



Planning Commission Public Hearing and Regular Meeting

August 05, 2025 at 6:00 PM

Cape Charles Civic Center - 500 Tazewell Avenue

Agenda

1. Call to Order

- A. Roll Call
- B. Establish a Quorum

2. Invocation and Pledge of Allegiance

3. Consent Agenda

- A. Approval of Agenda Format
- B. Approval of Minutes

4. Public Hearing

- A. Conditional Use Permit (2025-03): Application for a Comprehensive Sign Plan for Dreams by the Water Subdivision, according to Cape Charles Zoning Ordinance Section 5.3 (F)

5. Unfinished Business

6. New Business

- A. Review of Incorporated Changes to the Draft Zoning Text Amendment of Cape Charles Zoning Ordinance Article VII - Chesapeake Bay Preservation Ordinance to Finalize for Submission to the Town Council to Commence the Public Hearing Process on said Zoning Text Amendment

7. Standing Staff Reports

- A. June and July Monthly Standing Staff Reports

8. Announcements - Next Meetings

- A. Next Planning Commission Meeting - September 2nd, 2025

9. Adjournment

June 3rd, 2025 Minutes



Planning Commission

Regular Meeting
Cape Charles Civic Center
June 3rd, 2025

At approximately 6:00 pm, Chairman Bill Stramm, having established a quorum, called to order the Regular Meeting of the Planning Commission. In addition to Chairman Stramm, also present were Vice-Chair Bill Ashworth and Commissioners Ian McDonald, Shannon Smith, Jim Holloway, Libby Wright, and Clayton Newman.

Also, in attendance were Director of Planning/Zoning Administrator Katie Nunez, Zoning Compliance Officer Jack Steinmayer, and Town Clerk Libby Hume.

After establishing a quorum, a moment of silence was observed, followed by the recitation of the Pledge of Allegiance.

Approval of Agenda

Following the Pledge of Allegiance, the Planning Commission approved the agenda as presented by common consent.

Public Hearing

None.

Unfinished Business

Continued review of proposed changes to CCZO Section VII – Chesapeake Bay Preservation Act – markup of Model Ordinance as a result of state law changes, as well as proposed edits to the Definitions Chapter (Appendix A) and the Site Plan Ordinance (Appendix C).

Planning/Zoning Administrator Katie Nunez went through the changes that the Virginia Department of Environmental Quality (DEQ) wanted to see implemented after reviewing the work that Town staff had undertaken in the Fall of 2024, in regard to compliance with new State Laws and Regulations. She went on to explain that she was still working with DEQ on additional proposed changes.

She went on to explain that one of the largest issues that DEQ had identified when they were conducting their audit of Cape Charles is that the Town has never had a map of the Chesapeake Bay Overlay. She then mentioned there is some grant funding that is available to help create a map that can be used.

Commissioner McDonald wanted to know if a restaurant fell within the intensely developed area (IDA), would they be able to not be compliant. Ms. Nunez explained that they would have to be compliant with the underlying Zoning Ordinance.

Commissioner Smith mentioned that the Shanty Restaurant was within the IDA. Ms. Nunez explained that the Shanty Restaurant was an existing restaurant that was already there.

Commissioner Ashworth then wanted a bit of clarification on whether development activity could occur within the RPA. Ms. Nunez explained that no development activity could occur within the 50-foot seaward of the RPA; however, some development through exceptions and allowances can occur within the 50-foot landward portion of the RPA.

Commissioner Holloway wanted to know if any of the information provided dovetails with the RAFT study that was conducted. Ms. Nunez explained that the RAFT study was undertaken to achieve different objectives, such as seeing if the Town's infrastructure would be able to withstand a 100-year storm, hurricane, or tropical storm, in part due to the sea level rise and warming of the Earth.

Ms. Nunez explained that after the RAFT study concluded, FEMA remapped all of the Flood Zones within the Town, and most of the Town has come out of the Flood Zones, which has made some of the responses a bit difficult. Due to the Town not falling within a Flood Zone, getting grant money has been a challenge, as they ask for flood data, and the answer is "the town is not in a flood zone".

Commissioner McDonald wanted to know if the Town was ahead of other communities because it was the first audit that DEQ conducted. Ms. Nunez explained that the Town would not be the first to adopt the resiliency assessment language, as other cities are further along in their progress, such as Virginia Beach and Norfolk, which have a much higher stake in protecting their waterfronts. However, for towns the size of Cape Charles, it is expected to be the first one, and Cape Charles is taking the lead on implementing resiliency language in its Ordinance.

Commissioner McDonald explained that he asked that because he was a little concerned about being the guinea pig and being given the hardest set of rules that would be impossible for the Town to administer. Ms. Nunez explained that she shared those same concerns with DEQ. She explained to DEQ staff that everything would need to be easily digestible for staff and residents.

Commissioner Ashworth wanted to know if the model ordinance and changes the Commission would be reviewing are recommendations that DEQ is drafting, or if they are pulling them from different places around the state. Ms. Nunez explained that DEQ did pull changes from other locations that have already launched their programs, and any changes would need to be tailored to the Town of Cape Charles' specific needs and not the needs of other Towns.

Ms. Nunez then explained that she was hoping to get grant funding to get the map created and implemented into the Town's GIS software.

Ms. Nunez then began to walk the Planning Commission through all the comments that DEQ had provided.

Commissioner Wright wanted to know if oyster shells were an acceptable alternative to cement to increase water penetration onto the property. Ms. Nunez said that shells would be better, and staff can work with the property owner about different types of permeable pavers, and staff may recommend larger stones for the driveway so they won't get compacted down and allow for more water to get through.

Ms. Nunez then stopped her presentation to allow for the Planning Commission to weigh in on what they think the difference is between a defined feature in the RMA vs a defined measurement in the RMA.

Commissioner Ashworth then mentioned to Commissioner Wright that by looking under the definition of impervious cover, it speaks of a shelled surface. Ms. Nunez explained that, depending on the size of the crushed shells, it could be impervious or pervious.

Commissioner McDonald wanted to know how much of the land that would fall in the RPA is already built. Ms. Nunez explained that Plantation Pointe has not been built, and there are subdivisions to come in Southern Bay Creek that have not yet been plated. She also mentioned that in North Bay Creek there is a big portion of the Colony Subdivision that falls within the RPA, and a lot of the lots have not been built yet. Finally, she explained that the RPA gets locked in when a development plan comes forward, and not when the subdivision was created, because of the changing coast, and the RPA on one lot may not be the same on another.

Commissioner McDonald then wanted to know if the Planning Department would approve a house that would take up 90% of a lot, even if it encroached on the RMA, and he wanted to know how the Planning Department would meet the RMA requirements. Ms. Nunez explained that homes can be built within the RMA. Ms. Nunez finally mentioned that to date, not a single lot has been declared as undevelopable in Bay Creek, and if there are any issues with the Lot, Ms. Nunez has worked with the Property Owner to help them with their issues.

Chairman Stramm wanted to know if Kings Creek was going to be impacted. Ms. Nunez explained that only a portion of Kings Creek was going to be impacted as there was a wetlands stream and creek that goes up into the Marina. However, most of Kings Creek was near a stormwater pond.

Ms. Nunez then mentioned that most of the Town was not impacted by the CBPA, however, some properties were affected by the RMA. To help mitigate the flooding issues in the Town, Ms. Nunez explained that she was encouraging property owners to not pave over all of their lot, and having vegetation was helpful for reducing flooding.

Commissioner Ashworth wanted to know if considerations of the RPA or RMA would impact the Beach Front Master Plan. Ms. Nunez stated they did not.

Commissioner McDonald wanted to know what criteria the Town was applying when defining the RMA. Ms. Nunez explained that it was a bit more nebulous and the state wanted property owners to only cover their lots with the minimum amount needed, however, the state does not define what the minimum amount is.

Ms. Nunez explained that later this summer she was going to be proposing a Zoning Text Amendment that would define what pervious and impervious coverage along with a total maximum allowable amount for impervious coverage which would include hardscapes and structures on a lot.

Ms. Nunez then explained to the Planning Commission that if a developer was going to be disturbing more than 2,500 sq. ft. of land, the developer or owner is going to have to submit a full plan of

development which would include the site plan, all of the feature, RPA/RMA, elevations, a water quality impact assessment, etc... in an effort to help show how much water is going to be going back into ground. Ms. Nunez explained that to date she has not automatically made property owners submit a plan of development.

Ms. Nunez then went on to explain that most people were forgetting what redevelopment under the RPA meant, but because it was listed as a separate section in the Ordinance people were forgetting, so the Town wants to bring it into the same section as all the other RPA information. Commissioner Ashworth wanted to know if this was going to be new language in the Ordinance. Ms. Nunez explained that it was from the model.

Commissioner McDonald wanted to know if it was mandatory that property owners would need to contact the Zoning Administrator if a tree needed to be pruned within the RPA. Ms. Nunez explained that yes, if it's in the RPA, it would have to come through the office, even if it is just an email with some pictures.

Commissioner Ashworth wanted to know what the highlighted language was in E.1.A and E.1.B. Ms. Nunez explained that it was State requirements, and it would take time to figure out how to appropriately implement it into the Zoning Ordinance.

After going through a majority of the changes, the Planning Commission decided to finish going over the changes at the next meeting.

Ms. Nunez then went on to explain the changes that were going to be happening to Article VII of the Zoning Ordinance.

Commissioner McDonald wanted to know if someone wanted to do routine maintenance, would they have to go to the Planning Department to get permission to do it? Ms. Nunez explained that all that would be needed is a quick phone call or email. Commissioner McDonald then explained he was very wary about the implementation of this, as while some people may be compliant, others will not

Commissioner Newman explained that when purchasing a house within the Historic District, people may not be aware of the area's rules and may inadvertently get themselves in trouble without even realizing it.

Seeing as more questions were popping up regarding the Historic District and Article VIII, Ms. Nunez implored the Planning Commission to hold the remainder of their questions for the next meeting.

Chairman Stramm asked for a motion to adjourn, motion made by Commissioner Smith, seconded by Vice-Chair Ashworth. The motion was approved by a unanimous vote. The Planning Commission adjourned at 7:52 pm.

Chairman Stramm

Zoning Compliance Officer

DRAFT

July 1st, 2025 Minutes



Planning Commission

Regular Meeting
Cape Charles Civic Center
July 1st, 2025

At approximately 6:00 pm, Chairman Bill Stramm, having established a quorum, called to order the Regular Meeting of the Planning Commission. In addition to Chairman Stramm, also present were Vice-Chair Bill Ashworth and Commissioners Ian McDonald, Shannon Smith, Jim Holloway, Libby Wright, and Clayton Newman.

Also, in attendance were Director of Planning/Zoning Administrator Katie Nunez, Planning & Zoning Assistant – Preservation & Zoning Administrator Tracy Outten, Zoning Compliance Officer Jack Steinmayer, and Town Clerk Libby Hume.

After establishing a quorum, a moment of silence was observed, followed by the recitation of the Pledge of Allegiance.

Approval of Agenda

Following the Pledge of Allegiance, the Planning Commission approved the agenda as presented by common consent.

Public Hearing

None.

Unfinished Business

Continued review of proposed changes to CCZO Section VII – Chesapeake Bay Preservation Act – markup of Model Ordinance as a result of state law changes, as well as proposed edits to the Definitions Chapter (Appendix A) and the Site Plan Ordinance (Appendix C)

Planning/Zoning Administrator Katie Nunez picked up where the previous commission meeting was paused and continued to review the proposed changes to CCZO Section VII – Chesapeake Bay Preservation Act.

Commissioner Ashworth wanted clarification on what the underlined language pertained to. Ms. Nunez explained that the underlined language came from the model ordinance, and the resiliency assessment was required by the State; however, the language could be tailored to the needs of the Town.

Ms. Nunez then went over the SLOSH Model with the Planning Commission and explained that the Planning Commission would need to pick which level of storm surge the Town would use as a basis for all the development to benchmark against.

Commissioner McDonald wanted to know if Ms. Nunez wanted the Planning Commission to decide on whether to use the 100-year or 150-year flood map. Ms. Nunez explained that she did want the Planning Commission to decide; however, it was not going to be at the

present meeting. She wanted the Commission members to play around on the AdaptVA map and come to the August 5th meeting with an idea of which flood map they wanted to use.

Commissioner Smith then wanted to know what Ms. Nunez's recommendation would be. Ms. Nunez explained that she believed the Town of Cape Charles was still in danger of flooding, be it from storm surges, an actual hurricane, tropical storm, or even sea level rise, and putting the Town at the 100-year consideration was relevant.

Commissioner McDonald then wanted to know the total amount of property in the Town that remained undeveloped, as the vast majority of the properties that would be affected by storm surges, hurricanes, tropical storms, and sea level rise have already been developed. Ms. Nunez explained that Commissioner McDonald was correct in his assessment; however, it could apply to someone who is looking to do an addition or a renovation that will impact the whole structure.

Commissioner Ashworth wanted to know the difference between a 30-year time frame and a project that would be less than 30 years. Ms. Nunez explained that it would be based on what they tell the Town about their project consideration; it could go higher, or, depending on what they are doing, it could be a lesser consideration.

Commissioner McDonald then asked Ms. Nunez if she envisioned anything that would be developed in some of these areas that would be less than 30-year activities, as it would be the only reason to go less than 30 years. Ms. Nunez explained she had no examples that she could give at the moment.

Commissioner Ashworth wanted to know the upside of locking in a one-size-fits-all approach for 30 years. Ms. Nunez explained that eventually, one developer may come forward who needs special consideration, and one thing that is put into the updated ordinance is that the developer can apply for a waiver for anything less than 30 years.

Commissioner Ashworth wanted to know what the Planning/Zoning Administrator's scope of discretion as it seems that under the new language, everything is mandatory, and it must go to the Zoning Administrator. Ms. Nunez explained that not everything would have to come to her, only projects that are looking to place substantial impervious coverage.

Ms. Nunez then mentioned that going forward, the State is seeking to have all mapping show the RPA/RMA when a project comes forward.

Ms. Nunez then spoke on the changes to the Stormwater Management Plan and specifically drew attention to the updated ordinance section of the Stormwater Management, and the biggest change that the State is looking for the Town to implement into the Ordinance is evidence of site-specific RPA boundary determinations.

Commissioner McDonald wanted to know if that was mandatory. Ms. Nunez stated that it is.

Ms. Nunez then spoke on exemptions for living shorelines, which is a new standard that the State is employing as they no longer want hardened shorelines.

Commissioner McDonald asked if there was enough flexibility for someone developing around the harbor to get approval for putting up a wall for construction. Ms. Nunez clarified that in the harbor areas, it would still need review from DEQ. However, DEQ would like a living shoreline as it's more conducive to coastal resiliency over a hardened shoreline.

Commissioner Ashworth then asked Ms. Nunez if she would characterize a living shoreline as a safe harbor for developers under State Law, or if it was more of a preferred preservation method. Ms. Nunez explained that the State believes it would be more conducive for a living shoreline than a hardened one.

Ms. Nunez explained that she was a bit concerned that the State language was pulling away from “exceptions”, as the terminology of “variances” is used elsewhere within the ordinance.

Ms. Nunez then spoke on the changes within Appendix A (Definitions) due to the changes in Article VII.

After telling the Planning Commission about the new definitions and definitions that were changed, she then spoke about Appendix C (Site Plan Ordinance) and the changes that are going to occur due to the changes in Article VII.

Review of Proposed Changes to CCZO Section VIII – Historic District Overlay Ordinance regarding the review process for the three categories of work: Routine Maintenance, Minor Work, Major Work, and proposed addition of a new Appendix to the Historic District Guidelines.

Ms. Nunez then spoke to the staff report, which explained why the proposed changes for CCZO Section VIII were coming before the Planning Commission at all.

Ms. Nunez then walked the Planning Commission through the changes that were in the Historic Overlay District.

Commissioner McDonald spoke on how he continues to struggle with the definition of routine work and how far the Town should be going in managing routine work. Ms. Nunez explained that part of why they were talking about Article VIII is to get some clarification on certain points of confusion.

Commissioner Newman then spoke on how the interpretation of routine, minor, and major work amongst residents was part of the reason residents continually get in trouble with the Town. Ms. Nunez agreed with Commissioner Newman and further mentioned that ensuring that the Town has a continued PR campaign on this was critical.

Commissioner Ashworth agreed with both Commissioner McDonald and a member of the public on the definition of routine maintenance, as he viewed it as a damaged window that needed to be replaced, or even a scratch on a door. He did not want to burden the staff with the sheer number of emails that would come into the Planning/Zoning Department for people asking to conduct routine maintenance.

Ms. Nunez then explained that things that start as a minor repair or routine maintenance can very quickly turn into something much more extensive.

Resident Claudette Lajoie told the Planning Commission if they needed any additional help with anything going on in the Historic District the Cape Charles Civic League had members with extensive knowledge of the Town and experts in other areas that would be of use, and they were more than willing to help.

Planning & Zoning Assistant – Preservation & Zoning Administrator Tracy Outten then spoke on the addition of a new Appendix to the Historic District Guidelines.

Commissioner Ashworth wanted to know if a resident had sent an email to the Planning/Zoning Department about repairs they were making; would Town Staff go out and inspect? Mrs. Outten explained that the Town Staff would go out and inspect to make sure that what they said they were doing is what they are doing. As in the past, residents have said one thing and have done something completely different that went well beyond the original scope of work.

Commissioner Newman wanted to know how much of Mrs. Outten's job was consumed by the Historic District and residents wanting to conduct repairs on their property. Ms. Nunez explained that Mrs. Outten's job is to deal with the residents within the Historic District.

Commissioner Newman then wanted to know how many calls and emails Mrs. Outten gets daily. Mrs. Outten said roughly 10 calls a day and numerous emails.

Commissioner Wright wanted to know when somebody buys a home within the Historic District, are they given a copy of the Historic District Guidelines. Mrs. Outten explained that she has tried to tell the realtors, however it has been a struggle to get realtors to disclose that they are buying a property within a Historic District.

Commissioner Newmann believed that this was a good step in the right direction to help clarify some of the more confusing aspects of the Zoning Ordinance.

Commissioner McDonald wanted to know if there was a set of things that the Planning/Zoning Department could spell out that were below routine maintenance that shouldn't even be going across Mrs. Outten's desk. Mrs. Outten explained it would be a simple call or an email.

Commissioner Newman wanted to know if Town staff would then come out and do an inspection on a routine maintenance request. Mrs. Outten explained that only if another resident made a call about the repair.

Ms. Nunez then gave the example of a resident going well beyond routine maintenance.

Commissioner Newman wanted to know if painting is addressed within the new appendix. Mrs. Outten explained that it is in the guidelines that painting is not under the purview of the Town, except for painting of bricks, which is not allowed.

Commissioner Ashworth then mentioned that it might be beneficial for the Town to take up Ms. Lajoie's suggestion in having an outside group come in and use their expertise to go through the Ordinance and address what would constitute minor and major work. Ms. Nunez explained that it can happen, but the current meeting was to get something back to the Town Council to see what they would want to do with the new appendix.

Ms. Nunez explained that she wanted another set of eyes, as the Planning Commission is a body that does a lot of review for the Town.

Commissioner Ashworth then wanted Mrs. Outten to explain the difference between items 12 and 13. Mrs. Outten explained that alterations and removals are minor work, and repairs and replacements are for routine maintenance. Commissioner Ashworth then mentioned that both 12 and 13 have a disclaimer that mentions they both require inspections, even though they are similar.

Commissioner McDonald wanted to know if the Planning Commission should take a formal vote to move this forward to the Town Council. Ms. Nunez explained that all she needed from the Planning Commission was to say if they wanted to make any changes regarding the new appendix, and if not, she was going to take the new appendix to the Town Council as is.

Commissioner Ashworth then spoke on number 29, which spoke on features not specifically listed. Mrs. Outten explained that it was a catch-all and addressed anything that was not covered, and mentioned that they would still need to come to the Planning/Zoning Department.

Commissioner Ashworth followed up by asking about number 31, which spoke on fences and fence repairs. He wanted to know if a new slate that rotted out and needed to be replaced would have to go through the Planning/Zoning Department. Mrs. Outten explained that it would have to come through the Planning/Zoning Department, as it would need to comply with the Zoning Ordinance today.

Commissioner Wright wanted to know if new fences would need to be wood. Mrs. Outten explained that fences cannot be vinyl, and there are materials in the Zoning Ordinance that were approved.

Commissioner Newman wanted to know if the new appendix was listed alphabetically. Mrs. Outten replied in the affirmative. Commissioner Newman then thought it would be a good idea to include a disclaimer that speaks to touch-ups on masonry.

Commissioner Newman then followed up and asked if someone does not complete their project within the 6-month time frame of a permit, will they have to come back and apply to get another. Mrs. Nunez explained that as long as they show good faith that they are working towards completing their project, the lifespan of the permit will continue to extend.

Commissioner Ashworth also wanted to include some comments that reflected the Planning Commission’s concern around specificity with certain phrasings.
Chairman Stramm asked for a motion to adjourn. Motion made by Commissioner McDonald, seconded by Commissioner Newman. The motion was approved by unanimous consent. The Planning Commission adjourned at 7:56 pm.

Chairman Stramm

Zoning Compliance Officer

Staff Report



Planning Commission Staff Report

Agenda Title: Dreams by the Water – CUP Application

Agenda Date: August 5th, 2025

Prepared by: Jack Steinmayer, Zoning Compliance Officer

Reviewed By: Katie Nunez, Director of Planning/Zoning Administrator

Date: July 30th, 2025

Type of Application: Conditional Use Permit

Applicant: Chris Larmore

Site Address ----

Tax Map: #83A1-21-1 through #83A1-21-10

Zoning: Residential-1 (R-1)

Proposal: Place sales and marketing signs on Lots 1, 2, 3, 9, and 10

Legal Deadline Requirements September 15th, 2025

Date Application Received: June 17th, 2025

Date Application Deemed Complete: June 17th, 2025

For Planning Commission:

**For Town Council
(Directory, not Mandatory)** Can act upon receipt of recommendation from Planning Commission; if PC fails to provide recommendation within the prescribed deadlines, it is deemed a favorable recommendation by the PC. The Town Council's max time frame is 12 months from when referred to the Planning Commission:

Narrative of Proposal:

The applicant (Chris Larmore) is seeking to obtain a Conditional Use Permit (CUP) for a comprehensive sign plan to place sales and marketing signage (5 signs and 2 flags) on Lots 1, 2, 3, 9, and 10 in the Dreams by the Water Subdivision, off of Washington Avenue.

Aerial Map (if applicable):



Comprehensive Plan Review

Housing Projections – (pg. 40)

Although the Town of Cape Charles is enclosed on three sides by water, the Town would still have the capacity to accommodate additional homes within areas such as the remaining lots in the Historic District.

Housing Objectives and Strategies – (pg. 47)

Pursue character-appropriate additional supply and diversity of housing, including *smaller single-family homes*.

Future Land Use – (pg. 131)

Land uses in this designation should consist of *single-family dwellings*, multi-family houses, including row houses containing two to four dwelling units per structure, or single-family houses.

Ordinance Requirements

The Cape Charles Zoning Ordinance Section 5.3 (F) states:

Special Exceptions. Comprehensive sign plans may be approved as part of a conditional use permit in commercial, heavy, and light industrial, and harbor districts, and as part of a subdivision approval for three (3) lots or greater in all zoning districts. The comprehensive sign plan shall establish the time, manner, and placement of signs, frequency of message changes, the materials, the hours of lighting, the height of signs, the total number of square feet of sign surface, and the number of signs to be placed on a site. The height of signs shall not be modified above the height permitted in the Zoning Ordinance.

This is a new ordinance that has been revamped to comply with Federal Law. From here on, any sign plan that deviates from the listed requirements laid out in Section 5.11.1 needs to be presented through a Conditional Use Permit Application.

The Cape Charles Zoning Ordinance Section 4.2 (B) states:

Conditional Use Permits may be issued for any of the conditional uses for which a use permit is required by the provisions of this ordinance in the specific districts provided by the Town Council, upon recommendation by the Planning Commission, shall find that after a duly advertised public hearing, the use will not:

- 1. Adversely affect the health, safety, or welfare of the persons residing or working in the neighborhood of the proposed use or adversely affect other land uses within the particular surrounding neighborhood.*
- 2. Be detrimental to the public welfare or injurious to property or improvements in the neighborhood.*
- 3. Conflict with the purpose of the comprehensive plan of the Town of Cape Charles.*

In granting any Conditional Use Permit, the Town Council shall designate such conditions as it determines to carry out the intent of this ordinance.

Additionally, approval of a conditional use permit shall be valid for only the specific use it covers in the specific location designated for one year after approval by the Town Council and the completion of the additional permit process as requested in the application. The applicant shall apply or have applied for all additional permits as provided to the Planning Commission and as required by the Zoning Administrator within one (1) month of the approval by the Town Council. If the applicant fails to apply for any such permit within this period, the Conditional Use Permit shall be effective as of this date, thirty (30) days after Town Council approval, unless

Town Council allows for additional time for such application or applications. If not acted upon within one (1) year, the Conditional Use Permit shall become null and void, unless an extension of the time is approved by the Town Council for good cause shown before the expiration of the Conditional Use Permit.

Staff Analysis

The application presented to the Planning Commission by Chris Larmore for the approval of a comprehensive sign plan within the Dreams by the Water Subdivision has demonstrated consistency and adherence to the requirements laid out in Article V: Signs of the Cape Charles Zoning Ordinance.

Furthermore, by recommending the presented Conditional Use Permit application for approval, it shows that the Town recognizes and accepts that selling off the remaining lots in the Dreams by the Water Subdivision is potentially a multi-month-long process, and that the Town wants to demonstrate consistency with marketing and sales signs throughout Bay Creek and the Historic District. As the applicant wants to match the sales and marketing signs that are currently in Bay Creek.

Finally, it reinforces the Town's commitment to increasing the housing stock and ensuring properties are getting sold to individuals, possibly year-round residents.

Recommendation to the Planning Commission

I am recommending that the Planning Commission recommend to the Town Council to approve the application for a Conditional Use Permit for the installation of sales and marketing signage on Lots 1, 2, 3, 9, and 10 in the Dreams by the Water Subdivision, for all the reasons contained herein.

Depending upon comments received and heard during the public hearing, there may be additional factors that the Planning Commission should consider when developing its motion.

