to afford relief;**
- 2. Granting the exception will not confer upon the applicant any special privileges that are denied by this ordinance to other property owners who are subject to its provisions and who are similarly situated;**
- 3. The exception is in harmony with the purpose and intent of this ordinance and is not of substantial detriment to water quality;**
- 4. The exception request is not based upon conditions or circumstances that are self-created or self-imposed;**
- 5. Reasonable and appropriate conditions are imposed, as warranted, to prevent the proposed activity from causing degradation of water quality; and**
- 6. Other findings and conditions, as appropriate and required by the CBPA Board, are met.**

D. The CBPA Review Committee shall review the exception request and make a recommendation to the CBPA Board whether to grant the request as

submitted, grant the request with conditions, or deny the request. The CBPA Review Committee will make written recommendations to the CBPA Board for all exception requests involving building permits, preliminary subdivision plans, preliminary site plans, conditional use permits and rezoning requests.

E. The CBPA Board shall also hear appeals from final decisions of the City Manager's Designee or the CBPA Review Committee. Appeals to the CBPA Board shall be filed on forms provided by the city. Procedures and submittal requirements may be supplemented in the CBPA Specifications Manual.

F. All applications for exceptions and appeals shall be submitted with a processing fee of \$200.00 per lot for which relief is requested. The applicant shall also be responsible for all advertising costs, including without limitation, the cost of newspaper publications and mailings to adjacent property owners.

G. In performing its duties, the CBPA Board shall:

1. Conduct a duly-advertised public hearing for all requests for exceptions and appeals. Such advertising and notice to adjacent property owners shall conform with ~~the CBLAB regulations~~ section 15.2-2204 of the Code of Virginia, 1950, as amended, with the exception that a short summary of the requested exception shall be sufficient for notice purposes.
2. In the case of exception requests, consider the recommendations of the CBPA Review Committee.
3. In the case of exception requests, render a final decision based on

the

criteria in ~~subsection (c)~~ section 26-527.C. above.

4. In the case of appeals from administrative decisions, apply the requisite criteria and render a final decision consistent with the intent and purpose of this ordinance.

H. Any denial of an exception request or appeal shall be made in writing and shall state the reasons for the denial. Such denial shall be considered a denial of a preliminary site plan, and the applicant shall have a right of appeal to the circuit court for the city as provided in section 15.2-2260 of the Code of Virginia, 1950, as amended.

I. No exception request or appeal that is denied or approved with conditions shall be refiled with the city for one year after such denial or conditional approval, unless the City Manager's Designee determines that the new application significantly reduces the extent of encroachment.

J. All exceptions granted by the CBPA Board shall expire two years from the date of issuance unless the use, building or structure is completed within the two year period or unless extended by the CBPA Board.

ADOPTED by the Council of the City of Chesapeake, Virginia, this _____ day of _____, 2005.

APPROVED:

Mayor

ATTEST:

Clerk of the Council