Attachments

Attachment 1 – Conditional Use Permit Application (2025-03)

Attachment 2 – Article V: Signs of the Cape Charles Zoning Ordinance

Comprehensive Sign Plan Application



Application for Zoning Clearance

Planning & Zoning Department
2 Plum Street; Cape Charles, VA 23310
757-331-3259 x31

planningtech@capecharles.org

Revised 05/2025	
Taxes	✓ paid R.S
Violations	_____
Fee	\$150
Decision	_____

Fee \$150 unless a residential building permit

Budget Code: MISPL 100-3100-1070

Budget Code for VIOLATIONS: PERMZ 100-3100-1370

PART 1. APPLICATION NOTES			
Use this form to request zoning clearance for all new construction, alteration of existing structures, additions, or demolitions within the Town of Cape Charles * <i>The applicant is responsible for confirming and obtaining all necessary building permits after approvals.</i>			
In addition to the information required in this application, all items from this checklist must be submitted before it can be evaluated.			
☒ Photos of existing area ☒ Site Plan ☒ Owner Affidavit			
Owner/Applicant signature: _____		Date: June 17th 2025	
PART 2: PROPERTY INFORMATION			
Property Address: Lots 1,2,3, 9 & 10		Tax Map #: 083A1	
Zoning District if not located in Bay Creek:			
☒ R-1	☐ R-2	☐ R-3	☐ CR
☐ M-2	☐ HARB-C	☐ HARB-LI	☐ C-1 ☐ C-2 ☐ C-3
Zoning District if located in Bay Creek: ☐ Located on Bay Creek property, but not in a current subdivision			
Subdivision Name	Zoning Designation	Subdivision Name	Zoning Designation
☐ Bayside Village	PUD Village	☐ Muirfield Village	PUD Village
☐ Bay Vista	PUD R-3	☐ New Quarter	PUD R-2
☐ Fairways	PUD R-3	☐ Plantation Pointe	PUD R-1
☐ Heron Pointe	PUD R-2	☐ The Colony	PUD R-3
☐ Kings Bay	PUD R-2	☐ The Hollies	PUD R-2
☐ Marina Resort	PUD R-2	☐ The Signature	PUD R-2
☐ Marina Village East	PUD R-2		

PART 3: PROPERTY OWNER INFORMATION

Name and/or Company: Deams by the Water LLC

Mailing Address: 415 4th St. NE PO Box 2666, Charlottesville VA

Phone Number: 434-531-0121

Email: Cgheatingandair@gmail.com

PART 4: APPLICANT INFORMATION

☐ Check here if the applicant is the owner. (If applicant is not the property owner, an Owner's Permission Affidavit must be attached.)

Name and/or Company: Chris Larmore, C&L Homes CC Inc.

Mailing Address: 10603 Shifting Sands Drive Ocean City MD 21842

Phone Number: 443-880-8950

Email: Occigarette@aol.com

PART 5: PROJECT INFORMATION – DESCRIBE PROPOSED WORK IN DETAIL

Lot 1- 1 sign, no larger than 3'x4' and one flag, 24" x 72", Lot 2-1 sign, no larger than 3'x4', lot 3-1 sign, no larger than 3'x4' Lot 9-1 sign, no larger than 3'x4', Lot 10-1 sign no larger than 4'x8', and one flag, no larger than 24"x72" Signs are sales and marketing material, if approved, final proof can be submitted if desired to the Zoning Administrator prior to installation. Sample is attached.

PART 6: ADDITIONAL INFORMATION

Category of work	☒ Residential	☐ Commercial ☐ Industrial
Type of work	☐ New (landscape plan needed)	☐ Renovations ☐ Repairs
(Check all that apply)	☐ Demolition ____ Full ____ Partial ____ ft ²	
	☐ Addition	☐ Accessory structure ____ ft ²
	☐ Fence	☐ Pool (requires a CUP)
	☐ Roof	☐ Solar Panels
	☐ Elevator	
	☒ Other (specify) 5 signs and 2 flags	

Are trees going to be removed? ☐ No ☒ Yes If yes, please complete a Tree Permit Application.

Applicant's signature: _____

Date: June 17, 2025

Zoning Administrator's signature: _____

Date: _____



Conditional Use Permit Application

Planning & Zoning Department
2 Plum Street; Cape Charles, VA 23310
757-331-3259 x31
planningtech@capecharles.org

Revised 03/2023	
Taxes	
Violations	
Fee	
Decision	

Budget Code: LANDF 100-3100-1050

PART 1: APPLICATION NOTES

Certain land uses, by nature, can have a potentially unfavorable impact on or be incompatible with other uses of land within a given zoning district. These uses may be permitted within designated districts under controls, limitations, and regulations of a conditional use permit.

The Town Council has the responsibility to evaluate the impact and the compatibility of each use and to stipulate conditions and restrictions to assure the proposed use is compatible with the neighborhood in which it is located. The Council can deny the use as not being in accordance with the adopted comprehensive plan or as being incompatible with the surrounding neighborhood.

In addition to the information required in this application, all items from this checklist must be submitted before it can be evaluated.

- ☒ Zoning Clearance Application ☒ Site Plan/Survey showing existing conditions and proposed changes

Owner signature:

Date: 6/17/25

PART 2: PROPERTY INFORMATION

Property Address: Lots 1-2-3-9&10 Dreams by the Water

Tax Map #: 083A1

Zoning District:

Current use: Vacant

Proposed use: Single family homes

PART 3: PROPERTY OWNER INFORMATION

Name and/or Company: Dreams by the Water LLC

Mailing Address: 415 4th Street NE P.O.Box 2666 Charlottesville Va

Phone Number: 4345310121

Email: Cgheatingandair@gmail.com

If owner is not the applicant, an Owner's Permission Affidavit must be attached.

PART 4: APPLICANT INFORMATION

Name and/or Company: Chris Larmore, C&L Homes CC Inc.

Mailing Address: 10603 Shifting Sands Drive, Ocean City MD 21842

Phone Number: 4438808950

Email: Occigarette@aol.com

PART 5: PROJECT INFORMATION

A. Neighborhood

1. What are the current uses and characteristics of the neighborhood? Single family residential homes
2. How would this proposed use fit in with the neighborhood? n/a
3. Describe the effects that any noise or odor from the proposed use might have on the neighborhood. There is no noise or negative effects. Signage will be consistent, maintained, and presented professionally.

B. In the Commercial and Harbor Districts, a conditional use permit is required for residential use above 1st floor commercial use.

Number of residential floors n/a Number of residential units per floor _____
 Number of parking spaces on premises _____ Number of parking spaces on street _____ deeded off-site _____
 Amenities provided _____

C. Description of Use

Days of Operation n/a Number of full-time staff? _____ Part-time? _____
 Hours of Operation _____ If foodservice, will there be alcohol sales on premises? _____
 Hours of Delivery _____

D. Site plan must also include Primary and any accessory structures (size & setbacks), Trash location, screening, fencing, lighting, utilities, landscaping, and parking if required.

I hereby certify that I have the authority to make the foregoing application, that the information given is true and correct, and that the construction or improvements will conform to the regulations in the Virginia Statewide Building Code, all pertinent Town Ordinances, including fire, sewer and water ordinances, and private building restrictions, if any, which may be imposed on the property by deed.

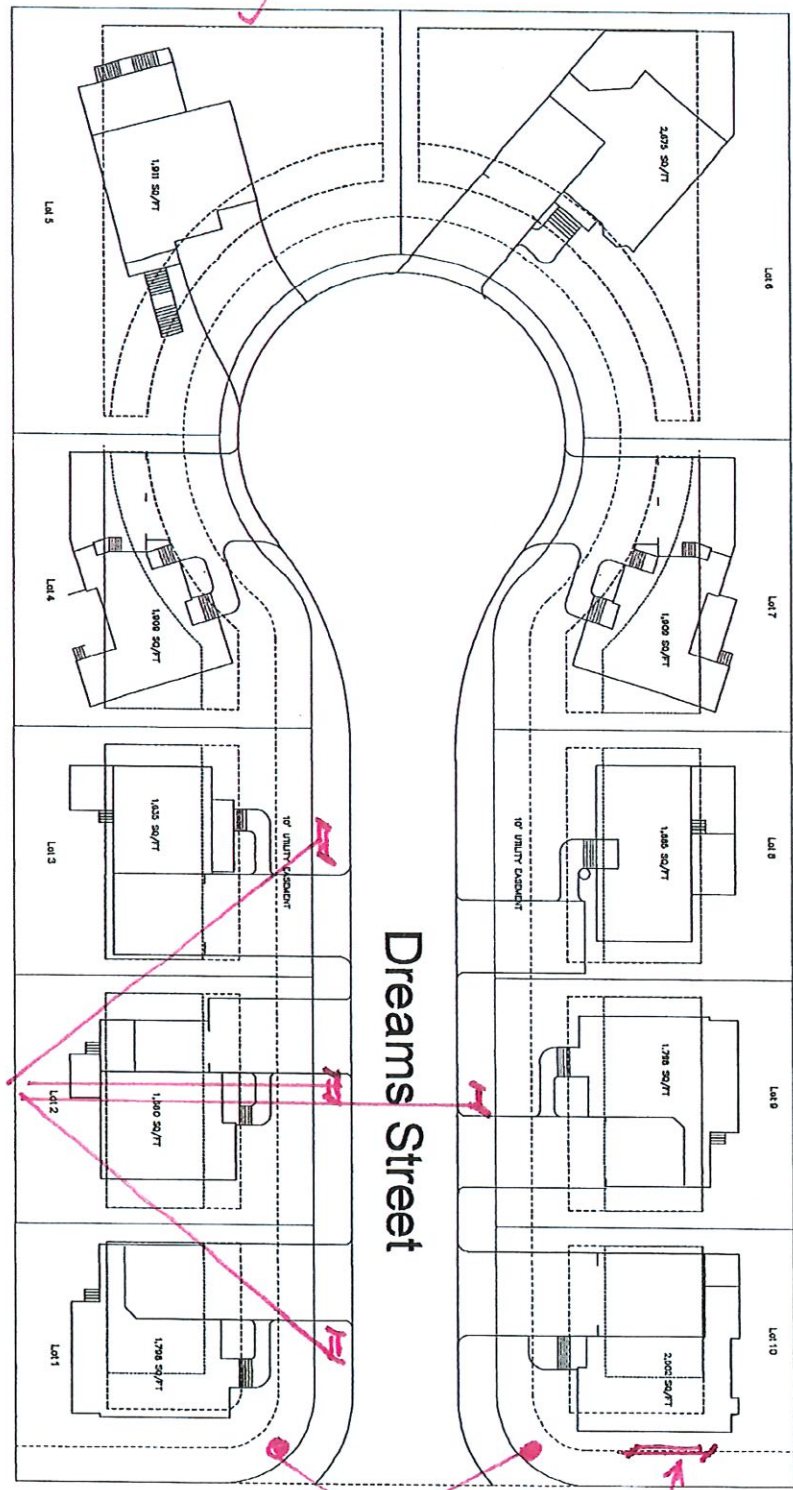
Applicant's signature: _____

Date: 6/17/25

Zoning Administrator's signature: _____

Date: _____

Request 4- 3x4 signs 1- 4x8 sale sign
2- Flags



1
A-3
NEW BLDG. FOOTPRINTS ON OLD SETBACKS
1/8" = 1'

3x4' signs

Flags

4x8 sign

A-4 SHEET 4 OF 4	DATE 2/24/25	SITE PLAN	DREAMS BY THE BAY CAPE CHARLES, VA. 23310	STEPHEN J. KANSACK Inc. 11236 W. MARIE DR. BISHOPVILLE, MD. 21813 410.213.8314 stevesplans@aol.com	C & L HOMES 10603 SHIFTING SAND DRIVE OCEAN CITY, MD. 21842
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Owner Affidavit for Permission to Represent

Planning & Zoning Department
2 Plum Street; Cape Charles, VA 23310
757-331-3259 x31

planningtech@capecharles.org

Revised 03/2023	
Taxes	
Violations	
Fees	
Decision	

PART 1. APPLICATION NOTES	
Use this form to give permission for a contractor, architect, or other individual to represent the owner of a property in matters within the Town of Cape Charles.	
PART 2: PROPERTY INFORMATION	
Property Address: 0 Washington Avenue (Lot 0000003, Parcel Rec #16739)	Tax Map #: 083A1
PART 3: PROPERTY OWNER INFORMATION	
Name and/or Company: Dreams By The Water LLC	
Mailing Address: c/o Ralph E. Main, Jr. 415 Fourth Street NE, PO Box 2666, Charlottesville, VA 22902	
Phone Number: 1-434-531-0121	Email: Cgheatingandair@gmail.com
I hereby give authority to the following representative to act on my behalf on the following matter: Any and all zoning related matters	
PART 4: REPRESENTATIVE INFORMATION	
Name and/or Company: Chris Larmore, C&L Homes	
Mailing Address: 10603 Shifting Sand Drive, Ocean City, MD 21842	
Phone Number: 1-443-880-8950	Email: occigarette@aol.com
☒ to file documents on my behalf	☒ To represent me in meetings with Town officials
Name and/or Company:	
Mailing Address:	
Phone Number:	Email:
☐ to file documents on my behalf	☐ To represent me in meetings with Town officials

Signature of owner: [Signature] Date: 3/12/25

State of Virginia County of Albemarle The foregoing instrument was acknowledged before me this 12 day of March, 2025 by Chadwick Graham (name of person acknowledged)

Signature of Notarial Officer: Dawn Shields

Notary Registration number: 7960330

My commission expires: 05/31/2025



Sign plan for Dreams by the Water – 5 Signs 2 flags

June 15, 2025

Location & size

Lot 1 – 1 3'x4' sign, 12 square feet, placed parallel with Washington Street. One flag as shown, 12 square feet on a white vinyl resistant PVC pole

Lot 2 – 1 3'x4' sign, 12 square feet, placed parallel with Dreams Steet.

Lot 3 – 1 3'x4' sign, 12 square feet, placed parallel with Dreams Street.

Lot 9 – 1 3'x4' sign, 12 square feet, placed parallel with Dreams Street.

Lot 10 – 1 4'x8' sign, 32 square feet, placed parallel with Dreams Street. One flag as shown, 12 square feet on a white vinyl weather resistant PVC pole.

Requirements:

All signs and flags shall be erected within 10 workdays of approval; Signs are expected to remain for a period of 12 months. The signs from lots 2, 3,9 may be relocated to lots 4,7 depending on construction and sales activity. Note, the totality and size of signs will not change without permission from the Zoning Administrator

Message - is not anticipated to be changed during the 12-month period

Construction material - To be vinyl color graphics (submitted by request for approval), on durable composite (Azeck) with vinyl wrapped 4x4 post(s)

Sign heights - will comply with the Towns sign guidelines, with the post and total square footage in compliance. Total height of the 4x8 sign with be within 72" from grade, the 3x4 (or smaller) signs, 60" from grade.

Lighting - it is requested that each sign have one solar powered, low wattage, warm white light installed at the base directed at the center of the message. No ambient light will shine outside of that area. Lights are expected to come on at dusk, and loose power approximately 3-6 hours later.

Maintenance - All signage will be checked at least twice a week for stability and condition and repaired or replaced as needed if at any time they appear anything less than when newly installed.

In the event of a hurricane warning with winds expected to be more than 60 mph, all signs will be removed and safely stored until the situation is deemed safe.





INTRODUCING

— 402 —

Bayside Village Phase II

HOMESITES NOW AVAILABLE FOR PURCHASE



SCAN TO LEARN MORE

— 403 —

58 prime homesites

Homesites starting in the \$100s

Golf, lake and interior locations

New home packages available

— 404 —

 **BAYCREEK**
Cape Charles, Virginia

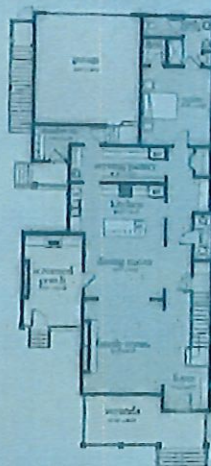
BayCreekLife.com | 844.620.2900

Exclusively offered by Bay Creek Realty

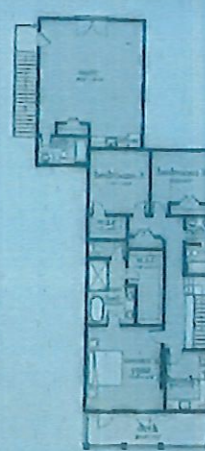
Canton Ridge Cottage

403 Bayside Avenue
Bayside Village, Homesite #8
4 Bedrooms | 4.5 Bathrooms
3,317 Square Feet

- 10' Ceilings on Main Level
- Elegant Colonial Cottage Design
- Desirable Open Floor Plan
- Dining Room Opens to Screened Porch
- Two Owner's Suites — One on Each Level
- Two Covered Front Porches
- Attached 2 Car Garage with Adjacent Mud Room
- Large Suite over Garage with Kitchenette
- High-End Finishes Throughout
- Steps to the Beach and Life Center



FIRST FLOOR



SECOND FLOOR

BAY CREEK

Exclusively offered by Bay Creek Realty
844.620.2900 | BayCreekLife.com

All renderings are artist's concept for illustration purposes only. Subject to modification. Square footage subject to change.

Article V: Signs

Article V – Signs

Section 5.1: General Provisions

A. Purpose and Intent; Interpretation

1. Signs obstruct views, distract motorists, displace alternative uses for land, and pose other problems that legitimately call for regulation. The purpose of this article is to regulate the size, color, illumination, movement, materials, location, height, condition, and other physical characteristics, but, not the content, of all signs placed on private property for exterior observation, thus ensuring the protection of property values, the character of the various neighborhoods, the creation of a convenient, attractive and harmonious community, protection against destruction of or encroachment upon historic areas, and the safety and welfare of pedestrians and wheeled traffic, while providing convenience to citizens and encouraging economic development. This article allows adequate communication through signage while encouraging aesthetic quality in the design, location, and size of all signs. This article shall be interpreted in a manner consistent with the First Amendment guarantee of free speech. If any provision of this article is found by a court of competent jurisdiction to be invalid, such finding shall not affect the validity of other provisions of this article which can be given effect without the invalid provision.
2. Signs not expressly permitted as being by right or by conditional sign permit under this article, by specific requirements in another portion of this Ordinance or otherwise expressly allowed by the Town Council or Board of Zoning Appeals are forbidden.
3. These regulations are intended to regulate signs that are not distracting to motorists and are constructed and maintained in a structurally sound and attractive condition.
4. These regulations distinguish between portions of the Town designed for primarily vehicular access and portions of the Town designed for primarily pedestrian access.
5. These regulations do not entirely eliminate all of the harms that may be created by the installation and display of signs. Rather, they strike an appropriate balance that preserves ample channels of communication by means of visual display while still reducing and mitigating the extent of the harms caused by signs.

Section 5.2: Definitions.

ADVERTISING means any words, symbol, color or design used to call attention to a commercial product, service, or activity.

ANIMATED SIGN means a sign or part of a sign that is designed to rotate, move or appear to rotate or move. Such a sign is sometimes referred to as a “moving sign.”

AIR-INFLATED SIGN means a sign that is inflated through electric or generated controlled air. Examples: tube man or googly man

BUILDING FRONTAGE means the exterior length of the main wall of a building which physically encloses usable interior space, and which is the architecturally designed wall that contains the main entrance for use by the general public. Said frontage shall be measured at a height of ten feet (10') above grade.

BUSINESS SIGN means a sign which directs attention to a product, service or commercial activity available on the premises.

CHANGEABLE COPY SIGN means a sign or part of a sign that is designed so that characters, letters or illustrations can be changed or rearranged without altering the face or surface of the sign.

COMPREHENSIVE SIGN PLAN means a plan for the signage of a property that includes multiple tenants or owners with shared parking or other facilities.

FLASHING SIGN means a sign that includes lights that flash, blink, or turn on and off intermittently.

HEIGHT means the maximum vertical distance from the base of the sign at normal grade to the top of the highest attached component of the sign. Normal grade shall be construed to be the lower of:

1. Existing grade prior to construction; or
2. The newly established grade after construction, exclusive of any filling, berming, mounding or excavating primarily for the purpose of mounting or elevating the sign.

ILLEGAL SIGN means any sign erected without a required permit or which otherwise does not comply with any provisions of this article.

ILLUMINATED SIGN means a sign that is backlit, internally lit, or indirectly lit, but does not include a neon sign.

NEON SIGN means a sign containing exposed tubes filled with light-emitting gas.

NON-CONFORMING SIGN. Any sign which was lawfully erected in compliance with applicable regulations of the Town and maintained prior to the effective date of this Article of the zoning ordinance and which fails to conform to current standards and restrictions of the zoning ordinance.

OFF-PREMISES SIGN means a sign advertising a business, person, activity, goods, products, or services not located on the site where the sign is installed, or that directs persons to any location not on that site.

PUBLIC SIGN means any public place, public right-of-way, any parking area or right-of-way open to use by the general public, or any navigable body of water.

ROOF SIGN means a sign erected or constructed, in whole or in part, upon or above the highest point of a building with a flat roof, or the lowest portion of a roof for any building with a pitched roof.

SIGN. Any structure, display, device or other object or thing, visible from any public street or right-of-way, any area open to use by the general public, or any navigable body of water, including, but not limited to, any word, letter, series of words or letters, painting, mural, logo, insignia, emblem, service mark or other graphic or pictorial representation, that:

1. identifies or advertises, or directs or attracts attention to, any product, merchandise, service, business or establishment,
2. suggests the identity or nature of any business or establishment,
3. invites or proposes a commercial transaction, or
4. communicates a message of a noncommercial nature. The term does not include holiday signs, architectural elements incorporated into the style or function of a building, numerals signifying a property address, dates of erection, monumental citations, commemorative tablets and the like when carved into stone, concrete or similar material or made of bronze, aluminum or other permanent type construction and made an integral part of the structure.

SIGN FACE means the portion of a sign structure bearing the message.

SIGN STRUCTURE means any structure bearing a sign face.

SIGN means any sign intended to be displayed for a limited period and neither permanently installed in the ground or permanently affixed to a building or structure permanently installed in the ground.

VEHICLE OR TRAILER SIGN means any sign attached to or displayed on a vehicle, if the vehicle or trailer is used for the primary purpose of advertising a business establishment, product, service or activity. Any such vehicle or trailer shall, without

limitation, be considered to be used for the primary purpose of advertising if it fails to display current license plates, inspection sticker, or municipal decal, if the vehicle is inoperable, if evidence of paid-to-date local taxes cannot be made available, or if the sign alters the standard design of such vehicle or trailer.

Section 5.3: Permit Required

- A. *In general.* A sign permit is required prior to the display and erection of any sign except as provided in Section 4 (Permit not required) as well as in Sections 11 through 14 (Sign Regulations by Use and Zoning District).
- B. *Application for permit.*
 - 1. An application for a sign permit shall be filed with the Planning & Zoning Department on forms furnished by that department. The applicant shall provide sufficient information to determine if the proposed sign is permitted under the zoning ordinance and other applicable laws, regulations, and ordinances.
 - 2. The Town Zoning Administrator or designee shall promptly process the sign permit application and approve the application, reject the application, or notify the applicant of deficiencies in the application within five (5) business days after receipt. If the application is rejected, the Town Zoning Administrator shall provide a list of the reasons for the rejection in writing. An application shall be rejected for non-compliance with the terms of the zoning ordinance, building code, or other applicable law, regulations or ordinance.
- C. *Permit fee.* A non-refundable fee as set forth in the uncodified fee schedule adopted by the Town Council shall accompany all sign permit applications.
- D. *Duration and revocation of permit.* If a sign is not installed within six (6) months following the issuance of a sign, the permit shall be void. The Town may revoke a sign permit under any of the following circumstances:
 - 1. The Town determines that information in the application was materially false or misleading;
 - 2. The sign as installed does not conform to the sign permit application; or
 - 3. The sign violates the zoning ordinance, building code, or other applicable law, regulation, or ordinance.
- E. *Overlay district regulations.* All sign reviews as required pursuant to Article VIII (Historic District Overlay ordinance) require approval of the Historic District Review Board (HDRB) except when a sign permit is not required as provided in Section 4.

- F. *Special exceptions.* Comprehensive sign plans may be approved as part of a conditional use permit in commercial, heavy and light industrial, and harbor districts and as part of a subdivision approval for three (3) lots or greater in all zoning districts. The comprehensive sign plan shall establish the time, manner, and placement of signs, frequency of message changes, the materials, the hours of lighting, the height of signs, the total number of square feet of sign surface, and the number of signs to be placed on a site. Height of signs shall not be modified above the height permitted in the Zoning Ordinance.

Section 5.4: Permit Not Required

- A. Signs that do not require a permit are depicted in Sections 11 through 14 (Sign Regulations by Use and Zoning District). In addition, a sign permit is not required for:
1. Signs erected by a governmental body or required by law. The Town, or through its designated agents, oversee or participate in Town Seasonal Events where temporary, moveable signage is allowed to promote these Town sponsored seasonal events, festivals or other marketing campaigns up to thirty (30) days prior to the event and must be removed seven (7) days after the conclusion of the event.
 2. The changing of messages on marquees and the repair of an existing permitted sign, except that repair of a nonconforming sign must comply with Section 9 (E).
 3. Pavement markings. Any sign applied directly and entirely to and flush with an asphalt, concrete, or similar paved surface related to parking and traffic.

Section 5.5: Prohibited Signs

In addition to signs prohibited elsewhere in this Code or by applicable state or federal law, the following signs are prohibited:

- A. General prohibitions.
1. Signs that violate any law of the Commonwealth relating to outdoor advertising.
 2. Signs attached to natural vegetation on public lands
 3. Signs simulating, or which are likely to be confused with, a traffic control sign or any other sign displayed by a public authority. Any such sign is subject to immediate removal and disposal by an authorized town official as a nuisance.
 4. Vehicle or trailer signs, except such signs parked at their associated place of business and otherwise in compliance with this article and applicable law.
 5. Any sign displayed without complying with all applicable regulations of this Article.
- B. Prohibitions based on materials.
1. Signs painted directly on any building that is a contributing structure in the Historic District Overlay, except where expressly permitted by this Article.

2. Animated signs
 3. Air-inflated sign
 4. Flashing signs or other signs displaying flashing, scrolling or intermittent lights or lights of changing degrees of intensity, except where such signs are expressly permitted within this article.
 5. Signs that emit smoke, flame, scent, mist, aerosol, liquid, or gas.
 6. Signs that emit sound.
 7. Any electronic sign that is generated by a series of moving images, such as an LED, digital display, or other video technology, whether displayed on a building, vehicle, or mobile unit unless permitted within this article.
 8. Strings of flags visible from, and within fifty feet (50') of, any public right-of-way.
- C. Prohibitions based on location.
1. Signs erected on public land other than those approved by an authorized Town official in writing, required by law without such approval, or permitted under the [Code of Virginia § 24.2-310 E](#). Any sign not so authorized is subject to immediate removal and disposal by any authorized official. Removal of the sign under this provision does not preclude prosecution of the person responsible for the sign.
 2. Signs on the roof surface or extending above the roofline of a building or its parapet wall.
 3. Neon signs, except in windows unless permitted in this article.
 4. Off-premises signs, unless specifically permitted by this article.

Section 5.6: Measurements of sign area

- A. Supports, uprights or structure on which any sign is supported shall not be included in determining the sign area unless such supports, uprights or structure are designed in such a way as to form an integral background of the display; except, however, when a sign is placed on a fence, wall, planter, or other similar structure that is designed to serve a separate purpose other than to support the sign, the entire area of such structure shall not be computed. In such cases, the sign area shall be computed in accordance with the provisions in Section 6 (C) below.
- B. In instances where there are multiple tenants or users on a property or in a building, allowable sign area for all parties shall not exceed the maximum sign area computed as if there were a single tenant or user.
- C. *Sign area.*
1. Sign area is calculated under the following principles:
 - a. With signs that are regular polygons or circles, the area can be calculated by the mathematical formula for that polygon or circle. With signs that are not regular polygons or circles, the sign area is calculated using all that area within a maximum of three abutting or

overlapping rectangles that enclose the sign face.

- b. The permitted area of a double-faced sign shall be considered to be the area on one side only. If one face contains a larger sign area than the other, the larger face shall be used in calculating the sign area. A double-faced sign must have an internal angle between its two faces of no more than forty-five degrees (45°).

Section 5.7: Maintenance and Removal

- A. All signs shall be constructed and mounted in compliance with the Virginia Uniform Statewide Building Code and Appendix H of the Virginia Construction Code.
- B. All signs and components thereof shall be maintained in good repair and in a safe, neat, and clean condition.
- C. The owner of any advertising sign, other than a permitted off-premises sign, located on commercial property where the use or business has ceased operating shall, within sixty (60) days of the cessation of use or business operation, replace the sign face with a blank face until such time as a use or business has resumed operating on the property.
- D. *Sign condition, safety hazard, and nuisance abatement.*
 1. Any sign which becomes a safety hazard, or which is not kept in a reasonably good state of repair shall be put in a safe and good state of repair within thirty (30) days of written notice to the owner and permit holder.
 2. Any sign which constitutes a nuisance may be abated by the Town under the requirements of the Code of Virginia § [15.2-900](#), [15.2-906](#), and/or [15.2-1115](#).
 3. The Code Official may cause to have removed or repaired immediately without written notice any sign which, in his opinion, has become insecure, in danger of falling, or otherwise unsafe, and, as such, presents an immediate threat to the safety of the public. If such action is necessary to render a sign safe, the cost of such emergency removal or repair shall be at the expense of the owner or lessee thereof as provided in the [Town Code Chapter 8, Article III](#).

Section 5.8: General requirements

- A. *Illumination.* All permitted signs may be backlit, internally lit, or indirectly lit, unless such lighting is specifically prohibited in this Article.
 1. In the case of indirect lighting, the source shall be so shielded that it illuminates only the face of the sign. However, signs shall be indirectly

illuminated or have shielded direct lighting, unless otherwise prohibited within this Article. Indirect lighting shall consist of full cut-off or directionally shielded lighting fixtures that are aimed and controlled so that the directed light shall be substantially confined to the sign to minimize glare, sky glow, and light trespass. The beam width shall not be wider than that needed to light the sign.

2. Internal illumination shall be limited to the illumination standards for parking lot lighting in Section 4.5. No sign shall be permitted to have an illumination spread of more than .05-foot candle (.05 fc) at the lot line, shine into on-coming traffic, affect highway safety, or shine directly into a residential dwelling unit. In no event shall the illumination of any sign resulting from any internal or external artificial light source exceed 100 lumens. All lighting fixtures used to illuminate a sign shall be full-cutoff, as defined by the Illuminating Engineering Society of North America (IESNA) and shall have fully shielded or recessed luminaires with horizontal-mount flat lenses that prevent upward.

Section 5.9: Nonconforming signs

- A. Signs lawfully existing on the effective date of this Article or prior ordinances, which do not conform to the provisions of this Article and signs which are accessory to a nonconforming use shall be deemed to be nonconforming signs and may remain except as qualified below. The burden of establishing nonconforming status of signs and of the physical characteristics/location of such signs shall be that of the owner of the property. If notice from the zoning administrator is issued, a property owner shall submit verification that sign(s) were lawfully existing at time of erection. Failure to provide such verification shall be cause for order to remove sign(s) or bring sign(s) into compliance with the current ordinance.
- B. No nonconforming sign shall be enlarged nor shall any feature of a nonconforming sign, such as illumination, be increased.
- C. Nothing in this section shall be deemed to prevent keeping in good repair a nonconforming sign. Nonconforming signs shall not be extended or structurally reconstructed or altered in any manner, except a sign face may be changed so long as the new face is equal to or reduced in height and/or sign area.
- D. No nonconforming sign shall be moved for any distance on the same lot or to any other lot unless such change in location will make the sign conform in all respects to the provisions of this Article.
- E. A nonconforming sign that is destroyed or damaged by any casualty to an extent not exceeding fifty percent of (50%) its area may be restored within two years (2 yrs) after such destruction or damage but shall not be enlarged in any manner. If such sign is so destroyed or damaged to an extent exceeding fifty percent (50%), it shall not be reconstructed but may be replaced with a sign that is in full accordance with the provisions of this Article.
- F. A nonconforming sign which is changed to becoming conforming or is replaced by

a conforming sign shall no longer be deemed nonconforming, and thereafter such sign shall be in accordance with the provisions of this Article.

- G. A nonconforming sign structure shall be subject to the removal provisions of Section 2.5. In addition, a nonconforming sign structure shall be removed if the use to which it is accessory has not been in operation for a period of two years or (2 yrs) more. Such structure sign shall be removed by the owner or lessee of the property. If the owner or lessee fails to remove the sign structure, the zoning administrator or designee shall give the owner fifteen (15) days written notice to remove it. Upon failure to comply with this notice, the zoning administrator or designee may enter the property upon which the sign is located and remove any such sign or may initiate such action as may be necessary to gain compliance with this provision. The cost of such removal shall be chargeable to the owner of the property.

Section 5.10: Non-commercial Signs

- A. Wherever this article permits a sign with commercial content, non-commercial content is also permitted subject to the same requirements of size, color, illumination, movement, materials, location, height, construction, and other requirements of this article.

Section 5.11.1: Residential District signs

Except as otherwise prohibited in this Article, the following signs are permitted as an accessory to residential uses in residential districts. Moving signs and electronic message signs are prohibited on residential properties in all residential districts.

Type	Flags Notes: (3)	Temporary Notes: (1) (2) (6)	Permanent Notes: (1) (4)
Permit Required	No	No	Yes
Size (Each/Total)	<24 ft/max 3 (Only one flagpole)	<12 sf/max 1 per building unit <16 sf/max 1 for multi – development site	Max 2 minor signs per building unit ≤ 3 sf each
			Historic markers exempted
			Sign other than minor signs ≤ 10 sf max 1; Freestanding for multi-family sites (apartment buildings) ≤ 32 sf/ max 1
Illumination	U.S Flage Code For other flags (see Section 8)	None	None
Setback	Not in public right-of-way nor 5 ft from service drive, travel lane, or adjacent street	Not within 5 ft of property boundaries or a public right-of-way	Not within 5 ft of property boundaries or a public right-of-way
Maximum Height	25 ft (flagpole)	4 ft	4 ft for freestanding
Location	Allowed within the front, rear and side setbacks provided that such structure shall not create a visual obstruction or hindrance to traffic on abutting street	Freestanding, portable, wall or window	Freestanding, wall or window sign
Duration	Unlimited	≤ 45 days per calendar year period, per building unit	Unlimited

- (1) Commercial signs are limited to existing legal non-conforming uses and permitted or conditional uses in that residential district.
- (2) Duration extensions may be granted *by Zoning Administrator* for finite activities expected to exceed standard duration, not to exceed ninety (90) days total.
- (3) Flag Code, [U.S. Code Title 36, Chapter 10, Section 174](#)
- (4) Minor sign means a wall or window sign not exceeding three square feet (3 SF) in area and not exceeding four feet (4') in height if freestanding and not illuminated.
- (5) Art is not considered a sign.
- (6) With all other requirements met, the number of temporary signs is unrestricted during the forty-five (45) day period immediately preceding a General Election.

Section 5.11.2: Commercial District signs & Harbor District signs

Generally. Except as provided otherwise in this Article, the following signs are permitted as accessory uses in commercial districts.

Type	Flags	Freestanding (Including Monument)	Wall Signs	Temporary Moveable Signs (e.g., A-Frame, Banner, Chalkboard, Feather, Off-Premises, Portable, Window)	Other (e.g., Canopy, Projecting, Awning, Marquee, Directory, Canopy)
Definitions	FLAG means a piece of cloth or similar material, typically oblong or square, attachable by one (1) edge to a pole or rope and used as a symbol or decoration; this includes pennants. POLE SIGN means a sign that is mounted on one (1) or more freestanding poles.	FREESTANDING SIGN means any non-portable sign supported by a fence, retaining wall, or by upright structural members or braces on or in the ground and not attached to a building. GROUND MOUNTED SIGNS means a sign that is supported by structures or supports in or upon the ground and independent of any support from any building or wall. MONUMENT SIGN means a sign affixed to a structure built on grade in which the sign and the structure are an integral part of one another; not a pole sign. OFF-PREMISES SIGN means a sign advertising a business, person, activity, goods, products, or services not located on the site where the sign is installed, or that directs people to any location not on site.	WALL SIGN means any sign attached to a wall or painted on or against a flat vertical surface of a structure; including glass.	A-FRAME SIGN means a two-faced sign with supports that are connected at the top and separated at the base, forming an “A” shape not more than four feet (4’) height. These are also referred to as “sandwich board” signs. They are included in the term “portable sign.” BANNER means a sign of flexible material affixed to a framework or flat surface. CHALKBOARD SIGN means a single-faced, framed slate or chalkboard that can be written on with chalk or similar markers. FEATHER SIGN means a lightweight, portable sign mounted along one (1) edge on a single, vertical, flexible pole the physical structure of which may resemble a sail, bow, or teardrop. OFF-PREMISES SIGN means a sign advertising a business, person, activity, goods, products, or services not located on the site where the sign is installed, or that directs people to any location not on site. PORTABLE SIGN means any temporary sign not affixed to a building.	AWNING SIGN means a sign placed directly on the surface of an awning. CANOPY SIGN means a sign attached to a canopy. DIRECTORY SIGN (also identified as Multi-Tenant Sign): A sign which identifies tenants in a multi-tenant building or complex and which is located in the development for which it is advertising. Said sign will list the tenants or occupants of a building or group of buildings and may also indicate their respective professions or business activities. ENTRANCE CANOPY means a fixed or stationary canopy or hood constructed to provide protection at the entrance of a building, either supported entirely from a building, or supported partly from a building or from posts. HANGING SIGN means a sign supported by the extended arm of a single post or from a commercial establishment (parallel to the building façade). MARQUEE SIGN means a sign attached to and made a part of a marquee or any similar projections from a building, with changeable, fixed or both types of lettering.

Type	Flags	Freestanding (Including Monument)	Wall Signs	Temporary Moveable Signs (e.g., A-Frame, Banner, Chalkboard, Feather, Off-Premises, Portable, Window)	Other (e.g., Canopy, Projecting, Awning, Marquee, Directory, Canopy)
	-	-	-	WINDOW SIGN means any sign visible outside the window and attached to or within eighteen inches (18”) in front of or behind the surface of a window or door, including etched or painted sign on a window or glass structure.	PROJECTING SIGN means a sign that is wholly or partly dependent on the building for support and that projects more than twelve inches (12”) from such building.
Permit Required	Yes for flagpole only	Yes	Yes	No	Yes
Size/Number (Each/Total)	24 sf/max 3 (only 1 flagpole)	Permanent On-Site: 24 sf/1. Permanent Off-Site: Up to 3 signs, each not to exceed 18 sf and 7 ft in height located on commercial property with owner permission. No more than 1 permitted sign displayed per lot.	<u>Wall Sign:</u> 12 sf per 5 lineal ft of building frontage <u>Wall Sign:</u> < 8 sf per 5 lineal ft of building side wall	≤ 16 sf/max 3	Directory – Limited to 1 sign per ingress/egress onto a primary road access Projecting signs perpendicular to building frontage ≤ 10 sf Hanging Sign parallel to building frontage ≤ 5 sf per 5 lineal ft Awning Signs ≤ 12 sf Entrance canopy sign < 12 sf
Illumination	U.S. Flag Code (See Note 1) Other Flags – See Section 8 requirements	If illuminated, see Section 8 requirements	If illuminated, see Section 8 requirements	Not to be illuminated	If illuminated, see Section 8 requirements
Setback	Not in the public right-of-way nor 5 ft from service drive, travel lane, or adjacent street.	All freestanding signs shall be set back from any street right-of-way at least half the height of the sign and 5 ft from service drive, travel lane, or adjacent street.	NA	Not in the public right-of-way nor 5 ft from service drive, travel lane, or adjacent street. Not to impede pedestrian traffic on the sidewalk.	NA

Type	Flags	Freestanding (Including Monument)	Wall Signs	Temporary Moveable Signs (e.g., A-Frame, Banner, Chalkboard, Feather, Off-Premise, Portable, Window)	Other (e.g., Canopy, Projecting, Awning, Marquee, Directory, Canopy)
Maximum Height	25 ft – Flagpole	10 ft	NA	10 ft	NA
Location	Allowed within the front, rear and side setbacks provided that such structure shall not create a visual obstruction or hindrance to traffic on abutting streets.	-	Building Wall	If located on another property, property owner concurrence needed. No more than 1 sign shall be displayed per lot. Signs cannot impede public right-of-way. Window signs are permitted only on the first floor of a building unless the business is only on the floor where the window sign is displayed	Signs cannot impede public right-of-way. Directory or Multi-Tenant Signs: Limited to 1 monument sign per ingress/egress onto a primary road access.
Duration	Unlimited	Unlimited	Unlimited	45 Days	Unlimited

(1) [U.S. Code Title 36, Chapter 10, Section 174](#)

Section 5.11.3 Heavy and Light Industrial District signs

Except as provided otherwise in this Article, the following signs are permitted as accessory uses in industrial districts.

Type	Flags	Freestanding (Including Monument)	Wall Signs	Temporary Moveable Signs (e.g., A-Frame, Banner, Chalkboard, Feather, Off-Premises, Portable, Window)	Other (e.g., Canopy, Projecting, Awning, Marquee, Directory)
Definitions	FLAG means a piece of cloth or similar material, typically oblong or square attachable by one (1) edge to a pole or rope and used as a symbol or decoration; this includes pennants. POLE SIGN means a sign that is mounted on one (1) or more freestanding poles.	FREESTANDING SIGN means any non-portable sign supported by a fence, retaining wall, or by upright structural members or braces on or in the ground and not attached to a building. GROUND MOUNTED SIGNS means a sign that is supported by structures or supports in or upon the ground and independent of any support from any building or wall. MONUMENT SIGN means a sign affixed to a structure built on grade in which the sign and the structure are an integral part of one another; not a pole sign. OFF-PREMISES SIGN means a sign advertising a business, person, activity, goods, products, or services not located on the site where the sign is installed, or that directs people to any location not on site.	WALL SIGN means any sign attached to a wall or painted on or against a flat vertical surface of a structure; including glass.	A-FRAME SIGN means a two-faced sign with supports that are connect at the tope and separated at the base, forming an “A” shape not more than four feet heigh. These are also referred to as “sandwich board” signs. They are included in the term “portable sign.” BANNER means a sign of flexible material affixed to a framework or flat surface. CHALKBOARD SIGN means a single-faced, framed slate or chalkboard that can be written on with chalk or similar markers. FEATHER SIGN means a lightweight, portable sign mounted along one (1) edge on a single vertical, flexible pole the physical structure of which may resemble a sail, bow, or teardrop. OFF-PREMISES SIGN means a sign advertising a business, person, activity, goods, products, or services not located on the site where the sign is installed, or that directs people to any location not on site. PORTABLE SIGN means any temporary sign not affixed to a building. WINDOW SIGN means any sign visible outside the window and attached to or within eighteen inches (18”) in front of or behind the surface of a window or door, including etched or painted sign on a window or glass window as part of a door structure.	AWNING SIGN means a sign placed directly on the surface of an awning. CANOPY SIGN means a sign attached to a canopy. DIRECTORY SIGN (also identified as Multi-Tenant Sign): A sign which identifies tenants in a multi-tenant building or complex and which is located in the development for which it is advertising. Said sign will list the tenants or occupants of a building or group of buildings and may also indicate their respective professions or business activities. MARQUEE SIGN means a sign attached to and made a part of a marquee or any similar projections from a building, with changeable, fixed or both types of lettering in use. PROJECTING SIGN means a sign that is wholly or partly dependent on the building for support and that projects more than twelve inches (12”) from such building.
Permit Required	No	Yes	Wall Sign: Yes	No	Yes

Type	Flags	Freestanding (Including Monument)	Wall Signs	Temporary Moveable Signs (e.g., A-Frame, Banner, Chalkboard, Feather, Off-Premises, Portable)	Other (e.g., Canopy, Projecting, Awning, Marquee, Directory, Window)
Size/ Number (Each/Total)	24 sf/max 3 (Only 1 flagpole)	Permanent On-Site: 40 sf/1 Permanent Off-Site: Up to 3 signs, each not to exceed 18 sf and 7 ft in height located on commercial property with owner permission. No more than 1 permitted sign displayed per lot.	Front Wall: 12 sf per 5 lineal ft of building frontage Side Wall: 8 sf per 5 lineal ft	16 sf/max 3	Directory – Limited to 1 sign per ingress/egress onto a primary road. Projecting signs perpendicular to building frontage ≤ 10 sf Hanging sign parallel to building frontage ≤ 5 sf./5 lineal ft Awning signs ≤ 12 sf Entrance Canopy Sign by ZA <12 sf
Illumination	U.S. Flag Code (see Note 1) Other Flags – See Section 8 requirements	If illuminated, see Section 8 requirements	If illuminated, Section 8 requirements	Not to be illuminated	If illuminated, Section 8 requirements
Setback	Not in public right-of-way nor 5 ft from service drive, travel lane, or adjacent street	All freestanding signs shall be set back from any street right-of-way at least half the height of the sign and 5 ft from service drive, travel lane, or adjacent street.	NA	Not in public right-of-way nor 5 ft. from service drive, travel lane, or adjacent street. Not to impede pedestrian traffic on the sidewalk.	NA
Maximum Height	25 ft – Flagpole	10 ft.	NA	10 ft	NA
Location	Allowed within the front, rear, and side setbacks provided that such structure shall not create a visual obstruction or hindrance to traffic on abutting streets	-	Building wall	If located on another property, property owner concurrence needed. No more than 1 sign shall be displayed per lot. Signs cannot impede public right-of-way. Window signs are permitted only on the first floor of the building unless the business is on the floor where the window sign is displayed.	Signs cannot impede the public right-of-way
Duration	Unlimited	Unlimited	Unlimited	45 Days	Unlimited

(1) [U.S. Code Title 36, Chapter 10, Section 174](#)

Staff Report



**STAFF REPORT
PLANNING COMMISSION REGULAR MEETING**

MEETING DATE: August 5, 2025

AGENDA ITEM: Item 7

PREPARED BY: Katie H. Nunez, Planning Director & Zoning Administrator

DATE: July 31, 2025

RE: Chesapeake Bay Preservation Act – State Code Changes

From our May and June 2025 Planning Commission meetings, I have incorporated all of the agreed upon changes to the proposed Zoning Text Amendment to Article VII – Chesapeake Bay Preservation Act Overlay Ordinance as well as to Appendix A (Definitions) and Appendix C (Site Plan)

The proposed changes are shown in red font for any additions and strike-through for any deletions. You will also see some items highlighted in YELLOW – these are mandatory language sections from the state code that must be in our ordinance to reflect the new Resiliency Assessment requirements.

I have also provided a standalone document on the DEFINITIONS changes just so it is easier to see.

I am requesting a final review by the Planning Commission before I forward this proposed Zoning Text Amendment to the Town Council for their initial review and commencement of a public hearing process for said ZTA.

CBPA Related Text Amendments

Article VII - Chesapeake Bay Preservation Area Overlay District

Section 7.1: Title

This ordinance shall be known and referenced as the Chesapeake Bay Preservation Area Overlay District of the Town of Cape Charles.

Section 7.1.1: Findings of Fact

The Chesapeake Bay and its tributaries is one of the most important and productive estuarine systems in the world, providing economic and social benefits to the citizens of Cape Charles and the Commonwealth of Virginia. The health of the Bay is vital to maintaining the Town of Cape Charles’ economy and the welfare of its citizens.

The Chesapeake Bay has been degraded significantly by many sources of pollution, including non-point source pollution from land uses and development. Existing high-quality waters are worthy of protection from degradation to guard against further pollution. Certain lands that are proximate to shorelines have intrinsic water quality value due to the ecological and biological processes they perform. Other lands have severe development constraints from flooding, erosion, and soil limitations. With proper management, they offer significant ecological benefits by providing water quality maintenance and pollution control, as well as flood and shoreline erosion control. These lands together, designated by the Town Council of Cape Charles as Chesapeake Bay Preservation Areas (hereinafter CBPA), need to be protected from destruction and damage in order to protect the quality of life in Cape Charles and the Commonwealth of Virginia.

Section 7.2: Purpose and Intent

- A. This ordinance is enacted to implement the requirements of [§ 62.1-44.15:67](#) et seq. of the Code of Virginia, 1988 as amended, (The Chesapeake Bay Preservation Act) and amends the Zoning Ordinance of Cape Charles. The intent of the Town Council and the purpose of the Overlay District is to: (1) protect existing high quality state waters; (2) restore all other state waters to a condition or quality that will permit all reasonable public uses and will support the propagation and growth of all aquatic life, including game fish, which might reasonably be expected to inhabit them; (3) safeguard the clean water of the Commonwealth from pollution; (4) prevent any increase in pollution; (5) reduce existing pollution; and (6) promote water resource conservation in order to provide for the health, safety, and welfare of the present and future citizens of the Town of Cape Charles.
- B. This district shall be in addition to and shall overlay all other zoning districts where they are applied so that any parcel of land lying in the Chesapeake Bay Preservation Area Overlay District shall also lie in one or more of the other zoning districts provided for by the Zoning Ordinance. Unless otherwise stated in the Overlay District, the review and approval procedures provided for in other applicable ordinances shall be followed in reviewing and approving development, redevelopment, and uses governed by this Article.
- C. This Article is enacted under the authority of [§ 62.1-44.15:67](#) et seq., The Chesapeake Bay Preservation Act, and [§ 15.2-2283](#) of the Code of Virginia, which states that zoning ordinances may “also include reasonable provisions, not inconsistent with applicable state water quality standards, to protect surface water and groundwater as defined in [§ 62.1-255.](#)”

Section 7.3: Areas of Applicability

- A. The Chesapeake Bay Preservation Act Overlay District shall apply to all lands identified as CBPA as designated by the Town Council and as shown on the Zoning District Map. Such map, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this Article.
- B. The Resource Protection Area includes:
 - 1. tidal wetlands

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- 2. non-tidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow
 - 3. tidal shores
 - 4. a one-hundred-foot (100') vegetated buffer area located adjacent to and landward of the components listed in subsections ~~a1~~ through ~~e 3~~ above and along both sides of any water body with perennial flow
- C. The Resource Management Area is composed of ~~the following land categories: flood plains; highly erodible soils, including steep slopes; highly permeable soils; non tidal wetlands not included in the RPA; other lands necessary to protect the quality of state waters or~~ a minimum of one hundred feet (100') in width landward of the Resource Protection Area, ~~whichever is greatest.~~
- D. The Zoning District Map shows the general location of CBPAs and should be consulted by persons contemplating activities within Cape Charles prior to engaging in a regulated activity.
- E. Portions of RPAs and RMAs designated by the Town Council as Intensely Developed Areas shall serve as ~~development and~~ redevelopment areas. Areas so designated shall comply with all erosion and sediment control requirements and the performance standards for redevelopment in Section 7.9, Performance Standards.

Section 7.4: Use Regulations

Permitted uses, special permit uses, accessory uses, and special requirements shall be as established by the underlying zoning district unless specifically modified by the requirements set forth herein.

Section 7.5: Lot Size

Lot size shall be subject to the requirements of the underlying zoning district(s) provided that any lot shall have sufficient area outside the RPA to accommodate an intended development in accordance with the performance standards in Section 7.9 when such development is not otherwise allowed in the RPA.

Section 7.6: Development Criteria for Resource Protection Areas

- ~~A.~~ Development in RPAs may be allowed only if it: (1) is water dependent, (2) constitutes redevelopment, ~~or (3) constitutes~~ development or redevelopment within IDAs, or ~~(34) constitutes redevelopment, is a new use established pursuant to subsection 107(C) of this Ordinance; (5) is a road or driveway crossing satisfying the conditions set forth in subdivision 5 of this section; or (6) is a flood control or stormwater management facility. In addition, the following conditions shall apply:~~
- 1. A water quality impact assessment shall be required for any proposed land disturbance, development or redevelopment within RPAs and for any development within RMAs when required by the Zoning Administrator because of the unique characteristics of the site or intensity of development in accordance with the provisions of Section 7.10 of this Article.
 - 2. A resiliency assessment as set forth in Section 7.10G of this Ordinance shall be required for any proposed land development during the plan of development or other project review process in the RPA.
- ~~A.~~ 1.3. A new or expanded water dependent facility may be allowed, provided that the following criteria are met:
- a. It does not conflict with the comprehensive plan;
 - b. It complies with the performance criteria set forth in Section ~~7.109~~ of this Article;
 - c. Any non-water dependent component is located outside of the RPA; and
 - d. Access to the water-dependent facility will be provided with the

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minimum disturbance necessary. Where practicable, a single point of access will be provided.

- ~~4.~~ Redevelopment on isolated redevelopment sites outside of the designated IDAs shall be permitted only if there is not an increase in the amount of impervious cover and no further encroachment within the RPA and it shall conform to the Virginia Erosion and Stormwaer Management Act ~~stormwater management requirements outlined under Section 7.9 and erosion and sediment control requirements outlined under Section 7.9 of this Article.~~
- ~~5.~~ Roads and driveways not otherwise exempt from the provisions of this Ordinance, as per subsection 7.13 of this Ordinance, may be constructed in or across Resource Protection Areas provided each of the following conditions are met:
- ~~a.~~ The Town Zoning Administrator finds that there are no reasonable alternatives to aligning the road or driveway in or across the Resource Protection Area.
 - ~~b.~~ The alignment and design of the road or driveway are optimized, consistent with other requirements, to minimize encroachment into the Resource Protection Area and adverse effects on water quality.
 - ~~c.~~ The design and construction of the road or driveway satisfy all applicable criteria of this Ordinance, including submission of a water quality impact assessment.
 - ~~d.~~ The Town Zoning Administrator reviews the plan for the road or driveway proposed in or across the Resource Protection Area in coordination with the Town's site plan, subdivision, and other plan of development reviews.
- ~~65.~~ Flood control and stormwater management facilities that drain or treat water from multiple development projects or from a significant portion of a watershed may be allowed in Resource Protection Areas, provided that:
- ~~a.~~ Such facilities are allowed and constructed in accordance with the Virginia Stormwater Management Act and Regulations.
 - ~~b.~~ The Town Zoning Administrator conclusively establishes that the location of the facility within the Resource Protection Area is the optimum location.
 - ~~c.~~ The size of the facility is the minimum necessary to provide necessary flood control or stormwater treatment, or both.
 - ~~d.~~ The facility is consistent with a comprehensive stormwater management plan developed and approved in accordance with Virginia Stormwater Management Program (VSMP) regulations.
 - ~~e.~~ All applicable State and Federal permits are obtained from the appropriate federal and state agencies having jurisdiction, such as the U.S. Army Corps of Engineers, the Department of Environmental Quality, and the Virginia Marine Resources Commission.
 - ~~f.~~ Approval is received from the Town Zoning Administrator prior to construction.
 - ~~g.~~ Routine maintenance is performed on such facilities to assure that they continue to function as designed.

It is not the intent of this subdivision to allow a best management practice that collects and treats runoff from an individual lot or portion thereof to be located within a Resource Protection Area.

~~2.~~

~~B.~~ A water quality impact assessment shall be required for any proposed land disturbance, development, or redevelopment within RPAs and for any development within RMAs when required by the Zoning Administrator because of the unique characteristics of the site or intensity of development in accordance with the provisions of Section 7.10 of this Article.

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B. Buffer Area Requirements. To minimize the adverse effects of human activities on the other components of Resource Protection Areas, state waters, and aquatic life, a 100-foot buffer area of vegetation that is effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff shall be retained if present and established where it does not exist. 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 full buffer area shall be designated as the landward component of the RPA in accordance with Section 7.3, Areas of Applicability, and Section 7.11, Plan of Development Process, of this Article. The planting of trees shall be incorporated into the reestablishment of the 100-foot buffer, as appropriate to site conditions and in such a manner to maximize the buffer function. Inclusion of native species in tree planting is preferred.

a. The 100-foot buffer area shall be deemed to achieve a 75 percent reduction of sediments and a 40 percent reduction of nutrients. Notwithstanding permitted uses, encroachments, and vegetation clearing, as set forth in this section, the 100-foot wide buffer area is not reduced in width.

b. Where land uses such as agriculture or silviculture within the area of the buffer cease and the lands are proposed to be converted to other uses, the full 100-foot wide buffer shall be reestablished. In reestablishing the buffer, management measures shall be undertaken to provide woody vegetation that assures the buffer functions set forth in this chapter. The planting of trees shall be incorporated into the reestablishment of the 100-foot buffer, as appropriate to site conditions and in such a manner to maximize the buffer function. Inclusion of native species in tree planting is preferred.

C. Permitted Encroachments into the buffer area.

1. When the application of the buffer areas would result in the loss of a buildable area on a lot or parcel recorded prior to October 1, 1989, the Zoning Administrator may allow encroachments into the buffer area in accordance with Section 7.11, Plan of Development Process, and the following criteria:

a. Encroachments into the buffer areas shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities;

b. Where practicable, a vegetated area that will maximize water quality protection, mitigate the effects of the buffer encroachment, and is equal to the area of encroachment into the buffer area shall be established elsewhere on the lot or parcel. Where established, such vegetated area shall include the planting of trees as appropriate to site conditions. Inclusion of native species in tree planting is preferred.

c. The encroachment may not extend into the seaward 50 feet of the buffer area; and

d. Encroachments into the buffer area processed through an administrative review shall be subject to the findings required by Section 7.14 of this Ordinance but without the requirement for a public hearing, such findings to be made instead by the Zoning Administrator.

D. Permitted modifications the buffer area.

The buffer area shall be maintained to meet the following additional performance standards:

1. In order to maintain the functional value of the buffer area, indigenous vegetation may be removed, subject to approval by the Zoning Administrator, only to provide for reasonable sight lines, access paths, general woodlot management, and best management practices including those that prevent upland erosion and concentrated flows of stormwater, shoreline erosion control projects, or adaptation measures. Such buffer modifications shall be permitted under the following conditions, and consistent with the requirements of this Ordinance:

a. In general, where the removal of trees within the buffer area is proposed, mature trees shall be preserved and trimmed or pruned in lieu of removal as site conditions permit and removal should be limited to the fewest number of trees feasible. Where tree planting

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- for mitigation, conservation landscaping, or for buffer reestablishment is proposed, inclusion of native species in tree planting is preferred.
- b. Trees may be pruned or removed as necessary to provide for sight lines and vistas provided that, where removed, they shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff.
1. When trees are proposed for removal to provide for site lines, vistas, and access paths they shall be replaced with trees as appropriate to site conditions and in such a manner as to maximize the buffer function and to protect the quality of state waters. The boundaries of this area shall be determined in a manner acceptable to the Zoning Administrator and be based on identified vantage points and the portion of the shoreline to be viewed.
 2. A written request for a determination by the Zoning Administrator that the proposed removal of vegetation from the RPA buffer is in accordance with the requirements of this subsection is required. Such request shall include a plan showing the following: (i) the vantage points for the sight lines, vistas, and access paths (ii) the portion of the shoreline to be viewed or accessed, (iii) the area in which trees are to be pruned or removed, (iv) the location of all trees six inches or greater in diameter at breast height or as required by the Zoning Administrator, and (v) the location of the trees to be removed or pruned. The request shall also indicate the type, location and number of replacement vegetation proposed.
 3. Trees may not be pruned or removed from the buffer area until a written determination is obtained from the Zoning Administrator that the proposed activity is in accordance with the requirements of this Ordinance.
- c. Any path shall be constructed and surfaced so as to effectively control erosion.
- d. 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 allowed, pursuant to standards adopted by the Town of Cape Charles.
- e. For shoreline erosion control projects, trees and woody vegetation may be removed, necessary control techniques employed, and appropriate vegetation established to protect or stabilize the shoreline in accordance with the best of available technical advice and applicable permit conditions or requirements.
1. The removal of mature trees for the installation and maintenance of proposed shoreline erosion control projects shall only be permitted as necessary and consistent with the best available technical advice, approved project plans, and applicable permit conditions or requirements.
 2. Where vegetation is proposed for removal within the buffer area as part of a shoreline erosion control project, a water quality impact assessment with vegetative mitigation equal to the area of

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encroachment is required. Trees shall be incorporated, as appropriate to the site conditions and the project specifications. In addition, vegetation in the form of a mixture of grasses, sedges, flowers, and shrubs can be used by property owners to provide natural stabilization of shorelines. Inclusion of native species is preferred.

3. Existing trees, proposed plantings, and clearing limits must be shown on the Joint Permit Application and/or Water Quality Impact Assessment.

4. Shoreline erosion control within the RPA shall be consistent with the Wetlands Act (Chapter 13 Title 28.2), the Virginia Marine Resources Commission (VMRC) *Tidal Wetlands Guidelines* which provide for “minimum standards for the protection and conservation of wetlands,” and “ensure protection of shorelines and sensitive coastal habitat from sea level rise and coastal hazard.”

a. Installation of living shorelines is the required adaptation measure for stabilizing tidal shorelines unless the best available science indicates that such approaches are not suitable for the site on which the practice is being considered, as determined by the Virginia Marine Resources Commission. Such projects should be coordinated to address the requirements of the VMRC *Tidal Wetlands Guidelines* current at the time of application submission in conjunction with the requirements of this Ordinance [and the local wetlands ordinance].

b. Approval from the VMRC is also required for adaptation measures proposing the use of sea walls, riprap, groins, or other structural means of stabilization within tidal wetlands. Such projects shall demonstrate to the satisfaction of the Zoning Administrator that vegetative techniques cannot be effectively utilized and shall incorporate elements of living shoreline approaches into permitted projects to the maximum extent possible.

c. If a hardened shoreline structure is allowed, the applicant shall be required to incorporate elements of living shoreline approaches into permitted projects, to the maximum extent possible.

f. Adaptation measures proposed for location within the Resource Protection Area, shall meet the following conditions:

1. The selected adaptation measure shall be a nature-based solution that uses environmental processes, natural systems, or natural features identified as being appropriate for existing site conditions.

2. An identified adaptation measure shall be selected from one of the following sources: Chesapeake Bay program approved BMP list, the Virginia Stormwater BMP Clearinghouse, the VMRC Tidal Wetlands Guidelines, or be a project that is eligible for funding by the Virginia Community Flood Preparedness Fund Grant.

a. Adaptation measures should consist of trees, vegetation, stone or enhance existing natural elements.

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- 3. Adaptation measures approved for use in the RPA shall be designed, installed, and maintained in accordance with the applicable specifications for the selected adaptation measure.
- 4. Adaptation measures should be placed channelward of the proposed development whenever possible and should maximize the preservation of mature trees and other natural vegetation to minimize adverse impacts to the RPA and to maximize water quality benefits.
- 5. The use of fill as a component of an adaptation measure may be permitted, provided it meets the following conditions:
 - a. The grading and slope created by the use of fill shall be no greater than necessary based upon the project specifications and implemented in a manner that minimize the impact of run-off.
 - i. Slopes should be equal to or less than 10% to support water quality conditions, including infiltration.
 - ii. Slopes less than or equal to 5% or that convey sheet flow of velocities less than one and one-half (1.5) feet/second are preferred, to reduce runoff and tidal wave energies.
 - iii. Slopes greater or different than the above may be necessary based upon certain site conditions and adaptation measure specifications. In such instances, submittal of additional calculations and engineering plans, and assessments of the impacts of the use of fill on existing vegetation, wetland migration and water movement, both landward and channelward, in support of the proposed slope shall be required.
 - b. Fill shall have the necessary biogeochemical characteristics, including sufficient organic content, to support the growth of vegetation and adequate permeability to allow infiltration consistent with project specifications. The applicant shall:
 - i. Provide documentation specifying the proposed depth, extent, and type of fill material proposed for use.
 - ii. Provide documentation that the proposed soils are compliant with the requirements governing the use of lightly contaminated soil consistent with the Virginia Solid Waste Management Regulations (9 VAC 20-81 et seq.) or permitting requirements for upland placement of dredge soil, if applicable.
 - iii. Provide documentation that the newly placed fill is revegetated with multi-strata vegetation inclusive of canopy and

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- understory trees, shrubs, and ground cover consistent with the guidance found in the *Buffer Manual*. Inclusion of native species is encouraged.
- iv. Ensure that the fill area is vegetatively stabilized within seven (7) days.
- c. The use of fill shall not exacerbate stormwater run-off, and lateral flow onto adjacent properties shall be controlled.
- i. Appropriate erosion and sediment control and stormwater management measures shall be incorporated into the design specifications, including the establishment of positive and proper drainage.
- ii. If the adaptation measure triggers separate stormwater management requirements, then these criteria should be considered in conjunction with those requirements.
- iii. Larger scale adaptation measures may require the use of stormwater calculations to ensure these criteria are met.
- iv. Any impacts on the management of stormwater upland of the Resource Protection Area created by the use of fill shall be mitigated, as necessary.
- d. The use of fill for an adaptation measure shall not negatively impact septic systems and drainfields located within the RPA. Where present, the proximity of the adaptation measure using fill should be considered such that the fill will not interfere with the proper function or maintenance of either of these features.
- e. The use of fill shall be consistent with floodplain requirements.
- f. The placement of fill allowed by either the Living Shoreline Group 1 or Group 2 general permits to establish appropriate elevations to support required vegetation shall be consistent with the fill requirements of this subsection, in that a change in slope or land elevation may not alter water flow in contravention with the fill requirements of this subsection.
6. The preservation of existing natural vegetation shall be maximized, including mature trees, and land disturbance consistent with design specifications shall be minimized.
7. Adaptation measures shall comply with all federal, state and local requirements, including any required permits and conditions such as the need for a Water Quality Impact Assessment.
8. Nothing in these provisions shall be construed to authorize approval or allowance of an adaptation measure in contravention of floodplain management requirements.

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including [the local floodplain ordinance].

2. In Intensely Developed Areas the Zoning Administrator may exercise discretion regarding whether to require establishment of vegetation in the 100-foot wide buffer area. However, while the immediate establishment of vegetation in the buffer area may be impractical, the Zoning Administrator shall give consideration to implementing measures that would establish vegetation in the buffer in these areas over time in order to maximize water quality protection, pollutant removal, and water resource conservation. When considering the reestablishment of a buffer within an Intensely Developed Area, the Zoning Administrator shall consider the planting of trees as a component of such buffer reestablishment measure. Inclusion of native species in tree planting is preferred.
3. On agricultural lands the agricultural buffer area shall be managed to prevent concentrated flows of surface water from breaching the buffer area and appropriate measures may be taken to prevent noxious weeds from invading the buffer area. Agricultural activities may encroach into the buffer area as follows:
- a. Agricultural activities may encroach into the landward 50 feet of the 100-foot wide buffer area when at least one agricultural best management practice, which, in the opinion of the [local soil and water conservation district board], addresses the more predominant water quality issue on the adjacent land – erosion control or nutrient management – is being implemented on the adjacent land, provided that the combination of the undisturbed buffer area and the best management practice achieves water quality protection, pollutant removal, and water resource conservation at least the equivalent of the 100-foot wide buffer area. If nutrient management is identified as the predominant water quality issue, a nutrient management plan, including soil test, must be developed consistent with the “Virginia Nutrient Management Training and Certification Regulations (4 VAC 50-85 et seq.)” administered by the Virginia Soil and Water Conservation Board.
 - b. Agricultural activities may encroach within the landward 75 feet of the 100-foot-wide buffer area where agricultural best management practices which address erosion control, nutrient management, and pest chemical control, are being implemented on the adjacent land. The erosion control practices must prevent erosion from exceeding the soil loss tolerance level, referred to as “T”, as defined in the “National Soil Survey Handbook” of November 1996 in the “Field Office Technical Guide” of the U. S. Department of Agriculture Natural Resource Conservation Service. A nutrient management plan, including soil test, must be developed consistent with the “Virginia Nutrient Management Training and Certification Regulations (4 VAC 50-85 et seq). administered by the Virginia Soil and Water Conservation Board. In conjunction with the remaining buffer area, this collection of best management practices shall be presumed to achieve water quality protection at least the equivalent of that provided by the 100-foot-wide buffer area.
 - c. The buffer area is not required to be designated adjacent to agricultural drainage ditches if the adjacent agricultural land has in place at least one best management practices as considered by the Eastern Shore Soil and Water Conservation District to address the more predominant water quality issue on the adjacent land – either erosion control or nutrient management
 - d. If specific problems are identified pertaining to agricultural activities that are causing pollution of the nearby water body with perennial flow or violate performance standards pertaining to the vegetated buffer area, the town, in cooperation with soil and water conservation district, shall recommend a compliance schedule to the landowner and require the problems to be corrected consistent with that schedule. This schedule shall expedite environmental protection while taking into account the seasons and other temporal considerations so that the probability for successfully implementing the corrective measures is greatest.
 - e. In cases where the landowner or the landowner's agent or operator has refused assistance from the local soil and water conservation district in complying with or documenting compliance with the agricultural requirements of this chapter, the district shall report the noncompliance to

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the Town. The Town shall require the landowner to correct the problems within a specified period of time not to exceed 18 months from their initial notification of the deficiencies to the landowner. The local government, in cooperation with the district, shall recommend a compliance schedule to the landowner. This schedule shall expedite environmental protection while taking into account the seasons and other temporal considerations so that the probability for successfully implementing the corrective measures is greatest.

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Section 7.7: Conflict With Other Regulations

In any case where the requirements of this Article conflict with any other provision of the Cape Charles Zoning Ordinance and other regulations or existing state or federal regulations, whichever imposes the more stringent restrictions shall apply.

Section 7.8: Interpretation of Resource Protection Area Boundaries

- A. Delineation by the Applicant. The site-specific boundaries of the Resource Protection Area shall be determined by the applicant through the performance of an environmental site assessment, subject to approval by the Zoning Administrator and in accordance with Section 7.11, Plan of Development Process, or Section 7.10 Water Quality Impact Assessment, of this Article. The Zoning District Map may be used as a guide to the general location of Resource Protection Areas.
- B. Where Conflict Arises Over Delineation. When the applicant provides a site-specific delineation of the RPA, the Zoning Administrator will verify the accuracy of the boundary delineation. In determining the site-specific RPA boundary, the Zoning Administrator may render adjustments to the applicant's boundary delineation in accordance with Section 7.11, Plan of Development Process, of this Article. In the event the adjusted boundary delineation is contested by the applicant, the applicant may seek relief in accordance with the provisions of Section 7.11 of this ordinance.

Section 7.9: Performance Standards

- A. Purpose and Intent. The performance standards establish the means to minimize erosion and sedimentation potential, reduce land application of nutrients and toxins, and maximize rainwater infiltration. Natural ground cover, especially woody vegetation, is most effective in holding soil in place and preventing site erosion. Indigenous vegetation, within its adaptability to local conditions without the use of harmful fertilizers or pesticides, filters stormwater runoff. Minimizing impervious cover enhances rainwater infiltration and effectively reduces stormwater runoff potential.

The purpose and intent of these requirements are also to implement the following objectives: prevent a net increase in nonpoint source pollution from new development; achieve a ten percent (10%) reduction in nonpoint source pollution from redevelopment; and achieve a forty percent (40%) reduction in nonpoint source pollution from agricultural uses.

- B. General Performance Standards for Development and Redevelopment
 - 1. Land disturbance shall be limited to the area necessary to provide for the proposed use or development.
 - a. Ingress and egress during construction shall be limited to one access point unless otherwise approved by the Zoning Administrator.
 - 2. Indigenous vegetation shall be preserved to the maximum extent practicable consistent with the use or development proposed and in accordance with the Virginia Erosion and ~~Sediment Control~~ Stormwater Management Handbook, Version 1.1.
 - a. Mature trees shall be protected during development and only removed where necessary, including to provide for the proposed use or development.
 - b. Site clearing for construction activities shall be allowed as

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- approved by the Zoning Administrator through the plan of development review process.
- b.c. Prior to clearing or grading, suitable protective barriers, such as safety fencing, shall be erected five feet outside of the drip line of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
3. Land development shall minimize impervious cover to promote infiltration of stormwater into the ground consistent with the proposed use or development.
- a. Grid and modular pavements may be used for any required parking area, alley, or other low-traffic driveway unless otherwise approved by the Zoning Administrator.
4. Notwithstanding any other provision of this Article or exceptions or exemptions thereto, any land-disturbing activity exceeding twenty thousand five hundred square feet (2,500 SF), including construction of all single-family houses, shall comply with the requirements of Cape Charles’ Erosion and Sediment Control Ordinance.
5. All development and redevelopment exceeding two thousand five hundred square feet (2,500 SF) of land disturbance shall be subject to a plan of development process, including the approval of a site plan in accordance with the provisions of the Site Plan Ordinance.
6. All on-site sewage disposal systems not requiring a VPDES permit shall be pumped out at least once every five years (5 yrs) in accordance with the provisions of the State Health Code. Effective July 1, 2023, requirements of this section directly related to compliance with onsite sewage system pump-outs shall be managed and enforced by the Virginia Department of Health in Accomack, Essex, Gloucester, King and Queen, King William, Lancaster, Mathews, Middlesex, Northampton, Northumberland, Richmond, and Westmoreland Counties, and the incorporated towns within those counties.
- a. Subject to conditions established by the local Health District of the Virginia Department of Health (VDH), the owners of such systems may, in lieu of pumping out such systems every five (5) years, have a plastic filter installed and maintained in the outflow pipe from the septic tank to filter solid material from the effluent while sustaining adequate flow to the drainfield to permit normal use of the septic system. Such a filter shall satisfy standards established in the Sewage Handling and Disposal Regulations (12 VAC 5-610) administered by VDH; and
- b. In lieu of requiring proof of septic tank pump out every five (5) years, the Town may allow owners of on-site sewage treatment systems to submit documentation every five (5) years, certified by a an operator or onsite soil evaluator licensed or certified under Chapter 23 (§ 54.1-2300 et seq.) of Title 54.1 of the Code of Virginia as being qualified to operate, maintain, or design onsite sewage systems, that the septic system has been inspected, is functioning properly, and that – as of the date of inspection – pump-out of the effluent was not deemed necessary.
- c. For new construction not served by public sewer or other system requiring a VPDES permit, a reserve sewage disposal site with a capacity at least equal to that of the primary sewage disposal site shall be provided. This requirement shall not apply to any lot or parcel recorded prior to October 1, 1989 if such lot or parcel is not sufficient in capacity to accommodate a reserve sewage disposal site, as determined by the local Health District. Building or construction of any impervious cover shall be prohibited on the area of all sewage disposal sites, including reserve sewage disposal sites, until the property is served by public sewer or an on-site sewage treatment system operating under a VPDES permit. All sewage disposal site records shall be administered to provide adequate notice and enforcement. As an alternative to the reserve sewage disposal site, the owners of such systems may install an

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- alternative drainfield system meeting the following conditions:
1. Each of the two (2) alternating drainfields in the system shall have at a minimum, an area not less than fifty (50) percent of the area that would otherwise be required if a single primary drainfield were constructed.
 2. An area equal to fifty (50) percent of the area that would otherwise be required for the primary drainfield site shall be reserved for subsurface absorption systems that utilize a flow diversion device, to provide for future replacement or repair to meet the requirements for a sewage disposal system. Expansion of the primary system shall require an expansion of the reserve system.
 3. The two (2) alternating drainfields shall be connected by a diversion valve, approved by the local Health District, located in the pipe between the septic tank and the distribution boxes. The diversion valve shall be used to alternate the direction of effluent flow to one (1) drainfield or the other at a time. Diversion valves shall not be used for the following types of treatment systems:
 - (a). Sand mounds.
 - (b). Low pressure distribution systems.
 - (c). Repair situations when installation of a valve is not feasible.
 - (d). Any other approved system for which the use of a valve would adversely affect the design of the system, as determined by the local Health District.
- d. The diversion valve shall be a three-port, two-way valve of approved materials (i.e., resistant to sewage, leak-proof and designed so that the effluent from the tank can be directed to flow into either one (1) of the two (2) distribution boxes).
- e. There shall be a conduit from the top of the valve to the ground surface with an appropriate cover to be level with or above the ground surface.
- f. The valve shall not be located in driveways, recreational courts, parking lots, or beneath sheds or other structures.
- g. In lieu of a diversion valve, any device that can be designed and constructed to direct the flow of effluent from the tank into either one (1) of the two (2) distribution boxes may be approved if plans are submitted to the local Health District and determined to be satisfactory.
- h. Owners shall alternate using the drainfields every 12 months to permit the yearly resting of half of the absorption system.
- i. The Zoning Administrator shall ensure that the owners are notified annually of the requirement to switch the valve to the opposite drainfield.
- ~~6-7. For any development or redevelopment, stormwater runoff shall be controlled by the use of best management practices that achieve the following:~~
- ~~a. For development, the post-development nonpoint source pollution runoff load shall not exceed the pre-development load based on the calculated average land cover condition of the Town of Cape Charles.~~
 - ~~b. For sites within IDAs or other isolated redevelopment sites, the non-point source pollution load shall be reduced by at least ten percent (10%). The Zoning Administrator may waive or modify this requirement for redevelopment sites that originally incorporated best management practices for storm water runoff quality control provided the following provisions are satisfied:~~
 - ~~i. In no case may the post-development non-point source~~

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~~pollution runoff load exceed the pre-development load.~~
~~ii. Runoff pollution loads must have been calculated and the BMPs selected for the expressed purpose of controlling non-point source pollution.~~
~~iii. If best management practices are structural, evidence shall be provided that the facilities are currently in good working order and performing at the design levels of service. The Zoning Administrator may require a review of both the original structural design and maintenance plans to verify this provision. A new maintenance agreement may be required to ensure compliance with this Article.~~
~~For redevelopment, both the pre and the post development loadings shall be calculated by the same procedures. However, where the design data is available, the original post-development non-point source pollution loadings can be substituted for the existing development loadings.~~

~~7.~~ 8. Prior to initiating grading or other on-site activities on any portion of a lot or parcel, all wetlands permits required by federal, state, and local laws and regulations shall be obtained and evidence of such submitted to the Zoning Administrator in accordance with Section 7.11 of this Article.

9. Land upon which agricultural activities are being conducted shall have a soil and water quality conservation assessment. Such assessments shall evaluate the effectiveness of existing practices pertaining to soil erosion and sediment control, nutrient management, and management of pesticides, and, where necessary, results in a plan that outlines additional practices needed to ensure that water quality protection is accomplished consistent with the Article.

a. Recommendations for additional conservation practices need address only those conservation issues applicable to the tract or field being assessed. Any soil and water quality conservation practices that are recommended as a result of such an assessment and are subsequently implemented with financial assistance from federal or state cost-share programs must be designed, consistent with cost-share practice standards effective in January 1999 in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resource Conservation Service or the June 2000 edition of the "Virginia Agricultural BMP Manual" of the Virginia Department of Conservation and Recreation, respectively. Unless otherwise specified in this section, general standards pertaining to the various agricultural conservation practices being assessed shall be as follows:

- (1) For erosion and sediment control recommendations, the goal shall be, where feasible, 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. However, in no case shall erosion exceed the soil loss consistent with an Alternative Conservation System, referred to as an "ACS", as defined in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resource Conservation Service.
- (2) For nutrient management, whenever nutrient management plans are developed, the operator or landowner must provide soil test information, consistent with the Virginia Nutrient Management Training and Certification Regulations (4VAC50-85).

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(3) For pest chemical control, referrals shall be made to the local cooperative extension agent or an Integrated Pest Management Specialist of the Virginia Cooperative Extension Service. Recommendations shall include copies of applicable information from the "Virginia Pest Management Guide" or other Extension materials related to pest control.

b. A higher priority shall be placed on conducting assessments of agricultural fields and tracts adjacent to Resource Protection Areas. However, if the landowner or operator of such a tract also has Resource Management Area fields or tracts in his operation, the assessment for that landowner or operator may be conducted for all fields or tracts in the operation. When such an expanded assessment is completed, priority must return to Resource Protection Area fields and tracts.

c. The findings and recommendations of such assessments and any resulting soil and water quality conservation plans will be submitted to the Eastern Shore Soil and Water Conservation District Board, which will be the plan-approving authority.

8.

~~C. Buffer Area Requirements. To minimize the adverse effects of human activities on the other components of Resource Protection Areas, state waters, and aquatic life, a one-hundred-foot (100') buffer area of vegetation that is effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff shall be retained if present and established where it does not exist. 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 full buffer area shall be designated as the landward component of the RPA in accordance with Section 7.3, Areas of Applicability, and Section 7.11, Plan of Development Process, of this Article.~~

~~The one-hundred-foot (100') buffer area shall be deemed to achieve a seventy-five percent (75%) reduction of sediments and a forty percent (40%) reduction of nutrients.~~

~~The buffer area shall be maintained to meet the following additional performance standards:~~

- ~~1. In order to maintain the functional value of the buffer area, indigenous vegetation may be removed, subject to approval by the Zoning Administrator, only to provide for reasonable sight lines, access paths, general woodlot management, and best management practices including those that prevent upland erosion and concentrated flows of stormwater, as follows:~~
 - ~~a. Trees may be pruned or removed as necessary to provide for sight lines and vistas provided that, where removed, they shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff.~~
 - ~~b. Any path 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 allowed, pursuant to standards adopted by the Town of Cape Charles.~~
 - ~~d. For shoreline erosion control projects, trees and woody vegetation may be removed, necessary control techniques employed, and appropriate vegetation established to protect or stabilize the shoreline in accordance with the best of available~~

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- ~~technical advice and applicable permit conditions or requirements.~~
2. ~~When the application of the buffer areas would result in the loss of a buildable area on a lot or parcel recorded prior to October 1, 1989, the Zoning Administrator may allow encroachments into the buffer area in accordance with Section 7.11, Plan of Development Process, and the following criteria:~~
- ~~a. Encroachments into the buffer areas shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities.~~
 - ~~b. Where practicable, a vegetated area that will maximize water quality protection, mitigate the effects of the buffer encroachment, and is equal to the area of encroachment into the buffer area shall be established elsewhere on the lot or parcel; and~~
 - ~~c. The encroachment may not extend into the seaward 50 feet of the buffer area.~~
3. ~~Redevelopment within IDAs may be exempt from establishing vegetation within the buffer area in accordance with Section 7.11, Plan of Development Process, of this Article.~~
4. ~~On agricultural lands the agricultural buffer area shall be managed to prevent concentrated flows of surface water from breaching the buffer area and appropriate measures may be taken to prevent noxious weeds from invading the buffer area. Agricultural activities may encroach into the buffer area as follows:~~
- ~~a. Agricultural activities may encroach into the landward 50 feet of the one-hundred-foot (100') wide buffer area when at least one agricultural best management practice, which, in the opinion of the [local soil and water conservation district board], addresses the more predominant water quality issue on the adjacent land — erosion control or nutrient management — is being implemented on the adjacent land, provided that the combination of the undisturbed buffer area and the best management practice achieves water quality protection, pollutant removal, and water resource conservation at least the equivalent of the one-hundred-foot (100') wide buffer area. If nutrient management is identified as the predominant water quality issue, a nutrient management plan, including soil test, must be developed consistent with the “Virginia Nutrient Management Training and Certification Regulations (4 VAC 5-15 et seq.)” administered by the Virginia Department of Conservation and Recreation.~~
 - ~~b. Agricultural activities may encroach within the landward seventy-five feet (75') of the one-hundred-foot (100') wide buffer area where agricultural best management practices which address erosion control, nutrient management, and pest chemical control, are being implemented on the adjacent land. The erosion control practices must prevent erosion from exceeding the soil loss tolerance level, referred to as “T”, as defined in the “National Soil Survey Handbook” of November 1996 in the “Field Office Technical Guide” of the U. S. Department of Agriculture Natural Resource Conservation Service. A nutrient management plan, including soil test, must be developed consistent with the “Virginia Nutrient Management Training and Certification Regulations (4 VAC 5-15 et seq.)” administered by the Virginia Department of Conservation and Recreation. In conjunction with the remaining buffer area, this collection of best management practices shall be presumed to achieve water quality protection at least the equivalent of that provided by the one-hundred-foot (100') wide buffer area.~~
 - ~~c. The buffer area is not required to be designated adjacent to agricultural drainage ditches if the adjacent agricultural land has~~

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- ~~in place at least one best management practices as considered by the local Soil and Water Conservation District to address the more predominant water quality issue on the adjacent land— either erosion control or nutrient management~~
5. ~~When agricultural or silvicultural uses within the buffer area cease, and the lands are proposed to be converted to other uses, the full one-hundred foot (100') wide buffer area shall be reestablished. In reestablishing the buffer, management measures shall be undertaken to provide woody vegetation that assures the buffer functions are maintained or established.~~

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Section 7.10: Water Quality Impact Assessment *and Resiliency Assessment*

- A. Purpose and Intent. The purpose of the water quality impact assessment is to: (1) identify the impact of proposed development on water quality and lands within RPAs and other environmentally sensitive lands; (2) ensure that, where development does take place within RPAs and other sensitive lands, it will be located on those portions of a site and in a manner that will be least disruptive to the natural functions of RPAs and other sensitive lands; (3) to protect individuals from investing funds for improvements proposed for location on lands unsuited for such development because of high ground water, erosion, or vulnerability to flood and storm damage; and (4) specify mitigation and to demonstrate compliance with the local program which will address water quality protection.
- B. Water Quality Impact Assessment Required. A water quality impact assessment is required for (1) any proposed land disturbance, redevelopment or development within an RPA, including any buffer area modification or encroachment as provided in Section 7.10 of this Article; (2) any development in an RMA as deemed necessary by the Zoning Administrator due to the unique characteristics of the site or intensity of the proposed development; and (3) if living shorelines are being installed. There shall be two levels of water quality impact assessments--a minor assessment and a major assessment.
- C. Minor Water Quality Impact Assessment. A minor water quality impact assessment pertains only to a development within CBPAs which causes no more than five thousand square feet (5,000 SF) of land disturbance and requires any modification or encroachment into the landward fifty feet (50') of the one-hundred-foot (100') buffer area. A minor assessment must demonstrate that the undisturbed buffer area, enhanced vegetative plantings, and any required best management practices will result in removal of no less than seventy-five percent (75%) of sediments and forty percent (40%) of nutrients from post-development stormwater runoff and that the remaining buffer area will retard runoff, prevent erosion and filter nonpoint source pollution the equivalent of the full undisturbed one-hundred-foot (100') buffer area. A minor assessment shall include a site drawing to scale which shows the following:
1. Location of the components of the RPA, including the one-hundred-foot (100') buffer area;
 - ~~1-2.~~ RPA and RMA boundaries.
 3. Location and nature of the proposed encroachment into the buffer area if ~~needed necessary; including type of paving material; areas~~ limits of clearing or grading; location of any structures, drives, or other impervious cover;
 - ~~2-4.~~ Area of land disturbance and impervious coverage proposed within the RPA;
 - ~~3-5.~~ Type and location of proposed best management practices to mitigate the proposed encroachment.
 - ~~4-6.~~ Location of existing vegetation onsite, including the number and type of trees and other vegetation to be removed in the buffer to accommodate the encroachment or modification;
 7. Revegetation plan that supplements the existing buffer vegetation in a manner that provides for pollutant removal, erosion and runoff control

and mitigates for the removal of vegetation in the buffer;-
5.8. Limits of land disturbance and the area of land disturbance within the RPA.

- D. Major Water Quality Impact Assessment. A major water quality impact assessment shall be required for any development which (1) exceeds five thousand square feet (5,000 SF) of land disturbance within CBPA and requires any modifications or encroachment into the landward seaward fifty feet (50') of the one-hundred-foot (100') buffer area; (2) proposes to disturb any portion of any other component of an RPA or proposes to disturbs any portion of the buffer area within fifty feet (50') of any other component of any RPA; or (3) is located in an RMA and is deemed necessary by the Zoning Administrator. The information required in this section shall be considered a minimum unless the Zoning Administrator determines that some of the elements are unnecessary due to the scope and nature of the proposed use and development of land.
1. The following elements shall be included in the preparation and submission of a major water quality assessment:
 - a. All of the information required in a minor water quality impact assessment as specified in Section 7.10.C;
 - b. A hydro-ecological element that:
 - i. describes the existing topography, soils, hydrology, and geology of the site and adjacent lands
 - ii. indicates the following:
 1. disturbance or destruction of wetlands and justification for such action
 2. disruptions or reductions in the supply of water to wetlands, streams, or other water bodies
 3. disruptions to existing hydrology including wetlands and stream circulation patterns
 4. source location and description of proposed fill material
 5. location of dredge material and location of dumping area for such material
 6. location of and impacts on shellfish beds or submerged aquatic vegetation
 7. estimation of pre- and post- development pollutant loads in runoff
 8. estimation of percent increase in impervious surface on site and type(s) of surfacing materials used
 9. percent of site to be cleared for project
 10. anticipated duration and phasing schedule of construction project
 11. listing of all requisite permits from all applicable agencies necessary to develop project
 - iii. describes the proposed mitigation measures for the potential hydroecological impacts. Potential mitigation measures include:
 1. proposed erosion and sediment control concepts; concepts should include minimizing the extent of the cleared area, perimeter controls, reduction of runoff velocities, measures to stabilize disturbed areas, schedule and personnel for site inspection
 2. proposed water quality and quantity stormwater management system
 3. creation of wetlands to replace those lost
 4. minimizing cut and fill
 - c. A landscape element that:
 - i. identifies and delineates the location of plant material on site, including all trees two inches or greater diameter at breast height. Where there are groups of trees, stands may be outlined.

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- ii. describes the impacts the development or use will have on the existing vegetation. Information should include:
 - 1. limits of clearing based on all anticipated improvements including buildings, drives, and utilities
 - 2. clear delineation of all trees and other woody vegetation proposed to be removed
 - 3. description of plant species to be disturbed or removed
- iii. describes the potential measures for mitigation. Possible mitigation measures should include:
 - 1. replanting schedule for trees and other significant vegetation removed for construction including a list of possible plants and trees to be used
 - 2. demonstration that the design of the plan will preserve to the greatest extent possible any significant trees and vegetation on the site and will provide maximum erosion control and overland flow benefits from such vegetation
 - 3. demonstration that native plants are to be used to the greatest extent possible

E. Submission and Review Requirements

- 1. ~~Eight (8)~~Four (4) copies of all site drawings and other applicable information as required by Subsections C and D above shall be submitted to the Zoning Administrator for review.
- 2. All information required in this section shall be certified as complete and accurate by a professional engineer or certified land surveyor.
- 3. A minor water quality impact assessment shall be prepared and submitted to and reviewed by the Zoning Administrator in conjunction with Section 7.11, Plan of Development Process, of this Article.
- 4. A major water quality impact assessment shall be prepared and submitted to and reviewed by the Zoning Administrator in conjunction with a request for rezoning, special use permit, or in conjunction with Section 7.11 of this Article as deemed necessary by the Zoning Administrator.
- 5. As part of any major quality impact assessment submittal, the Zoning Administrator may require review by the ~~Chesapeake Bay Local Assistance Department (CBLAD)~~Department of Environmental Quality. Upon receipt of a major water quality impact assessment, the Zoning Administrator will determine if such review is warranted and may request ~~CBLAD-DEQ~~ to review the assessment and respond with written comments. Any comments by such ~~CBLAD-DEQ~~ will be incorporated into the final review by the Zoning Administrator provided that such comments are provided by ~~CBLAD-DEQ~~ within ninety (90) days of the request.

F. Evaluation Procedure

- 1. Upon the completed review of a minor water quality impact assessment, the Zoning Administrator will determine if any proposed encroachment into the buffer area is consistent with the provisions of this Article and make a finding based upon the following criteria:
 - a. the necessity of the proposed encroachment and the ability to place improvements elsewhere on the site to avoid disturbance of the buffer area;
 - b. impervious surface is minimized;
 - c. proposed best management practices, where required, achieve the requisite reductions in pollutant loadings;
 - d. the development, as proposed, meets the purpose and intent of this Article;
 - e. the cumulative impact of the proposed development, when considered in relation to other development in the vicinity both

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- existing and proposed, will not result in a significant degradation of water quality.
2. Upon the completed review of a major water quality impact assessment, the Zoning Administrator will determine if the proposed development is consistent with the purpose and intent of this Article and make a finding based upon the following criteria in conjunction with Section 7.11.
 - a. Within an RPA, the proposed development is water dependent.
 - b. The disturbance of any wetlands will be minimized.
 - c. The development will not result in significant disruption of the hydrology of the site.
 - d. The development will not result in significant degradation to aquatic vegetation or life.
 - e. The development will not result in unnecessary destruction of plant materials on site.
 - f. Proposed erosion and sediment control concepts are adequate to achieve the reductions in runoff and prevent off-site sedimentations.
 - g. Proposed storm water management concepts are adequate to control the storm water runoff to achieve the required performance standard for pollutant control.
 - h. Proposed re-vegetation of disturbed areas will provide optimum erosion and sediment control benefits.
 - i. The development as proposed is consistent with the purpose and intent of the Overlay District.
 3. The Zoning Administrator shall require additional mitigation where potential impacts have not been adequately addressed. Evaluation of mitigation measures will be made by the Zoning Administrator based on the criteria listed above in Subsections 1 and 2.
 4. The Zoning Administrator shall find the proposal to be inconsistent with the purpose and intent of this Article when the impacts created by the proposal cannot be mitigated. Evaluation of the impacts will be made by the Zoning Administrator based on the criteria listed in Subsections 1 and 2.

G. Resiliency assessment.

- (A) Submittal of a resiliency assessment that considers the potential impacts of sea level rise, storm surge, and flooding on buffer function in light of a proposed RPA encroachment is required during the review of a plan of development or other review process. Such an assessment is to be based upon the RPA as delineated at the time of the proposed land development and is required in addition to all other requirements of this and other local ordinances. At a minimum the resiliency assessment should contain the following information:
- (1) A scaled drawing or aerial image of the proposed project that includes the RPA and RMA boundary, required setbacks, existing topography, and a graphic depiction of the anticipated impacts of sea level rise, flooding, and storm surge on the parcel and the proposed project, based upon a review of approved models and forecasts, to include the following:
- a. For sea level rise, use the 2017 National Oceanographic and Atmospheric Administration (NOAA) Intermediate-High scenario projection curve [or any subsequently updated version thereof on the project site]. Sea level rise data can be accessed on the AdaptVA website, maintained by the Virginia Institute of Marine Science (VIMS). When determining potential sea-level rise impacts, the applicant should use the model to identify both the extent of anticipated inland migration, as well as the water depth.
 - b. For storm surge, use the most up to date NOAA hydrodynamic Sea, Lake, and Overland Surges Hurricanes (SLOSH) model on the project site. Storm surge data can be accessed on the AdaptVA website. [Selection of a default storm category should be determined by the locality based upon historical frequency and specified for use in conducting resiliency assessments by the applicant. If additional storm surge analysis is being used by the locality, it should be referenced here].

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- c. For flooding, use the most up to date Special Flood Hazard Area and the Limit of Moderate Wave Action (LiMWA) model on the project site according to the Virginia Flood Risk Information System (VFRIS) model in conjunction with the requirements and application of the [local] floodplain management ordinance. VFRIS includes the Flood Insurance Rate Maps, flood insurance studies, and associated models produced by the Federal Emergency Management Agency, and is available on the Virginia Department of Conservation and Recreation (DCR) website. When identifying flooding impacts, the applicant may rely on existing use and application of the relevant Special Flood Hazard Area. This data is also accessible on the AdaptVA website.
 - d. The anticipated impacts shall be based upon a thirty (30) year timeframe, unless the applicant demonstrates that the lifespan of the project proposed for development is less than thirty (30) years based upon the information in 2(b) as approved by the Planning Commission. Where a lifespan of less than 30 years is proposed, the applicant shall provide documentation of proposed building materials, anticipated quality of construction, design specifications, and other materials or information in support of a predicted lifespan of less than 30 years for the project.
- (2) A narrative report that analyzes the results of the data and graphic research, and provides the following information:
- (a) Define the intended service life of the proposed structure(s).
 - (b) Identification of any proposed impact directly from proposed impervious cover or structures in the RPA and the extent of such impact.
 - (c) Identification of extent of impact on the current buffer area including impacts to existing vegetation from the landward movement of water and vegetative migration.
 - (d) Describe the extent to which anticipated impacts can be or have been mitigated by altering the location design, size, or orientation of proposed structures or impervious cover, by preserving and/or supplementing existing buffer areas as provided for in Section 108 of this Ordinance, and/or by considering other limiting site conditions including required setbacks and parcel size, and/or by proposing an adaptation measure in accordance with the provisions of Section 108.
 - (e) Identification of the utilization of existing local programs that already take potential impacts into account through the building permit or site design review processes, such as freeboard requirements enacted through the local floodplain ordinance.
- (3) Apply the results of the resiliency assessment to the proposed development. The Zoning Administrator will review the narrative report along with the water quality impact assessment and determine whether the anticipated impacts necessitate an alteration or conditions to the proposed project or implementation of an adaptation measure for approval.
- (a) In considering whether a requirement for project alteration or adaptation measure is appropriate, the Zoning Administrator will ensure that the proposed alteration or adaptation measure is practical, achievable, and necessary to mitigate the identified impact.
 - (b) Where possible, consideration will be given to modifying the proposed development size or location, such that the extent of land disturbance or impervious cover can be reduced to avoid or minimize the area or areas of the parcel that the assessment indicates will be impacted.
 - (c) If the resiliency assessment reveals that impacts on the parcel can be addressed by structural design or siting alterations, then supplemental information on the potential alterations shall be provided for consideration by the Zoning Administrator. Supplemental information may include additional sketches or plans, including plan and section views, building specifications, and other supporting materials.
 - (d) Approval may be conditioned on the implementation of the proposed alterations, conditions, or adaptation measure.
 - (e) The resiliency assessment may also indicate that no alterations, conditions, or adaptation measures are required, in which case the applicant may proceed through the remainder of the approval process.
- (4) Identify conditions, alterations, or adaptation measures for the proposed development. Should an impact from sea-level rise, storm surge, or flooding be identified that exceeds available design alterations, approval of the proposed project should then be conditioned with the requirement for an adaptation measure and the following information provided:

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- (a) Describe the proposed adaptation measure(s) for the site as selected from one of the sources listed in subsection 7.10(G) of this Ordinance and submit documentation of the proposed adaptation measure and its suitability for use on the site, such as design specifications, construction methods and materials that will provide shoreline stabilization until vegetation is established, and a proposed maintenance plan.
- (b) Describe how the selected adaptation measure meets the requirement for being a nature-based solution.
- (c) Describe how the selected adaptation measure(s) comply with applicable regulatory or permitting requirements. Submit a water quality impact assessment pursuant to Section 7.10 of this Ordinance and a site plan pursuant to Appendix C of this Ordinance detailing the proposed placement of the adaptation measure, existing and proposed topography and vegetation, proposed limits of clearing and grading, and mitigation for the area of land disturbance within the RPA. Additionally, provide documentation of as-built documentation of the final design and installation, including photographs, and final inspection is required upon completion of installation.
- (5) The resiliency assessment may be submitted as a standalone document as part of the plan of development process or it may be submitted as part of a water quality impact assessment pursuant to **Section 7.10** of this Ordinance for those projects disturbing less than 2,500 square feet.

Section 7.11: Plan of Development Process

Any development or redevelopment within the Chesapeake Bay Preservation Areas exceeding two thousand five hundred square feet (2,500 SF) of land disturbance shall be accomplished through a plan of development process prior to any clearing or grading of the site or the issuance of any building permit to assure compliance with all applicable requirements of this Article.

- A. Required Information. In addition to the requirements of this Ordinance or the requirements of the Cape Charles Subdivision Ordinance, the plan of development process shall consist of the plans and studies identified below. These required plans and studies may be coordinated or combined as deemed appropriate by the Zoning Administrator. The Zoning Administrator may determine that some of the following information is unnecessary due to the scope and nature of the proposed development.
 - 1. Except as otherwise provided herein, the plan of development process for any development or redevelopment in a CBPA shall consist of the plans and information identified below: The following plans or studies shall be submitted unless otherwise provided for:
 - a. A site plan in accordance with the provisions of this ordinance; or a subdivision plat in accordance with the provisions of the Subdivision Ordinance of Cape Charles;
 - b. An environmental site assessment;
 - c. A landscaping plan;
 - d. A water quality impact assessment, according to Section 7.10 of this Ordinance;
 - e.e. A resiliency assessment, according to Section 7.10 of this Ordinance;
 - d.f. A storm water management plan;
 - e.g. An erosion and sediment control plan in accordance with the provisions of the Cape Charles Erosion and Sediment Control Ordinance.
- B. Environmental Site Assessment. An environmental site assessment shall be submitted in conjunction with preliminary site plan or preliminary subdivision plan approval.
 - 1. The environmental site assessment shall be drawn to scale and clearly delineate the following environmental features:
 - a. tidal wetlands
 - b. tidal shores
 - c. non-tidal wetlands connected by surface flow and contiguous to

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- tidal wetlands or water bodies with perennial flow
- d. a one-hundred-foot (100') buffer area located adjacent to and landward of the components listed in Subsections a through c above, and along both sides of any water body with perennial flow
 - e. other sensitive environmental features as determined by the Zoning Administrator
2. Wetlands delineations shall be performed consistent with the methods and procedures used and accepted from time to time by the U.S. Army Corps of Engineers.
3. The environmental site assessment shall delineate the site-specific geographic extent of the RPA and RMA, as necessary.
4. The environmental site assessment shall be drawn at the same scale as the preliminary site plan or subdivision plat and shall be certified as complete and accurate by a professional engineer or a certified land surveyor. This requirement may be waived by the Zoning Administrator when the proposed use or development would result in less than five thousand square feet (5,000 SF) of disturbed area; however, this requirement may not be waived for projects located on parcels impacted by the Chesapeake Bay Preservation Areas.
- C. Landscaping Plan. A landscape plan shall be submitted in conjunction with site plan approval or as part of subdivision plat approval. No clearing or grading of any lot or parcel shall be permitted without an approved landscaping plan.
1. Landscaping plans when required shall be prepared and/or certified by design professionals practicing within their areas of competence as prescribed by the Code of Virginia and must meet the following requirements:
- a. The landscaping plan shall be drawn to scale and clearly delineate the location, size, and description of existing and proposed plant material within the RPA and the RMA. All existing mature trees on the site two-four inches (24") or greater DBH shall be shown on the landscaping plan. Where there are groups of trees, stands may be outlined instead, except for mature trees, which shall be individually identified. Mature trees shall be protected during development and only removed where necessary, including to provide for the proposed use or development. The location and specific number of trees two inches (2") or greater DBH to be preserved outside of this construction footprint shall be indicated on the plan. Trees to be removed to create a desired construction footprint shall be clearly delineated on the landscaping plan.
 - b. Any required buffer area shall be clearly delineated and any plant material to be added to establish or supplement the buffer area, as required by this Article, shall be shown on the landscaping plan.
- Within the buffer area, trees to be removed for sight lines, vistas, access paths, shoreline erosion control projects, and best management practices, as provided for in this Article, shall be shown on the plan. Vegetation required by this Article to replace any existing trees within the buffer area shall also be shown on the landscaping plan. Mature trees shall be preserved and trimmed or pruned in lieu of removal as site conditions permit. Any removal of mature trees should be limited to the fewest number of trees feasible. When mature trees are removed in the RPA to provide for sight lines and vistas, access paths or BMPs, they shall be replaced with trees as appropriate to site conditions.
- ~~e.~~ c. Trees to be removed for shoreline stabilization projects and any replacement vegetation required by this Article shall be shown on the landscaping plan.
 - ~~e.d.~~ d. The plan shall depict grade changes or other work adjacent to

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- trees which would affect them adversely. Specifications shall be provided as to how grade, drainage, and aeration would be maintained around trees to be preserved.
- ~~f.e.~~ The landscaping plan will include specifications for the protection of existing trees during clearing, grading, and all phases of construction.
2. Plant specifications
- a. All plant materials necessary to supplement the buffer area or vegetated areas outside the construction footprint shall be installed according to standard planting practices and procedures.
- ~~b.~~ All supplementary or replacement plant materials shall be living and in a healthy condition. Plant materials shall conform to the standards of the most recent edition of the American Standard for Nursery Stock, published by the American Association of Nurserymen.
- ~~b.c.~~ The landscaping plan should include a demonstration that where the planting of new trees or vegetation is required, native species will be used to the greatest extent
3. Maintenance
- a. The applicant shall be responsible for the maintenance and replacement of all vegetation as may be required by the provision of the Article.
- b. In buffer areas and areas outside the construction footprint, plant material shall be tended and maintained in a healthy growing condition and free from refuse and debris. Unhealthy, dying, or dead plant materials shall be replaced during the next planting season as required by the provisions of this Article.
- ~~D.~~ Stormwater Management Plan. A stormwater management plan shall be submitted in accordance with the requirements of the Virginia Erosion and Stormwater Management Regulations, as part of the plan of development process required by this Article and in conjunction with site plan or subdivision plan approval.
- ~~1.~~ Contents of the plan. The storm water management plan shall contain maps, charts, graphs, tables, photographs, narrative descriptions, explanations, and citations to supporting references as appropriate to communicate the information required by this Article. At a minimum, the storm water management plan must contain the following:
- ~~a.~~ location and design of all planned storm water control devices;
- ~~b.~~ procedures for implementing non-structural storm water control practices and techniques;
- ~~c.~~ pre and post development non point source pollutant loadings with supporting documentation of all utilized coefficients and calculations;
- ~~d.~~ for facilities, verification of structural soundness, including a professional engineer or Class IIIB surveyor certification.
- ~~2.~~ Site specific facilities shall be designed for the ultimate development of the contributing watershed based on zoning, comprehensive plans, local public facility master plans, or other similar planning documents.
- ~~3.~~ All engineering calculations must be performed in accordance with procedures outlined in the current edition of the Virginia Storm water Management Handbook.
- ~~4.~~ The plan shall establish a long term schedule for inspection and maintenance of storm water management facilities that includes all maintenance requirements and persons responsible for performing maintenance. If the designated maintenance responsibility is with a party other than the Town of Cape Charles, then a maintenance agreement shall be executed between the responsible party and the Town of Cape Charles.
- ~~E.D.~~ Erosion and Sediment Control Plan. An erosion and sediment control plan shall be submitted that satisfies the requirements of this Article and in accordance

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with the Cape Charles Erosion and Sediment Control Ordinance in conjunction with site plan or subdivision plan approval.

~~F.E.~~ Final Plan. Final plan for property within CBPAs shall be final plats for land to be subdivided or site plans for land not to be subdivided as required in the Cape Charles Subdivision Ordinance and this Ordinance.

1. Final plans for all lands within CBPAs shall include the following additional information:
 - a. Evidence of the site-specific RPA boundary determination, inclusive of perennial flow determination and wetland delineation studies, as appropriate to the site conditions, the delineation of the Resource Protection Area boundary,
 - b. ~~the delineation of required buffer areas~~
 - c. Evidence that all applicable wetland permits required by law have been obtained prior to authorization of grading or other on-site activities shall be provided.~~all wetlands permits required by law.~~
 - d. Limits of land disturbance and all areas of clearing, grading, access ways and staging areas and the total area of land disturbance, as well as total area of land disturbance proposed within the RPA.
 - e. Location of all approved existing and proposed septic tanks and drainfield areas, including reserve areas, and the location of all existing and proposed wells and utilities.
 - f. A statement that excavation material and debris from construction shall be disposed of in a lawful manner.
 - g. Existing and proposed impervious cover and the total amount of impervious cover proposed for the site, as well as total amount of impervious cover proposed within the RPA.
 - ~~d.~~ h. A maintenance agreement as deemed necessary and appropriate by the Zoning Administrator to ensure proper maintenance of best management practices in order to continue their functions.

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2. The following notations are required on plats:
 - a. the requirement to retain an undisturbed and vegetated 100-foot wide buffer area
 - b. the requirement for pump-out and 100% reserve drainfield sites for onsite sewage treatment systems, when applicable
 - c. the permissibility of only water dependent facilities or redevelopment in Resource Protection Areas, including the 100-foot wide buffer area

~~2.3.~~ Installation and bonding requirements

- a. Where buffer areas, landscaping, storm water management facilities, or other specifications of an approved plan are required, no certificate of occupancy shall be issued until the installation of required plant materials or facilities is completed in accordance with the approved site plan.
- b. When the occupancy of a structure is desired prior to the completion of the required landscaping, storm water management facilities, or other specifications of an approved plan, a certificate of occupancy may be issued only if the applicant provides Cape Charles a form of surety satisfactory to the Zoning Administrator in an amount equal to the remaining plant materials, related materials, and installation costs of the required landscaping or facilities and/or maintenance costs for any required storm water management facilities during the construction period.
- c. All required landscaping shall be installed and approved by the first planting season following the issuance of a certificate of occupancy or the surety may be forfeited to the Town of Cape Charles.
- d. All required storm water management facilities or other

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specifications shall be installed and approved within eighteen months (18 mos) of project commencement. Should the applicant fail, after proper notice, to initiate, complete, or maintain appropriate actions required by the approved plan, the surety may be forfeited to the Town of Cape Charles. Cape Charles may collect from the applicant the amount by which the reasonable cost of required actions exceed the amount of the surety held.

- e. After all required actions of the approved site plan have been completed the applicant must submit a written request for a final inspection. If the requirements of the approved plan have been completed to the satisfaction of the Zoning Administrator, such unexpended or un-obligated portion of the surety held shall be refunded to the applicant or terminated within sixty (60) days following the receipt of the applicant’s request for the final inspection. The Zoning Administrator may require a certificate of substantial from a professional engineer or Class IIIB surveyor before making the final inspection.

G.F. Administrative Responsibility. Administration of the plan of development process shall be in accordance with this ordinance or the Cape Charles Subdivision Ordinance.

H.G. Denial of Plan, Appeal of Conditions or Modifications. In the event the final plan or any component of the plan of development process is disapproved and recommended conditions or modifications are unacceptable to the applicant, the applicant may appeal such administrative decision to the Planning Commission. In granting an appeal the Planning Commission must find such plan to be in accordance with all applicable ordinances and include necessary elements to mitigate any detrimental impact on water quality and upon adjacent property and the surrounding area or such plan meets the purposes and intent of the performance standards in this Article. If the Planning Commission finds that the applicant’s plan does not meet the above-stated criteria, they shall deny approval of the plan. In the event of a denial of appeal to the Planning Commission, the applicant may appeal such decision to the Cape Charles Town Council. Said appeal shall be made within fifteen (15) days of the negative decision. Further appeals by the applicant shall be established by law.

Section 7.12: Non-Conforming Use and Development Waivers

- A. The lawful use of a building or structure which existed on September 11, 1990, or which exists at the time of any amendment to this Article, and which is not in conformity with the provisions of the Overlay District may be continued in accordance Section 2.5 of this Ordinance. No change or expansion of use shall be allowed with the exception that:
 - 1. The Zoning Administrator may grant a non-conforming use and development waiver for structures on legal non-conforming lots or parcels to provide for remodeling and alterations to such non-conforming structures provided that:
 - a. there will be no increase in non-point source pollution load;
 - b. any development or land disturbance exceeding an area of two thousand five hundred square feet (2,500 SF) complies with all erosion and sediment control requirements of this Article;
 - c. the intent of Section 2.5, Non-Conforming Uses, is upheld.
 - 2. An application for a non-conforming use and development waiver shall be made to and upon forms furnished by the Zoning Administrator and shall include, for the purpose of proper enforcement of this Article, the following information:
 - a. name and address of applicant and property owner;
 - b. legal description of the property and type of proposed use and development;
 - c. a sketch of the dimensions of the lot or parcel, location of

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- buildings and proposed additions relative to the lot lines, and boundary of the Resource Protection Area;
- d. location and description of any existing private water supply or sewerage system.
- 3. A non-conforming use and development waiver shall become null and void twelve months (12 mos) from the date issued if no substantial work has commenced.
 - 4. An application for the expansion of a nonconforming structure may be approved by the Zoning Administrator through an administrative review process provided that the following findings are made:
 - a. The request for the waiver is the minimum necessary to afford relief;
 - b. Granting the waiver will not confer upon the applicant any specific privileges that are denied by this Article to other property owners in similar situations;
 - c. The waiver is in harmony with the purpose and intent of this Article and does not result in water quality degradation;
 - d. The waiver is not based on conditions or circumstances that are self- created or self-imposed;
 - e. Reasonable and appropriate conditions are imposed, as warranted, that will prevent the waiver from causing a degradation of water quality;
 - f. Other findings, as appropriate and required by the Town of Cape Charles are met; and
 - g. In no case shall this provision apply to accessory structures.
 - 5. In accordance with Code of Virginia [§ 15.2-2283](#), additions to nonconforming structures for the purpose of providing reasonable modifications in accordance with the American with Disabilities Act of 1990 shall not be considered an expansion of a nonconforming structure.
 - 6. In accordance with the Code of Virginia [§ 15.2-2307.H](#), nothing in this ordinance shall be construed to prevent the owner of a valid nonconforming mobile or manufactured home from replacing that home with a newer manufactured home, either single- or multisection, that meets the current HUD manufactured housing code. Any such replacement home shall retain the valid nonconforming status of the prior home.
 - 6-7. **This chapter shall not be construed to prevent the reconstruction of pre-existing structures within Chesapeake Bay Preservation Areas from occurring as a result of casualty loss unless otherwise restricted by this Ordinance.**

Section 7.13: Exemptions

- A. Exemptions for Utilities, Railroads, and Public Roads.
 - 1. Construction, installation, operation, and maintenance of electric, natural gas, fiber-optic, and telephone transmission lines, railroads, and public roads and their appurtenant structures in accordance with (i) regulations promulgated pursuant to the ~~Virginia Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq. of the Code of Virginia)~~ and the Stormwater Management Act ([§ 62.1-44.15:24](#) et seq. of the Code of Virginia), (ii) an erosion and sediment control plan and a stormwater management plan approved by the Virginia Department of ~~Conservation and Recreation~~[Environmental Quality](#), or (iii) local water quality protection criteria at least as stringent as the above state requirements are deemed to comply with this Article. The exemption of public roads is further conditioned on the following:
 - a. The road alignment and design has been optimized, consistent with all applicable requirements, to prevent or otherwise minimize the encroachment in the Resource Protection Area and to minimize the adverse effects on water quality.
 - 2. Construction, installation, and maintenance of water, sewer, and natural gas and underground telecommunication and cable television lines, owned, permitted or both by the Town of Cape Charles, shall be

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- exempt from the Overlay District provided that:
- a. to the degree possible, the location of such utilities and facilities shall be outside RPAs;
 - b. no more land shall be disturbed than is necessary to provide for the proposed utility installation;
 - c. all construction, installation, and maintenance of such utilities and facilities shall be in compliance with all applicable state and federal requirements and permits and designed and conducted in a manner that protects water quality; and
 - d. any land disturbance exceeding an area of two thousand five hundred square feet (2,500 SF) complies with all Cape Charles erosion and sediment control requirements.

- B. Exemptions for Silvicultural Activities. Silvicultural activities located within designated CBPAs are exempt from the requirements of this Article provided that silvicultural operations adhere to water quality protection procedures prescribed by the Virginia Department of Forestry in the ~~1997 edition of "Best Management Practices Handbook for Forestry Operations [Technical Guide] the Fifth Edition (March 2011) of "Virginia's Forestry Best Management Practices for Water Quality Technical Manual."~~ The Virginia Department of Forestry will oversee and document installation of best management practices and will monitor in-stream impacts of forestry operations in Chesapeake Bay Preservation Areas.
- C. Exemptions in Resource Protection Areas. The following land disturbances in Resource Protection Areas may be exempted from the Overlay District: (1) water wells; (2) passive recreation facilities such as boardwalks, trails, and pathways; and (3) historic preservation and archaeological activities provided that it is demonstrated to the satisfaction of the Zoning Administrator that:
- 1. Any required permits, except those to which this exemption specifically applies, shall have been issued;
 - 2. Sufficient and reasonable proof is submitted that the intended use will not deteriorate water quality;
 - 3. The intended use does not conflict with nearby planned or approved uses; and
 - 4. Any land disturbance exceeding an area two thousand five hundred square feet (2,500 SF) shall comply with all Cape Charles erosion and sediment control requirements.

Section 7.14: Exceptions

- A. A request for an exception to the requirements of Sections 7.6 and ~~7.9~~10.C of this Overlay District shall be made in writing to the Board of Zoning Appeals. It shall identify the impacts of the proposed exception on water quality and on lands within the RPA through the performance of a water quality impact assessment which complies with the provisions of Section 7.10.
- B. The Town of Cape Charles shall notify the affected public of any such exception requests and shall consider these requests in a public hearing in accordance with § 15.2-2204 of the Code of Virginia, except that only one hearing shall be required.
- C. The Board of Zoning Appeals shall review the request for an exception and the water quality impact assessment and may grant the exception with such conditions and safeguards as deemed necessary to further the purpose and intent of this Article if the Board of Zoning Appeals finds:
- 1. Granting the exception will not confer upon the applicant any special privileges that are denied by this Article to other property owners in the Overlay District;
 - 2. The exception request is not based upon conditions or circumstances that are self-created or self-imposed, nor does the request arise from conditions or circumstances either permitted or non-conforming that are related to adjacent parcels;
 - 3. The exception request is the minimum necessary to afford relief;

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4. The exception request will be consistent with the purpose and intent of the Overlay District and not injurious to the neighborhood or otherwise detrimental to the public welfare, and is not of substantial detriment to water quality; and
5. Reasonable and appropriate conditions are imposed which will prevent the exception request from causing a degradation of water quality.
- D. If the Board of Zoning Appeals cannot make the required findings or refuses to grant the exception, the Board of Zoning Appeals shall return the request for an exception together with the water quality impact assessment and the written findings and rationale for the decision to the applicant.
- ~~D.E.~~ Exceptions to Section 7.10 may be made by the zoning administrator provided that the findings noted in Section 7.14(C) are made.
- ~~E.~~ A request for an exception to the requirements of provisions of this Article other than those in Sections 7.6 and 7.9.C shall be made in writing to the Zoning Administrator. The Zoning Administrator may grant these exceptions provided that: exceptions to the requirements are minimum necessary to afford relief; and reasonable and appropriate conditions are placed upon any exception that is granted, as necessary, so that the purpose and intent of this Article is preserved
1. ~~Exceptions to the requirements are minimum necessary to afford relief; and Reasonable and appropriate conditions are placed upon any exception that is granted, as necessary, so that the purpose and intent of this Article is preserved.~~
2. ~~Exceptions to § 7.9.B may be made provided that the findings noted in §7.14.C are made.~~
- G. General requirements. Applications for variances [waivers] and exceptions from the requirements of Section 7.9 general performance standards, and 7.6, development standards for RPAs, shall be made in writing and filed with the Zoning Administrator. Such applications shall identify any potential impacts of the proposed variance [waiver] or exception on water quality and on lands within the RPA through the performance of a water quality impact assessment, pursuant to Section 7.10 of this Ordinance, and shall examine the impacts of sea level rise, storm surge, and flooding on the project through the performance of a resiliency assessment, pursuant to Section 7.10(G). Each application for a variance [waiver] and exception shall be approved, denied, or approved with conditions according to the review process outlined in the following subsections. No application for a variance [waiver] or exception to sections 7.9 and 7.6 of this Ordinance shall be granted under this Section without meeting the following findings:
- (1) The requested variance [waiver] or exception to the criteria is the minimum necessary to afford relief.
- (2) Granting the variance [waiver] or 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 variance [waiver] or exception is in harmony with the purpose and intent of this Ordinance and is not of substantial detriment to water quality.
- (4) The variance [waiver] or 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, that will prevent the allowed activity from causing a degradation of water quality.
- (6) Other findings, as appropriate to the Zoning Administrator are met.
- (A) Administrative variances [waivers]. The Zoning Administrator shall approve, deny, or approve with conditions an application requesting an administrative variance [waiver] following the review of a complete application, as defined under subsection 113(A) of this Ordinance. No such application shall be accepted by the Zoning Administrator unless accompanied by a nonrefundable fee in the amount of [\$\$\$].00] dollars.

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Town of Cape Charles Zoning Ordinance
Article VII – Chesapeake Bay Preservation Area Overlay District

- (1) The Zoning Administrator may establish such review policies as they deem expedient in implementing the intent of this Ordinance. In approving an application, the Zoning Administrator shall, if warranted, include reasonable and appropriate conditions that will prevent the degradation of water quality.
- (2) No administrative variance [waiver] or exception shall be granted to Section 7.9 of this Ordinance, general performance standards, unless the Zoning Administrator makes the findings required in subsection 7.14(A) of this Ordinance.
- (3) Administrative variances [waivers] to provisions within sections of this Ordinance other than 7.9 or 7.6 may be granted, provided that:
- a. Variances [waivers] to the criteria shall be the minimum necessary to afford relief.
 - b. Reasonable and appropriate conditions upon any variance [waiver] granted shall be imposed, as necessary, so that the purpose and intent of this Ordinance is preserved.
- (B) Formal exceptions. Exceptions from the criteria of Section 7.6 of this Ordinance, development criteria for Resource Protection Areas, require public notice and a public hearing before the Board of Zoning Appeals. Complete applications for an exception shall be submitted to the Zoning Administrator for review and evaluation prior to being forwarded to the Board for consideration. No such application for an exception shall be accepted by the Zoning Administrator unless accompanied by a nonrefundable fee as set by the Cape Charles Town Council. Such fee shall include all costs of notification and advertising.
- (1) The Zoning Administrator shall review complete applications for an exception to the requirements of Section 7.6 of this Ordinance, including the water quality impact assessment and resiliency assessment, and provide the Board and the applicant with copies of the submitted materials, an evaluation of the required findings and potential impacts of the proposed exception, and such other information as may aid the Board in considering the application no less than five (5) days prior to the scheduled hearing.
- (2) Not later than 60 days after the receipt of a complete application, the Board shall hold a public hearing on such application. Notice of the time and place of the hearing shall be published no less than once per week for two (2) consecutive weeks prior to such hearing in a newspaper having a general circulation in the Town. The second such notice shall appear not less than five (5) days nor more than 21 days prior to the hearing.
- (3) The Board shall notify, by first class mail, all property owners adjacent to the subject property and each waterfront property owner across the waterway from the subject property, if the water body is less than 500-feet wide, of the public hearing at least five (5) days prior to the hearing.
- (4) The Board may make, alter and rescind rules for its procedures not inconsistent with the provisions of this Ordinance; provided, however, that a quorum shall be not less than a majority of the members of the Board, and provided further, that the concurring vote of a majority of the members of the Board present and voting shall be required to grant any exception.
- (5) The Board shall approve, deny, or approve with conditions an application requesting an exception to the requirements of Section 7.6 following the review of a complete application and a determination that the proposed project meets the findings required by subsection 7.14(A) above.
- (D) No application for relief from sections 7.9 or 7.6 of this Ordinance shall be considered complete where a resiliency assessment, as outlined in Section 7.10(G) of this Ordinance has not occurred or the proposed adaptation measure allows for the use of fill in a Resource Protection Area in contravention to the requirements of subsection 7.6(E)(1)(f)5 of this Ordinance.

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Section 7.15: Enforcement

- A. Any person who: (i) violates any provision of this ordinance or (ii) violates or fails, neglects, or refuses to obey any Town of Cape Charles or its official Designee’s final notice, order, rule, regulation, or variance or permit condition authorized under this ordinance shall, upon such finding by an appropriate circuit court be assessed a civil penalty not to exceed five thousand dollars (\$5,000) for each day of violation. Such civil penalties may, at the discretion of the court assessing them, be directed to be paid into the treasury of the Town of Cape Charles for the purpose of abating environmental damage to or

Town of Cape Charles Zoning Ordinance
Article VII – Chesapeake Bay Preservation Area Overlay District

restoring Chesapeake Bay Preservation Areas therein, in such a manner as the court may direct by order, except that where the violator is the Town of Cape Charles itself or its agent, the court shall direct the penalty to be paid into the state treasury.

- B. With the consent of any person who: (i) violates any provision of any Town of Cape Charles ordinance related to the protection of water quality in Chesapeake Bay Preservation Areas or (ii) violates or fails, neglects, or refuses to obey any Town of Cape Charles or its official Designee’s order, rule, regulation, or variance or permit condition authorized under such ordinance, the Town of Cape Charles may provide for the issuance of an order against such person for the one-time payment of civil charges for each violation in specific sums, not to exceed ten thousand dollars (\$10,000) for each violation. Such civil charges shall be paid into the treasury of the Town of Cape Charles for the purpose of abating environmental damage to or restoring Chesapeake Bay Preservation Areas therein, except that where the violator is the Town of Cape Charles itself or its agent, the civil charges shall be paid into the state treasury. Civil charges shall be in lieu of any appropriate civil penalty that could be imposed under subdivision 1 of this subsection. Civil charges may be in addition to the cost of any restoration required or ordered by the Town of Cape Charles body or official.

Section 7.16: Severability

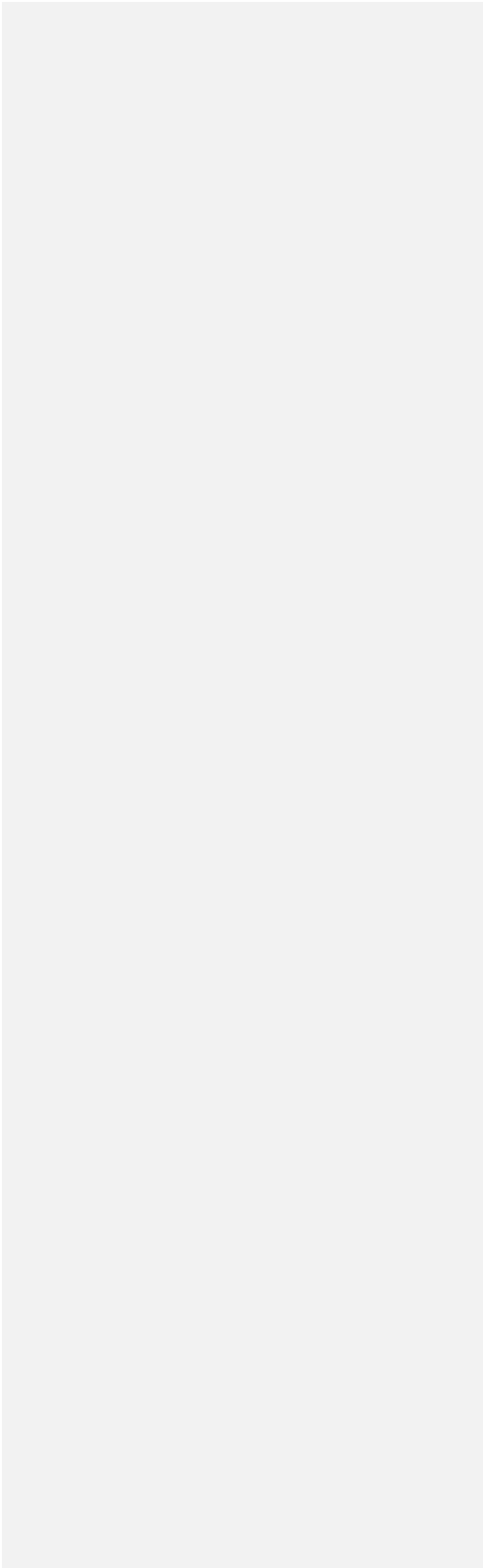
The provisions of this ordinance shall be deemed to be severable, and if any of the provisions hereof are adjudged to be invalid or unenforceable, the remaining portions of this ordinance shall remain in full force and effect and their validity shall remain unimpaired.

~~Section 7.17: Effective Date~~

~~This ordinance was duly considered following a required public hearing held on November 18, 2024, and was adopted by the Town Council of Cape Charles, Virginia, at its regular meeting held December 19, 2024. (Ord. No. 20241219A; 12/19/24)~~

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Town of Cape Charles Zoning Ordinance
Article IX – Historic Harbor Area Overlay District



Appendix A – Definitions

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For the purpose of the Zoning Ordinance, the following words and phrases shall have the meanings respectively ascribed to them by this section. Please note that certain words and phrases have not been included here if their definitions are topic specific; those definitions continue to reside in their respective sections of the Zoning Ordinance which includes the *Sign Section (Article V)*, *Floodplain Ordinance (Article VI)*, *Subdivision Ordinance (Appendix B)*, *Coastal Primary Sand Dune Ordinance (Appendix D)*, *Erosion and Sediment Control Ordinance (Appendix E)* and *Wetlands Ordinance (Appendix F)*.

ABANDONMENT means the relinquishment of property, or a cessation of the use of the property, by the owner or lessee without any intention of transferring rights to the property to another owner or of resuming the use of the property.

ACCESS means a way or means of approach to provide vehicular or pedestrian physical entrance to a property.

ACCESSORY USE, except as otherwise provided in the zoning district regulations, an accessory use is:

1. A use which is conducted on the same zoning lot as the principal use to which it is related, whether located within the same building or as an accessory structure, or as an accessory use of land, or which is conducted on a contiguous lot in the same ownership, and
2. Clearly incidental to, and customarily found in connection with, such principal use, and
3. Operated and maintained substantially for the benefit or convenience of the owners, occupants, employees, customers, or visitors of the zoning lot with the principal use.

ACRE is a measure of land area containing forty three thousand and five hundred and sixty square feet (43,560 SF).

ACREAGE means a parcel of land, regardless of area, described by metes and bounds which respectively are ascribed to them by this section.

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

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ADAPTIVE REUSE means the development of a new use for an older building or for a building originally designed for a special or specific purpose.

ADDITION means a structure added to the original structure at some time after the completion of the original structure or an extension or increase in floor area or height of a building or structure.

ADJACENT includes the term contiguous.

Town of Cape Charles Zoning Ordinance
Appendix A – Definitions

ADJACENT GROUND ELEVATION means the elevation of the surface of the ground between a point touching the exterior wall of a building and a point three feet (.3') in distance from such wall measured perpendicularly therefrom.

ADULT BOOK STORE means any establishment having as a substantial portion of its stock in trade, books, pictures, magazines, and other periodicals which are distinguished or characterized by an emphasis on matter depicting, describing, or relating to specific sexual activities or specified anatomical areas, or an establishment trading in such books, pictures, magazines, and other periodicals which limits its customers to persons over eighteen years (18 yrs) of age.

ADULT CARE means the provision of health care including retirement homes, congregate living, and acute care facilities, or a mixture thereof.

ADULT MOVIE THEATER means any establishment used for presenting material distinguished or characterized by an emphasis on matter depicting, describing, or relating to specific sexual activities or specified anatomical areas for observation by patrons therein, or an establishment used for presenting such material which limits its customers to persons over eighteen years (18 yrs) of age.

AFFORDABLE HOUSING means housing that is affordable to **households** with incomes typically at or below one hundred and twenty percent **120% of the area median income**, provided that the occupant pays no more than thirty percent (30%) of his gross income for gross housing costs, including utilities. For the purpose of administering affordable dwelling unit ordinances authorized by this chapter, local governments may establish individual definitions of affordable housing and affordable dwelling units including determination of the appropriate percent of area median income and percentage of gross income.

AGRICULTURE means the tilling of soil, the raising of crops, forestry, the keeping and raising of livestock and fowl, and including the process of any products produced on the premises, such as milk, eggs, and the like.

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.

ALLEY means the minor way used primarily for vehicular access to the rear or side of properties otherwise abutting a street. For an alley way to be recognized as such by the Town, it must have previously been officially adopted by the Town.

ALTERATION means any change or rearrangement in the supporting members of an existing building, such as bearing walls, columns, beams, girders, or interior partitions, as well as any exterior change such as doors, windows, roof, siding, porches, means of ingress or egress, or any enlargement to or diminution of a building or structure, whether horizontally or vertically, or the moving of a building or structure from one location to another.

Town of Cape Charles Zoning Ordinance
Appendix A – Definitions

AMERICANS WITH DISABILITIES ACT (ADA) is a 1990 federal law designed to bring disabled Americans into the economic mainstream by providing them equal access to jobs, transportation, public facilities, and services.

APARTMENT BUILDING means a building used or intended to be used as the residence of three (3) or more households/families living independently of each other.

APARTMENT UNIT is considered one (1) or more rooms with private bath and kitchen facilities comprising an independent, self-contained dwelling unit in a building containing three or more dwelling units.

AREA MEDIAN INCOME means the midpoint of Northampton County's income distribution for a family of four and is calculated on an annual basis by the Department of Housing and Urban Development as median family income (MFI).

AREA OF SPECIAL FLOOD PLAIN means the land in the flood plain within a community subject to a one percent (1%) or greater chance of flooding in any given year. This area is designated on the Flood Insurance Rate Map (hereinafter as FIRM) as AE and VE.

APPLICANT is the person submitting an application.

ATTIC is space between ceiling framing of the top story and the underside of the roof.

AUTOMOBILE GRAVEYARD means any lot or place which is exposed to weather upon which three or more motor vehicles of any kind, incapable of being operated, are placed.

AVERAGE SETBACK shall be the mean setback from a street right-of-way of buildings on both sides of a lot.

AWNING. An architectural projection or shelter projecting from and supported by the exterior wall of a building and composed of a covering of rigid or nonrigid materials and/or fabric on a supporting framework that may be either permanent or retractable, including such structures that are internally illuminated by fluorescent or other light sources.

AWNING, BACKLIT. An awning with a translucent covering material and a source of illumination contained within its framework.

BASE FLOOD ELEVATION means the highest height, expressed in feet above sea level, of the level of flood waters occurring in the regulatory base flood.

BANNER. A flexible substrate on which copy, or graphics may be displayed.

Town of Cape Charles Zoning Ordinance
Appendix A – Definitions

BASEMENT means that portion of a building that is partly or completely below grade. A basement is a level within a building that has its floor surface below the adjoining ground level. A basement shall be counted as a story if over fifty percent (50%) of its height is above finished grade.

BASE FLOOD/100-YEAR FLOOD means a flood that on the average is likely to occur once every one hundred years (100 yrs) (i.e., that has a one percent (1%) chance of occurring each year, although the flood may occur in any year).

BATHROOM means a room or area that includes a sink and toilet. It may also include a bathtub, shower, or bidet.

BED AND BREAKFAST means a single-family dwelling containing sleeping and/or breakfast accommodations as an accessory use to the principal use. Such lodging shall have room accommodations for transient persons and wherein a charge is normally paid for such accommodations. Owner or manager is a permanent dweller residing on site.

BEDROOM is a room or space within a structure intended for sleeping. Requirements include:

- A minimum size of seventy square feet (70 SF); if more than one person occupies the room, there must be fifty square feet (50 SF) per occupant.
- Access to a bathroom without crossing another bedroom.
- Every bedroom must have access to natural ventilation and have a permanent heat source.
- Two means of egress: one that leads to the rest of the home without going through another bedroom and one that leads directly to the outside. If the outside egress is a window, it must be at least five point seven square feet (5.7 SF) and can be no more than forty-four inches (44") from the room floor, unless there is a permanent step installed. It shall be illegal to have locking bars or grates covering an egress window.
- Ceiling height must be no less than seven feet (7').

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

BIKEWAY means a pathway often paved and separated from streets and sidewalks designed to be used by bicycles.

BLIGHTED AREA is an area characterized by deteriorating and/or abandoned buildings, inadequate or missing public or community services, and vacant land with debris, litter, lack of sanitation facilities, trash and junk accumulation and impacted by adverse environmental nuisances, such as noise, heavy traffic, and odors.

BOARD OF ZONING APPEALS means the board appointed to review appeals made by

Town of Cape Charles Zoning Ordinance
Appendix A – Definitions

individuals with regard to decisions of the Zoning Administrator or Floodplain Manager in the interpretation of this ordinance.

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

BUFFER YARD means an area or areas located within districts or land use classifications which extend along adjacent property lines abutting other districts.

BUILDING means any structure having a roof supported by walls which is solidly enclosed, including any area which is solidly enclosed with glass or any other rigid material which will not allow for the passage of air.

BUILDING, ACCESSORY means a subordinate and separate building located upon the same lot occupied by the main structure or where a main structure was previously located. Accessory buildings shall not be used as dwelling units, unless a zoning permit is issued in compliance with §4.1 (J).

BUILDING ELEVATION. The entire side of a building, from ground level to the roofline, as viewed perpendicular to the walls on that side of the building.

BUILDING FOOTPRINT is the land area on which a proposed building is located.

BUILDING, HEIGHT means the vertical distance measured from the finished grade to the top of the highest roof beams on a flat or shed roof, to the top of a parapet, the deck level on a mansard roof, and the average distance between eaves and the ridge level for gable, hip, and gambrel roofs. Note: Mechanical equipment, chimneys, air conditioning units, elevator penthouses, church spires and steeples, water towers, and similar appurtenances are exempted from height restrictions. However, these exclusive items may not exceed the height limit by more than fifteen feet (15').

BUILDING INSPECTOR/OFFICIAL is the individual designated by the appointing authority to enforce the provisions of the building code.

BUILDING, MAIN means the principal structure or the principal building on a lot or the building or the principal building housing the principal use on a lot.

BUILDING, PARCEL means a fraction of a tract of land containing one or more building lots.

BUILDING PERMIT is an approval statement signed by the Building Permit Office authorizing the construction, alteration, reconstruction, repair, restoration, demolition, or razing of all or a part of any building.

BUILDING CODE OFFICIAL is appointed by the Town Council as the individual who issues the permit for the construction, alteration, reconstruction, repair, restoration, demolition, or razing of all or part of any building.

Town of Cape Charles Zoning Ordinance
Appendix A – Definitions

CANOPY, ATTACHED. A multisided overhead structure or architectural projection supported by attachments to a building on one or more sides and either cantilevered from such building or also supported by columns at additional points. The surface(s) and/or soffit of an attached canopy may be illuminated by means of internal or external sources of light. See also "Marquee."

CANOPY, FREE-STANDING. A multisided overhead structure supported by columns but not enclosed by walls. The surface(s) and or soffit of a free-standing canopy may be illuminated by means of internal or external sources of light.

CANOPY TREE means a tree that typically reaches 35 feet in height or taller when mature.

CAREGIVER is an adult who provides care for a mentally or physically impaired person within the Commonwealth. A caregiver shall be either related by blood, marriage or adoption to or the legally appointed guardian of the mentally or physically impaired person for whom he is caring.

CARRY-OUT RESTAURANT means an establishment that, by design of the physical facilities, service, or packaging sells prepared ready-to-eat foods intended primarily to be consumed off the premises.

CEMETERY means property used for interring the dead.

CERTIFICATE OF APPROPRIATENESS is a certificate or other statement indicating approval by the Administrator, the Harbor Area Review Board or the Historic District Review Board as the case may require, of plans for construction, alteration, reconstruction, repair, restoration, demolition, or razing of a building or structure or part thereof.

CHESAPEAKE BAY PRESERVATION AREA or CBPA means any land designated by the Town Council pursuant to Part III of the Chesapeake Bay Preservation Area Designation and Management Regulations, 9VAC25-830-10 et seq., § 62.1-44.15:68 of the Code of Virginia. A Chesapeake Bay Preservation Area shall consist of a Resource Protection Area and a Resource Management Area.

CHILD CARE CENTER means any facility, other than a family home, established for providing childcare, supervision, and protection of children.

CHILD AND PERSONAL CARE USES shall mean any care, activity, and supervision (with or without academic instruction) for five or more children.

CHURCH means a building or structure, or groups of buildings or structures, that by design and construction are primarily intended for conducting organized religious services and associated accessory uses.

Town of Cape Charles Zoning Ordinance
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CLUB means a group of people organized for a common purpose to pursue common goals, interests, or activities and usually characterized by certain membership qualifications, payment of fees and dues, regular meetings, and a constitution and by-laws.

COASTAL HIGH HAZARD AREA means an area subject to high velocity waters including but not limited to hurricane wave wash. The area is designated on the FIRM as VE.

COMMERCIAL USE is an activity involving the sale of goods or services carried out for profit.

COMMERCIAL VEHICLE shall mean limousine, flatbed truck, dump truck, tow truck, bus, school bus, transport wrecker, cab-on-chassis truck, tractor trailer, wheeled attachment, earth-moving machinery, semi-trailer, and any vehicle over twenty feet (20') in length, eight feet (8') in height, or seven feet in width.

COMMISSION shall mean the Cape Charles Planning Commission.

COMPREHENSIVE PLAN is a master plan, long-range plan, intended to guide the growth and development of a community or region that typically includes inventory and analytic sections leading to recommendations for the community's future economic development, housing, recreation and open space, transportation, community facilities, and land use, all related to the community's goals and objectives for these elements.

CONDITIONAL USE means a use permitted in a particular zoning district upon showing that such use in a specified location will comply with all the conditions and standards for the location or operation of the use as specified in the zoning ordinance and authorized by the approving agency.

CONDITIONAL USE PERMIT is a permit recommended by the Planning Commission and issued by the Town Council stating that the conditional use meets all conditions set forth in local ordinances.

CONSTRUCTION FOOTPRINT means the area of all impervious surface including but not limited to buildings, roads and drives, parking areas, and sidewalks and the area necessary for construction of such improvements.

CONTINUING CARE RETIREMENT COMMUNITY, sometimes known as a life plan community, is a type of retirement community where a continuum of aging care needs from independent living, assisted living, and skilled nursing care can all be met within the community.

CONTRIBUTING PROPERTIES are those properties constructed fifty years (50 yrs) or more ago.

Town of Cape Charles Zoning Ordinance
Appendix A – Definitions

COOPERATIVE means real estate owned by an association, each of the members of which is entitled, by virtue of his ownership, interest in the association, to exclusive possession of a unit. (See § 55.1-2100 et seq. of the Code of Virginia)

CONSTRUCTION shall mean any site or building preparation, assembly, erection, repair, alteration or similar action, or demolition of buildings or structures.

CONTRIBUTING STRUCTURE OR PROPERTY means a structure, building, or place constructed on or before 1964 OR which has special significance because of notable architectural or historic features relating to the cultural or artistic heritage of the community and whose authentic look and character should be retained. The National Register of Historic Places (amended 2019) provides the list of contributing structures and properties. Should a building or structure within the boundaries of the historic district not be listed in the national register, the building or structure will be classified as noncontributing.

COPY. Those letters, numerals, figures, symbols, logos and graphic elements comprising the content or message of a sign, excluding numerals identifying a street address only.

COUNTRY CLUB is land area and buildings containing golf courses, recreational facilities, a clubhouse, and customary accessory uses open to members and their guests.

CRAWL SPACE is an under-floor space that is not a basement which usually contains pipes, ducts, wiring and lighting fixtures, and permits access but is too low for standing.

DECK is an uncovered platform, constructed of wood or wood substitute.

DEMOLITION is the dismantling or tearing down of all or part of any building and all operations incidental thereto.

DEMOLITION PERMIT means the official authorization in writing to remove part or all of a building or structure.

DENSITY means the total number of families, individuals, dwelling units, households, or housing structures per unit of land.

DESIGN GUIDELINES are those set of recommendations adopted pursuant to §8.20 and §9.20 of this Code.

DEVELOPER means the owner or any person with written authorization for the owner who intends to improve or to construct improvements upon any given property.

DEVELOPMENT means a tract of land developed or to be developed as a unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain three (3)

Town of Cape Charles Zoning Ordinance
Appendix A – Definitions

or more residential dwelling units. The term "development" shall not be construed to include any tract of land which will be principally devoted to agricultural production. DEVELOPMENT within the Chesapeake Bay Preservation Act Overlay Ordinance means the construction or substantial alteration of residential, commercial, industrial, institutional, recreation, transportation, or utility facilities or structures.

DIAMETER AT BREAST HEIGHT or DBH means the diameter of a tree measured outside the bark at a point four- and one-half feet (4-1/2') above ground.

DISTRICT is a part, zone, or geographical area within the municipality within which certain zoning or development regulations apply.

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

DRIVE-THROUGH ESTABLISHMENT/RESTAURANT shall mean a business establishment so developed that its retail or service character includes providing a driveway approach and service window for motor vehicles so as to serve patrons as they are seated in the motor vehicle and passing by the service window rather than serving them from within a building.

DRIVEWAY shall mean a vehicular connection between the right-of-way of a street and to a vehicle parking, loading, or maneuvering facility, lots, building sites, uses, or other divisions of land and not intended to be public ingress and egress. A driveway is not considered a street.

DWELLING means a structure or portion thereof that is used exclusively for human habitation.

DWELLING, ACCESSORY is a dwelling unit which is an accessory use to a single-family dwelling or commercial use in the Commercial – Residential Districts.

DWELLING, CONDOMINIUM shall mean a single, separately owned dwelling unit in a multi-unit development or structure, with jointly owned and shared areas and facilities.

DWELLING, DUPLEX shall mean a building designed as a single structure, containing two (2) separate dwelling units joined side-by-side, has direct access to the outside, and each of which is designed or arranged to be occupied by two families living independently of each other.

DWELLING, MANUFACTURED HOME or MOBILE HOME means a special form of one-family dwellings with the following characteristics:

1. A structure, transportable in one or more sections, which in the traveling mode is eight (8) body feet or more in width, or forty (40) body feet or more in length, or which when erected on-site is three

Town of Cape Charles Zoning Ordinance
Appendix A – Definitions

- hundred and twenty (320) or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained in the structure, and designed and constructed to National Manufactured Housing Construction and Safety Standards Act of 1974. The term does not include any self-propelled recreational vehicle.
2. Calculations used to determine the number of square feet in a structure will include the total of square feet for each transportable section comprising the completed structure and will be based on the structure's exterior dimensions measured at the largest horizontal projections when erected onsite. These dimensions will include all expandable rooms, cabinets, and other projections containing interior space, but do not include bay windows.

DWELLING, MULTI-FAMILY shall mean a building designed for and containing three (3) or more dwelling units.

DWELLING, SINGLE FAMILY DETACHED shall mean a single-family dwelling that is located on an individual lot of record.

DWELLING, SINGLE-FAMILY ATTACHED (TOWNHOUSE) shall mean a dwelling unit which is located on an individual lot of record, and which is attached to another dwelling unit or any adjoining lot by a common wall.

DWELLING UNIT means one or more rooms, designed, occupied, or intended for occupancy as a separate living quarter with cooking, sleeping, and sanitary facilities provided within the dwelling unit for the exclusive use of a single family maintaining a household.

EASEMENT is a grant of one or more of the property rights by the property owner to and/or for use by the public, a corporation, or another person or entity.

ENGINEER means a professional engineer licensed by the Commonwealth of Virginia.

ENLARGEMENT means an increase in the size of an existing structure or use, including the physical size of the property, building, parking, and other improvements.

EVENT CENTER shall mean a multi-purpose facility generally used for meetings, parties, banquets, weddings, and other social gatherings, conventions, and the display of merchandise by a variety of industrial groups, professional groups, social groups and trade organizations.

EXISTING CONSTRUCTION means, for the purpose of determining rates, structures for which the start of construction commenced before the effective date of the FIRM. EXISTING CONSTRUCTION may also be referred to as **EXISTING STRUCTURES**.

Town of Cape Charles Zoning Ordinance
Appendix A – Definitions

EXISTING USE is the use of a lot or structure at the time of the enactment of the zoning ordinance.

FARM or **FARMLAND** is a parcel of land used for agricultural activities.

FENCE means an artificially constructed barrier of any material or combination of materials erected to enclose, screen, or separate areas.

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

FLEX SPACE, INDUSTRIAL USE: Flex buildings are, by design, “flexible” and allow for a wide range of office and warehouse uses. They can be used for many purposes and are easier to retrofit to meet a company’s needs than typical warehouse buildings.

FLOOD or FLOODING means:

1. A general and temporary condition of partial or complete inundation of normally dry land areas from:
 - a. The overflow of inland or tidal waters.
 - b. The unusual and rapid accumulation or runoff of surface waters from any source.
 - c. Mudslides (i.e., mudflows) which are approximately caused or precipitated by accumulations of water on or under the ground.
2. The collapse of subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in 1 (a) of this section.

FLOOD INSURANCE RATE MAP (FIRM) means the official map of the community, on which the administrator has delineated both special hazard areas and the risk premium zones applicable to the community. **FLOOD PLAIN** means (1) a relatively flat land area adjoining a river, stream, or watercourse which is subject to partial or complete inundation; (2) an area subject to the unusual and rapid accumulation of runoff of surface water from any source.

FLOOD PLAIN means the channel and the relatively flat area adjoining the channel of a natural stream, river, or body of water that has been or may be covered by floodwater.

FLOODPLAIN within the Chesapeake Bay Preservation Act Overlay Ordinance means all lands that would be inundated by floodwater as a result of a storm event of a 100-year return interval.

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Town of Cape Charles Zoning Ordinance
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FLOOD PLAIN MANAGEMENT means the operation of an overall program of corrective and preventive measures for reducing flood damage including but not limited to emergency preparedness plans, flood control works, and flood plain management regulations.

FLOOD PROOFING means any combination of structural and nonstructural additions, changes, or adjustments to structure which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

FLOOR AREA shall mean the gross horizontal areas of a building, including mezzanines and lofts, exclusive of garages, parking structures, basements, open balconies and porches, and equipment and service areas, measured from the exterior face of the exterior walls of a building.

FOOT CANDLE means a standard measurement of light intensity, defined as the illuminance on a one- square foot surface from a uniform source of light.

FORESTRY means an establishment primarily engaged in the operation of timber tracts, tree farms, forest nurseries, the gathering of forest products, or in performing forest services.

FREEBOARD means an additional amount of height above the Base Flood Elevation used as a factor of safety (e.g., 2 feet above the Base Flood) in determining the level at which a structure's lowest floor must be elevated or floodproofed to be in accordance with state or community floodplain management regulations.

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FRONTAGE is the width in linear feet of each lot where it abuts the right-of-way of any public or private street.

FRONTAGE, BUILDING. The length of an exterior building wall or structure of a single premise orientated to the public way or other properties that it faces.

FRONTAGE, PROPERTY. The length of the property line(s) of any single premise along either a public way or other properties on which it borders.

FUNCTIONALLY DEPENDENT USE means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long- term storage or related manufacturing facilities.

FUNERAL HOME is a building used for the preparation of the deceased for burial and the display of the deceased and rituals connected therewith before burial or

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cremation.

GARAGE means a deck, building, or parking structure, or part thereof, used or intended to be used for the parking and storage of vehicles.

GARAGE, PRIVATE RESIDENTIAL is a structure that is an accessory to a residential building and that is used for the parking and storage of vehicles owned and operated by the residents thereof and that is not a separate commercial enterprise available to the general public.

GOLF COURSE means a tract of land laid out for at least nine holes for playing the game of golf and improved with tees, greens, fairways, and hazards, and that may include a clubhouse and shelter.

GOVERNING BODY shall mean the Cape Charles Town Council.

GRADE (ADJACENT GROUND LEVEL), generally flat horizontal surfaces, is the lowest point of elevation of the finished surface of the ground, paving or sidewalk within the area between the building or structure and the property line. When ground level slopes, the reference plane shall be established by the average elevations at the four corners of the lot and two additional highest points on the lot (i.e., the average of six (6) points).

GRADING is the act of excavation or filling or combination thereof or any leveling to a smooth horizontal or sloping surface on a property, but not including normal cultivation associated with an agricultural operation.

GROSS FLOOR AREA (GFA) shall mean the total covered floor area inside the building envelope, including exterior walls, and excluding the roof.

GROUND COVER means grasses or other plants and landscaping grown to keep soil from being blown or washed away.

GROUP HOME is a residential facility, licensed by the Department of Behavioral Health and Developmental Services, in which no more than eight individuals with mental illness, mental retardation, or developmental disabilities reside, with one (1) or more residential counselors or other staff persons. For the purposes of this ordinance, mental illness and developmental disability shall not include current illegal use of or addiction to a controlled substance as defined in [§ 54.1-3401](#) of the Code of Virginia.

HARDSHIP means a restriction on property so unreasonable that it results in an arbitrary and capricious interference with basic property rights, and that which relates to the physical characteristics of the property, not the personal, financial, or self-imposed circumstances of the owner or user.

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HEALTH CARE FACILITY means a facility or institution, whether public or private, principally engaged in providing services for health maintenance and the treatment of mental or physical conditions.

HISTORIC DISTRICT means an area containing buildings or places in which historic events occurred or having special public value because of notable architectural or other features relating to the cultural or artistic heritage of the community of such significance as to warrant conservation and preservation.

HISTORIC LANDMARK is defined as any building or place listed on the National Register of Historic Places or on the Register of the Virginia Historic Landmarks Commission.

HISTORIC STRUCTURES means any structure that is:

1. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the national register;
2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
3. Individually listed on a state inventory of historic places in the states with historic preservation programs which have been approved by the Secretary of the Interior; or
4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either: a. by an approved state program as determined by the Secretary of the Interior, or b. directly by the Secretary of Interior in the states without approved programs.

HOME OCCUPATION means any activity carried out for gain by a resident and conducted as a customary, incidental, and accessory use in the resident's dwelling.

HOSPITAL means an institution providing primary health services and medical or surgical care to persons, primarily inpatients, suffering from illness, disease, injury, deformity, and other abnormal physical or mental conditions and including, as an integral part of the institution, related facilities, such as laboratories, outpatient facilities, training facilities, medical offices, and staff residents.

HOTEL is a building in which lodging or boarding and lodging facilities are provided for transient guests and offered to the public for compensation and in which ingress and egress to and from all rooms are through an inside lobby or office supervised by a person in charge at all hours.

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HOUSEHOLD (family) all the people who occupy a housing unit. A household includes the related family members and all the unrelated people, if any, such as lodgers, foster children, wards, or employees who share the housing unit. A person living alone in a housing unit, or a group of unrelated people sharing a housing unit such as partners or roomers, is also counted as a household.

IMPERVIOUS is any paved, hardened or structural surfaces which prevent or impede the infiltration of stormwater into the soil.

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

IMPROVEMENT means any permanent structure that becomes part of, placed upon, or is affixed to real estate.

INDUSTRY means those fields of economic activity including forestry, fishing, hunting, and trapping; mining; construction; manufacturing; transportation; communications; electric, gas, and sanitary services; and wholesale trade.

INFILL DEVELOPMENT: Development that takes place on vacant or underutilized parcels within an area that is already characterized by residential and/or commercial development and has access to municipal services.

INSTITUTIONAL USES shall mean a nonprofit or quasi-public use, such as a religious institution, library, public or private school, hospital, or government owned or government operated structure or land used for public purpose.

INTENSELY DEVELOPED AREA or IDA means a portion of Resource Protection Area, or a Resource Management Area designated by the Town Council where development is concentrated and little of the natural environment remains.

JUNKYARD means any area, lot, parcel, building, or structure or part thereof used for the storage, collection, processing, purchase, sale, salvage, or disposal of junk.

KENNEL means a commercial establishment in which dogs or domesticated animals are housed, groomed, bred, boarded, trained, or sold, all for a fee. This includes any building or premises used, designed, or arranged for the boarding or breeding or care of four (4) or more dogs, cats, or other domesticated pets of at least six months (6 mos) of age.

KITCHEN means a space within a structure designated for the cooking and preparation of food that includes a sink and a refrigerator.

LAND DISTURBANCE or LAND DISTURBING ACTIVITY means. a man-made change to the

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land surface that may result in soil erosion or has the potential to change its runoff characteristics, including construction activity such as the clearing, grading, excavating, or filling of land.

LAND USE means a description of how land is occupied or utilized.

LANDSCAPE means an expanse of natural scenery; lawns, trees, plants, and other natural materials, such as rock and wood chips and decorative features, including sculptures, patterned walks, fountains, and pools.

LANDSCAPE PLAN is a plan indicating the location, size, quantity and species of replacement trees and shrubbery.

LANDSCAPE ZONE is an area reserved for the growing and maintenance of landscape materials, including approved street trees and ground cover.

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

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

LOT means a parcel of land occupied by a main structure or to be occupied by a main structure or group of main structures and accessory structures, together with such yards, open space, and lot areas as are required by this ordinance, and having frontage upon a street, either shown on a plat of record or considered as a unit of property and described by metes and bounds.

LOT AREA means the total area within the lot lines of a lot, excluding any street rights-of-way.

LOT, CORNER means a lot or parcel of land abutting upon two or more streets at their intersection or upon two parts of the same street forming an interior angle of less than one hundred and thirty-five degrees (135°).

LOT COVERAGE is that portion of the lot that is covered by buildings.

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LOT DEPTH means the average distance measured from the front of the lot line to the rear of the lot line.

LOT, FLAG means a lot not meeting minimum frontage requirements and where access to the public road is by narrow private right-of-way or driveway.

LOT FRONTAGE means the length of the front lot line measured at the street right-of-way line.

LOT LINE means a line of record bounding a lot that divides one lot from another lot or from a public or private street or any other public space.

LOT LINE, FRONT is the lot line separating a lot from the street right-of-way.

LOT LINE, REAR is the lot line opposite and most distant from the front lot line. In the case of a triangular or otherwise irregularly shaped lot, a line ten feet (10') in length entirely within the lot, parallel to and at a maximum distance from the front lot line.

LOT OF RECORD means a lot that exists as shown or described on a plat or deed in the records of the local registry of deeds.

LOT WIDTH is the horizontal distance between the side lot lines measured at right angles to its depth along a straight line parallel to the front lot line at the minimum required building setback line.

MANSARD. An inclined decorative roof-like projection that is attached to an exterior building facade.

MANUFACTURED HOME PARK/SUBDIVISION means a parcel (or contiguous parcels) of land divided into two or more lots for rent or sale. MAP means the Flood Insurance Rate Map (FIRM) for the community issued by the Federal Insurance Administration.

MANUFACTURED HOUSING means factory-built, single-family structures that meet national standards.

MANUFACTURING is an establishment engaged in the mechanical or chemical transformation of materials or substances into new products, including the assembling of component parts, the creation of products, and the blending of materials, such as lubricating oils, plastics, resins, or lacquers.

MARINA is a facility for the storing, servicing, fueling, berthing, and securing of boats and that may include eating, sleeping, and retail facilities for owners, crews, and guests.

MARQUEE. See the term "Canopy."

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

MEAN SEA LEVEL means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum to which base flood elevations shown on the Flood Insurance Rate Map are referenced.

MENTALLY or PHYSICALLY IMPAIRED PERSON is a person who is a resident of Virginia and who requires assistance with two or more activities of daily living, as defined in § 63.2- 2200 of the Code of Virginia, as certified in writing by a physician licensed in the Commonwealth of Virginia.

MIXED USE DEVELOPMENT means property that incorporates two (2) or more different uses, and may include a variety of housing types, within a single development.

MOBILE HOME PARK is a site containing space with the required improvements and utilities that are leased for the long-term placement of manufactured houses and that may include services and facilities for the residents.

MODULAR BUILDING, OR HOMR OR INDUSTRIALIZED BUILDING means, but is not limited to, single and multifamily houses, apartment units, commercial buildings, and permanent additions thereof, a combination of one (1) or more sections or modules, subject to state regulations and including the necessary electrical, plumbing, heating, ventilating, and other service systems, manufactured off-site and transported to the point of use for installation or erection, with or without other specified components, to comprise a finished building. Unlike Manufactured Homes, the design, installation, and construction of modular or industrialized homes are regulated by the Uniform Statewide Building Code.

MOTEL is one (1) or more buildings in which lodging or board and lodging are provided for transient guests for compensation and supervised by a person in charge at all hours. Ingress and egress to and from all rooms are made primarily directly from an exterior walkaway rather than from an inside lobby.

MUNICIPAL COMMUNITY CENTER. See ‘Neighborhood Community Center.’

NATURE-BASED SOLUTION means an approach that reduces the impacts of sea-level rise, flooding, and storm events through the use of environmental processes and natural systems.

NEIGHBORHOOD is an area of the community with characteristics that distinguish it from other areas and that may include distinct ethnic or economic characteristics, housing types, schools, or boundaries defined by physical barriers, such as roads, railroads, or other natural features.

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NEIGHBORHOOD COMMUNITY CENTER is a facility within Residential Districts intended for the use of Town citizens for recreational and educational use.

NEW CONSTRUCTION means structures for which the start of construction commenced on or after the effective date of a flood plain management regulation adopted by a community and includes any subsequent improvement to such structures.

NON-CONFORMING LOT is a lot, the area, dimensions, or location of which was lawful prior to the adoption, revision, or amendment of the zoning ordinance but that fails by reason of such adoption, revision, or amendment to conform to the present requirements of the zoning district.

NON-CONFORMING STRUCTURE or **BUILDING** is a structure or building, the size, dimensions, or location of which was lawful prior to adoption, revision, or amendment of the zoning ordinance but that fails by reason of such adoption, revision, or amendment to conform to the present requirements of the zoning district.

NON-CONFORMING USE is a use or activity that was lawful prior to the adoption, revision, or amendment of the zoning ordinance but fails by reason of such adoption, revision, or amendment to conform to the present requirements of the zoning district.

NONCONTRIBUTING STRUCTURE are those that were built after 1964 or have been altered to such a degree that they are no longer representative of the period which they were built or are in such poor physical condition that their retention is difficult. The National Register of Historic Places (amended 2019) provides the listing of non-contributing structures and properties. Should a building or structure within the boundaries of the historic district not to be listed in the national register, the building or structure will be classified as non-contributing.

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

NONTIDAL WETLANDS means those wetlands other than tidal wetlands that are inundated or saturated by surface 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 such as defined by the U.S. Environmental Protection Agency pursuant to Section 404 of the Federal Clean Water Act in 33 C.F.R. 328.3b.

NOXIOUS WEEDS means weeds that are difficult to control effectively, such as Johnson Grass, Kudzu, and multiflora rose.

OCCUPANCY PERMIT is a required permit allowing the use of a building or structure

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after it has been determined that all the requirements of applicable ordinances have been met.

OFFICE means a room or group of rooms for conducting affairs of a business, profession, service, industry, or government and generally furnished with desks, tables, files, and communication equipment.

OFF-SITE PARKING means parking provided for a specific use but located on a site other than the one on which the specific use is located.

OPEN SPACE is a lot or portion of a lot set aside, designated or reserved for the outdoor enjoyment of the public or for all persons occupying a building on the lot, and is preserved as natural areas or is designed as a park or recreational area.

OPERATOR means the proprietor of any dwelling, lodging, or sleeping accommodations offered as a short-term rental, whether in the capacity of owner, lessee, mortgagee in possession, licensee, or any other possessory capacity.

OUTDOOR STORAGE means the keeping in an enclosed area of any goods, junk, material, merchandise, or vehicles in the same place for more than twenty-four hours (24 hrs).

OVERLAY ZONE is an area where additional requirements are superimposed upon a base zoning district or underlying district.

OWNER shall mean the legal or beneficial titleholder of a site, including but not limited to, a mortgagee or vendee in possession, receiver, executor, trustee, lessee or other person, firm or corporation in control of the site.

PARAPET. The extension of a building facade above the line of the structural roof.

PARCEL: See **LOT**.

PARK means a tract of land designated and used by the public for active and passive recreation.

PARKING LOT OR PARKING GARAGE shall mean an area or building designated and designed for the temporary storage of vehicles.

PARKING SPACE shall mean a marked or striped usable hard-surfaced area enclosed within a main or accessory building, or unenclosed, permanently reserved for the temporary storage of one vehicle.

PATIO is an uncovered courtyard composed of a paved surface such as concrete, tile, or brick which lies directly on the ground.

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PAVERS shall mean preformed paving blocks that are installed on the ground to form patterns while at the same time facilitate pedestrian and vehicular travel.

PEDESTRIAN WALKWAY shall mean a walking surface similar to a sidewalk, which facilitates the safe, unobstructed and convenient flow of pedestrians internally on a private property.

PERIOD OF SIGNIFICANCE: The National Register of Historic Places recognizes buildings, sites, and districts for their historic significance, and has documented that the significance be associated with a discrete chronological period for the Cape Charles Historic District from 1883 to 1964.

PERMEABILITY is the ease with which air, water, or other fluids can move through soil or rock.

PERMIT is any written governmental permission issued by an authorized official, empowering the holder thereof to do some act not forbidden by law but not allowed without such authorization.

PERMITTED USE means any allowable use in a zoning district and subject to the restrictions applicable to the zoning district.

PERSON means any individual or group of individuals, corporation, partnership, association, or any other entity, including state and local governments and agencies.

PERVIOUS is any surface or element through which water can infiltrate directly into the ground.

PERVIOUS PAVING is any paving surface that presents an opportunity for precipitation to infiltrate or percolate directly into the ground.

PHASE or **PHASED** is subparts or segments of construction projects where the subpart or segment is constructed and stabilized prior to completing construction activities on the entire construction site.

PICNIC AREA means a place equipped with tables, benches, grills, and trash receptacles for people to assemble, cook, eat, and relax.

PLACE OF WORKSHIP shall mean a building where persons regularly assemble for religious purposes and related social events, and which is maintained and controlled by a religious body organized to sustain religious ceremonies and purposes.

PLAN OF DEVELOPMENT means the process for site plan or subdivision plat review to ensure compliance with [§10.1-2109 of the Code of Virginia](#) and this Article prior to any clearing or grading of a site or the issuance of a building permit. [For the Chesapeake Bay](#)

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Preservation Act Overlay Ordinance, **PLAN OF DEVELOPMENT** means any process for site plan review in local zoning and land development regulations designed to ensure compliance with Va. Code § 62.1-44.15:74 and with this Ordinance, prior to issuance of a building permit.

PLANNED UNIT DEVELOPMENT means a form of development characterized by unified site design for a variety of housing types and densities, clustering of buildings, common open space, and a mix of building types and land uses in which project planning and density calculation are performed for the entire development rather than on an individual lot basis.

PLAT or PLAT OF SUBDIVISION means the schematic representation of land divided or to be divided and information in accordance with the provisions of §§ [15.2-2241](#), [15.2-2242](#), [15.2-2258](#), [15.2-2262](#), and [15.2-2264](#), and other applicable statutes.

PLAYGROUND means an active recreational area with a variety of facilities, including equipment for younger children as well as court and field games.

PLOT means a single-family parcel of land or a parcel of land that can be identified and referenced to a recorded plat or map.

PORCH means a roofed area, which may be screened, usually attached to or part of and with direct access to or from a building. A porch becomes a room when the enclosed space is heated or air conditioned, or has water and sewer service, and when the percentage of window area to wall area is less than fifty percent (50%).

PREMISES shall mean any building, lot, parcel of land, or portion of land whether improved, or unimproved including adjacent sidewalks and parking strips.

PRESERVATION is the process of applying measures necessary to sustain the existing form, integrity, and materials of an historic property. Work, including preliminary measures to protect and stabilize the property, generally focuses upon the ongoing maintenance and repair of historic materials and features rather than extensive replacement and new construction. The limited and sensitive upgrading of mechanical, electrical, and plumbing systems and other code-required work to make properties functional is appropriate within a preservation project. However, new exterior additions are not within the scope of this treatment.

PRINCIPAL BUILDING shall mean a building in which is conducted the principal permitted use(s) of the lot on which said building is situated.

PRINCIPALLY ABOVE GROUND means that at least fifty-one percent (51%) of the actual cash value of the structure, less land value, is above ground.

PRIVATE shall mean property owned by individuals, corporations, and other organizations and not by city, county, state or federal governments.

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PROFFER is an offer of restrictions on use of property presented by an applicant for conditional rezoning or a special exception.

PROJECT shall mean the entire proposed development.

PROPERTY means a lot, parcel, or tract of land together with the building and structures located thereon.

PUBLIC, when used as a modifier shall mean "government-owned" or "government-operated."

PUBLIC AREA means any park, playground, trail, path, or other recreational area and open space; scenic and historical sites; schools and other public buildings and structures; and other places where the public is directly or indirectly invited to congregate.

PUBLIC ART is a fountain, sculpture, painting, mural, or similar object that is sited within a planned development as a focal point and is intended for the enjoyment of the general public.

PUBLIC ROAD means a publicly owned road designed and constructed in accordance with water quality protection criteria at least as stringent as requirements applicable to the Virginia Department of Transportation, including regulations promulgated pursuant to (i) the Erosion and ~~Sediment Control Law~~ Stormwater Management Act (§ 62.1-44.15:5124 et seq. of the Code of Virginia). This definition includes those roads where the Virginia Department of Transportation exercises direct supervision over the design or construction activities, or both, and cases where secondary roads are constructed and maintained, or both, by the Town of Cape Charles in accordance with the standards of the Town of Cape Charles.

PUBLIC UTILITY means a closely regulated enterprise with a franchise for providing to the public a utility service deemed necessary for the public health, safety, and welfare.

PUBLIC UTILITY FACILITY means any building, structure, and facility including generating and switching stations, poles, lines, pumping stations, repeaters, antennas, transmitters, and receivers, valves, and all buildings and structures relating to the furnishing of utility services, such as electric, gas, telephone, water, sewer, and public transit, to the public.

RECONSTRUCTION is any or all work needed to remake or rebuild all or part of any building to a sound condition, but not necessarily of original materials. It is the process of depicting, by means of new construction, the form, features, and detailing of a non-surviving site, landscape, building, structure, or object for the purpose of replicating

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its appearance at a specific period of time and in its historic location. Reconstruction is different from the other historic treatments in that it is undertaken when there are often no visible historic materials extant or only a foundation remains.

RECREATION, ACTIVE means leisure-time activities, usually of a formal nature and often performed with others, requiring equipment and taking place at prescribed places, sites, or fields.

RECREATION, PASSIVE means activities that involve relatively inactive or less energetic activities, such as walking, sitting, picnicking, card games, checkers, and similar games.

RECREATIONAL VEHICLE means a vehicle which is:

1. built on a single chassis;
2. four hundred square feet (400 SF) or less when measured at the largest horizontal projection;
3. designated to be self-propelled or permanently towable by a light-duty truck; and
4. designed primarily not for use as a permanent dwelling but as a temporary living quarters for recreational camping, travel, or seasonal use.

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

REHABILITATION is the process of making possible a compatible use for a property through repair, alterations, and additions while retaining to the maximum extent practicable those portions or features which convey its historical, cultural, or architectural values.

REGULATION shall mean any rule, development standard, or other requirement adopted by the governing body pursuant to the requirements of this Zoning Ordinance.

REPAIRS are any or all work involving the replacement of existing work with equivalent material for the purpose of maintenance, but not including any addition, change, or modification in construction.

RESIDENCE means a home or abode or place where an individual is actually living at a specific point in time.

RESIDENTIAL PROPERTY shall mean all property used for single-family detached, single-family attached, or multifamily residences, or mixed-use development that contains one or more dwelling units.

RESOURCE MANAGEMENT AREA or **RMA** means that component of the Chesapeake

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Bay Preservation Area that is not classified as the Resource Protection Area. RMAs include land types that, if improperly used or developed, have the potential for causing significant water quality degradation or for diminishing the functional value of the Resource Protection Area.

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

RESTAURANT means an establishment where food and drink are prepared and served and consumed primarily within the principal building.

RESTORATION is any or all work connected with the returning to or restoring of a building or a part of any building to its original condition through the use of original or nearly original materials. It is the process of accurately depicting the form, features, and character of a property as it appeared at a particular period of time by means of the removal of features from other periods in its history and reconstruction of missing features from the restoration period. The limited and sensitive upgrading of mechanical, electrical, and plumbing systems and other code-required work to make properties functional is appropriate within a restoration project.

RETAIL is the selling of goods, wares, or merchandise directly to the ultimate consumer or persons without a resale license.

RETAIL SALES mean an establishment engaged in selling goods or merchandise to the general public for personal or household consumption and rendering services incidental to the sale of such goods.

RETAINING WALL is a structure constructed and erected between lands of different elevations to protect structures and/or to prevent erosion.

RIGHT-OF-WAY means (1) a strip of land acquired by reservation, dedication, forced dedication, prescription or condemnation and intended to be occupied by a road, crosswalk, railroad, electric transmission lines, oil or gas pipelines, water line, sanitary storm sewer, and other similar uses; (2) generally the right of one to pass over the property of another.

ROOF LINE. The top edge of a peaked roof or, in the case of an extended facade or parapet, the uppermost point of said facade or parapet.

SAND DUNES means naturally occurring accumulations of sand in ridges or mounds of the beach.

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SETBACK is the minimum distance allowable between a building or structure and any lot line.

SHORT-TERM RENTAL means the provision of a room or space that is suitable or intended for occupancy for dwelling, sleeping, or lodging purposes, for a period of fewer than thirty (30) consecutive days, in exchange for a charge for the occupancy. This does not include a hotel, motel, or bed and breakfast.

SIDEWALK: A hard-surfaced walk or raised path and any curb ramps or blended transitions, along and generally paralleling the side of the streets for pedestrians. Sidewalks do not include the curb or gutter structures.

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 property for reforestation that are conducted in accordance with the silvicultural best management practices developed and enforced by the State Forester pursuant to § 10.1-1105 of the Code of Virginia and are located on property defined as real estate devoted to forest use under § 58.1-3230 of the Code of Virginia.

SITE PLAN means the development plan for one or more lots on which is shown the existing and proposed conditions of the lot, including topography, vegetation, drainage, flood plains, wetlands, and waterways; landscaping and open spaces; walkways; means of egress and ingress; circulation; utilities; structures and buildings; signs and lighting; berm; buffers and screening devices; surrounding development; and any other information that reasonably may be required in order that an informed decision can be made by the approving authority; a proposal for a development or a subdivision including all covenants, grants or easements and other conditions relating to use, location and bulk of buildings, density of development, common open space, public facilities and such other information as required by the subdivision ordinance to which the proposed development or subdivision is subject.

SPOT ZONING means the rezoning of a lot or parcel of land to benefit an owner for a use incompatible with the surrounding land uses and that does not further the comprehensive plan.

STANDARDS are Zoning Ordinance requirements that are evaluated by the Zoning Administrator or Code Official and not under the discretion of the Historic District Review Board or the Harbor Area Review Board.

START OF CONSTRUCTION means the date the building permit was issued, provided the actual START OF CONSTRUCTION, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within one hundred and eighty (180) days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the

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installation of piles, the construction of columns, or any work beyond the state of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation of property or accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual START OF CONSTRUCTION means the first alteration on any wall, ceiling, floor, or other structural part of a building, whether or not the alteration affects the external dimensions of the building.

STOOP is a small porch (covered or uncovered) and the step(s) to it.

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

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STORY means that portion of a building included between the surface of any floor and the floor next above it or, if there is no floor above it, the space between the floor and the ceiling next above it. A basement shall be counted as a story if over fifty percent (50%) of its height is above finished grade.

STORY, HALF, HABITABLE ATTIC, means a finished or unfinished area, not considered a full story, complying with all of the following requirements:

- The occupiable floor area is at least seventy square feet (70 SF).
- The occupiable floor area has a ceiling height of not less than seven feet (7'). For rooms with sloped ceilings, ceiling height shall not be less than five feet (5') and not less than fifty percent (50%) of the required floor area shall have a ceiling height of not less than seven feet (7'). A shower or tub equipped with a shower head shall have a ceiling height in accordance with the Virginia Residential Building Code.
- The occupiable space is enclosed by the roof assembly above, knee walls (if applicable) on the sides and the floor-ceiling assembly below.
- Total occupiable space shall not exceed fifty percent (50%) of the greatest story floor area.

STREET means highway, street, avenue, boulevard, road, lane, alley, or any public way.

STREET, ARTERIAL means a street which moves or is designed to move large volumes of traffic from one part of town to another, connecting residential areas with employment centers and centers of commercial activity. Traffic volumes are usually five hundred (500) vehicles per day or greater.

STREET, COLLECTOR means a street that collects traffic from local streets and

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connects with minor and major arterial.

STREET, LOCAL means a street designed to provide vehicular access to abutting property and to discourage through traffic.

STREET SCAPE means a design term referring to all the elements that constitute the physical makeup of a street and that, as a group, define its character, including building frontage, landscaping, street paving, street furniture, trees and other plantings, awnings, and marquee signs and lighting.

STRUCTURAL ALTERATION means any change in either the supporting members of a building, such as bearing walls, columns, beams and girders, or in the dimension or configuration of the roof or exterior walls.

STRUCTURE means a combination of materials to form a construction for use, occupancy, or ornamentation whether installed on, above, or below the surface of land or water.

STRUCTURE, APPURTENANT means a structure which is on the same parcel of property as the principal structure to be insured and the use of which is incidental to the use of the principal structure.

SUBDIVISION unless otherwise defined in an ordinance adopted pursuant to § 15.2-2240, means the division of a parcel of land into three or more lots or parcels of less than five acres (5 ac) each for the purpose of transfer of ownership or building development, or, if a new street is involved in such division, any division of a parcel of land. The term includes resub division and, when appropriate to the context, shall relate to the process of subdividing or to the land subdivided and solely for the purpose of recordation of any single division of land into two (2) lots or parcels, a plat of such division shall be submitted for approval in accordance with § 15.2-2258. Nothing in this definition, section, nor any ordinance adopted pursuant to § 15.2-2240 shall preclude different owners of adjacent parcels from entering into a valid and enforceable boundary line agreement with one another so long as such agreement is only used to resolve a bona fide property line dispute, the boundary adjustment does not move by more than two hundred and fifty feet (250') from the center of the current platted line or alter either parcel's resultant acreage by more than five percent (5%) of the smaller parcel size, and such agreement does not create an additional lot, alter the existing boundary lines of localities, result in greater street frontage, or interfere with a recorded easement, and such agreement shall not result in any nonconformity with local ordinances and health department regulations. Notice shall be provided to the zoning administrator of the locality in which the parcels are located for review. For any property affected by this definition, any division of land subject to a partition suit by virtue of order or decree by a court of competent jurisdiction shall take precedence over the requirements of Article 6 (§ 15.2- 2240 et seq.) and the minimum lot area,

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width, or frontage requirements in the zoning ordinance so long as the lot or parcel resulting from such order or decree does not vary from minimum lot area, width, or frontage requirements by more than twenty percent (20%). A copy of the final decree shall be provided to the zoning administrator of the locality in which the property is located.

SUBSTANTIAL ALTERATION means expansion or modification of a building or development that would result in a disturbance of land exceeding an area of twenty thousand five hundred square feet (2,500 SF) in the Resource Management Area only.

SUBSTANTIAL DAMAGE means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed fifty percent (50%) of the market value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENTS means any construction, rehabilitation, addition, or other improvements of a structure, the cost of which equals or exceeds fifty percent (50%) of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred substantial damage regardless of the actual repair work performed. The term does not include either: (1) any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or (2) any alteration of a historic structure, provided that the alteration will not preclude the structure as continued designation as a historic structure.

TAKING means to take, expropriate, acquire, or seize property without compensation.

TEMPORARY STRUCTURE shall mean a structure without any foundation or footing and removed when the designated time period, activity, or use of which the temporary structure was erected has ceased.

TEMPORARY FAMILY HEALTH CARE STRUCTURE means a transportable residential structure, providing an environment facilitating a caregiver’s provision of care for a mentally or physically impaired person meeting criteria stated in § 15.2-2292.1.

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 the vegetated and non-vegetated wetlands as defined in Section 28.2-1300 of the Code of Virginia.

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TRACT is an area, parcel, site, piece of land, or property that is the subject of development applications.

TRAILER means a structure standing on wheels, towed or hauled by another vehicle, and used for short- term human occupancy, carrying materials, goods, or objects or as a temporary office.

TRANSPORTATION FACILITY is any structure or facility that is primarily used, as part of a transit system, for the purpose of loading, unloading, or transferring passengers or accommodating the movement of passengers from one mode of transportation to another.

UNDERSTORY TREE means a tree that typically reaches 12 to 35 feet in height when mature.

USE means the purpose or activity for which land or buildings are designed, arranged, or intended or for which land or buildings are occupied or maintained.

UTILITY INSTALLATION. See Public Utility Facility.

VACANCY means any unoccupied land, structure, or part thereof that is available and suitable for occupancy.

VARIANCE means, in the application of a zoning ordinance, a reasonable deviation from those provisions regulating the shape, size, or area of a lot or parcel of land or the size, height, area, bulk, or location of a building or structure when the strict application of the ordinance would unreasonably restrict the utilization of the property, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the purpose of the ordinance. It shall not include a change in use, which change shall be accomplished by a rezoning or by a conditional zoning.

VIEWSHEDS are the areas of land extending south from Washington Avenue to Bayshore Lane, that align in width and angle with the existing streets to the north (including Harbor Street and Peach Street), that shall be restricted to only ground-level development and their amenities, including but not limited to streets, pedestrian or multi-modal trails, or linear parks, so as to maintain the view from the north to the south and vice-versa.

WATER-DEPENDENT FACILITY means a development of land that cannot exist outside the Resource Protection Area and must be located on the shoreline by reason of the intrinsic nature of its operation. These facilities include but are not limited to: (1) ports; (2) the intake and outfall structures of power plants, water treatment plants, sewage treatment plants, and storm sewers; (3) marinas and other boat docking structures; (4) beaches and other public water-oriented recreation areas; and

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(5) fisheries or other marine resources facilities.

WETLANDS means tidal and non-tidal wetlands.

WORKFORCE HOUSING means housing commonly targeted at “essential workers” in a community (e.g., police officers, firefighters, teachers, nurses, medical personnel, service workers). Workforce housing is targeted more generally at income levels from eighty percent (80%) to one hundred and twenty percent (120%) of Area Median Income (AMI), regardless of type of employment.

YARD is an open space that lies between the principal building or buildings and the nearest lot.

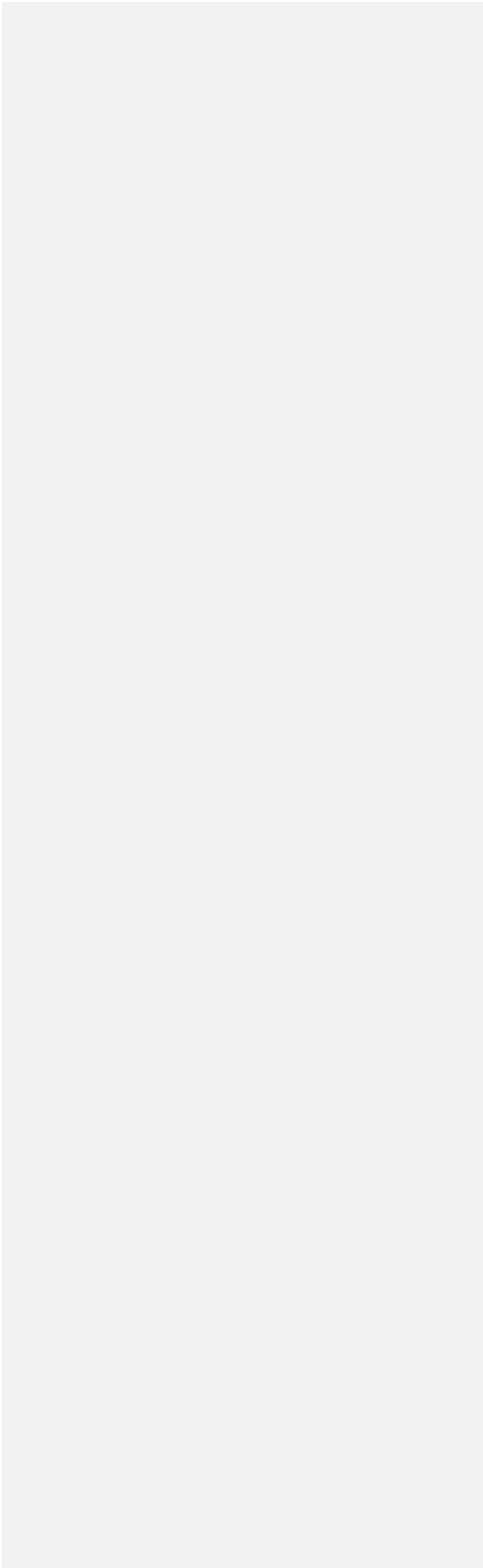
YARD, FRONT means a space extending the full width of the lot between any building and the front lot line and measured perpendicularly to the building at the closest point to the front lot line.

YARD, REAR means a space extending across the full width of the lot between the principal building and the rear of the lot and measured perpendicularly to the building to the closest point of the rear lot line.

YARD, SIDE means a space extending from the front yard to the rear yard between the principal building and the side lot line and measured perpendicularly from the side lot line to the closest point of the principal building.

ZONING or TO ZONE means the process of classifying land within a locality into areas and districts, being generally referred to as “zones,” and the prescribing and application in each of these areas and district regulations concerning buildings and structural designs, building and structure placement, and uses to which the land, buildings, and structures within such designated areas may be put.

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Appendix C - Site Plan Ordinance

Section 1: Purpose of Article

The purpose of these requirements is to provide for the orderly development of certain activities in the Town and to ensure that such activities are developed in a manner harmonious with surrounding properties and in the interest of the general public welfare. To achieve these ends and to assure compliance with all applicable requirements of this chapter, site plans for certain uses of land shall be submitted to and reviewed by the Zoning Administrator.

Section 2: Developments and Uses Requiring a Site Plan

- A. All development which exceeds two thousand five hundred square feet (2,500 sf) of land disturbance, including single-family residential development, shall submit either a plot plan or site plan prior to the initiation of the development process. Land-disturbing activities shall not include minor activities such as home gardening, individual home landscaping, and home maintenance, nor shall it include access or staging areas provided they do not result in land disturbance.
- B. Any changes to an existing multi-family, commercial, and industrial use that increase the improved square footage by more than one hundred square feet (100 sf) or as deemed necessary by the Zoning Administrator or increase the number of units within the previously approved site plan.
- C. Churches, church schools, public and private schools, hospitals, nursing homes, and government offices.

Section 3: Procedures for Preparation

- A. Site plans or any portion thereof involving engineering, architecture, landscape architecture, or land surveying shall be certified by an engineer, architect, or land surveyor authorized by the Commonwealth to practice as such.
- B. Site plans shall be prepared to a scale of not more than one-inch equals one hundred feet (1" = 100') or other scale acceptable to the administrator.
- C. A site plan may be prepared in one (1) or more sheets to show clearly the information required by the Article and to facilitate the review and approval of the site plan. If prepared in more than one (1) sheet, match lines shall clearly indicate where the several sheets join.
- D. All horizontal dimensions shown on the site plan shall be in feet and decimal fractions to a foot to the closest one-hundredths of a foot (.01), and all bearings in degrees, minutes, and seconds to the nearest ten (10) seconds.
- E. Every site plan shall show the name and address of the owner or developer, the north point, the date, the scale of drawing, and the number of sheets. In addition, it shall reserve a blank space at least three inches (3") wide and five inches (5")

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for the approving authority.

- F. Three (3) copies of the site plan shall be submitted to the Zoning Administrator for administrative review.

Section 4: Required Information

- A. Plot Plans. One (1) copy of a plot plan, drawn to scale, for individual single-family dwellings or accessory structures for single-family residences or for commercial development which results in a land disturbance less than five thousand square feet (5,000 sf) and which will result in an area of impervious surface of less than sixteen percent (16%) of any lot or parcel shall be submitted to the Zoning Administrator for review and approval. Any encroachment into a Resource Protection Area (RPA) shall require an applicant to prepare a site plan as outlined in Subsection B below including the submission of a water quality impact assessment in accordance with Subsection 7.10 of the Chesapeake Bay Preservation Ordinance.
1. At a minimum, the plot plan shall be drawn to scale and contain the following information:
 - a. a boundary survey of the site drawn to scale or site drawing showing the north arrow and property line boundaries and distances;
 - b. area of the lot/parcel;
 - c. location, dimension, and use of proposed and existing structures including marine and temporary structures. In the case of temporary structures, the date when the structures will be removed must be indicated;
 - d. location of all building restriction lines, setbacks, easements, covenant restrictions, and rights-of-way;
 - e. dimensions and location of all existing driveways, parking areas, or other impervious surfaces;
 - f. limits of clearing and grading;
 - g. specifications for the protection of existing trees and vegetation during clearing, grading, and all phases of construction;
 - h. location of the Resource Protection Area (-RPA) and Resource Management Area (RMA) boundary, as specified in Subsection 7.6.64.A of the Chesapeake Bay Preservation Ordinance, including any additional required buffer areas and RPA maintenance and use restrictions; ~~revision adopted by Town Council 12/2010~~;
 - i. plat notations as required in Section 7.11 (F)(2);
 - j. location of all erosion and sediment control devices;
 - k. amount of existing and proposed impervious surface ~~proposed~~ for the site, as well as total amount of impervious cover proposed within the RPA.
- B. A site plan shall be required for any single-family, residential, or commercial development which results in five thousand square feet (5,000 sf) or more of

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land disturbance or for any multi-family or industrial development or for development specified in Subsections 2.B and 2.C or for any other development deemed necessary by the Zoning Administrator. All site plans shall contain the following information:

1. Location of the tract by an insert map at a scale of not less than one-inch equals two thousand feet (1" = 2,000'), unless otherwise acceptable to the administrator, indicating the scale, the north arrow, and such information as the names and numbers of the adjoining roads, streams and bodies of water, railroads, subdivisions, or other landmarks sufficient to clearly identify the location of the property.
2. A boundary survey of the tract by bearings and distances certified by a licensed land surveyor.
3. Certificate signed by the surveyor or engineer setting forth the source of title of the owner of the tract and the place of record of the last instrument in the chain of title.
4. All existing property lines; existing streets and easements, their names, numbers, and width; the location and sizes of existing sanitary and storm sewers, gas lines, water mains, culverts, and other utilities and their easements; existing buildings; existing watercourses, waterways, or lakes and their names; and other existing physical features in or adjoining the project.
5. Existing zoning and zoning district boundaries on the property in question and on immediately surrounding properties, including all Resource Protection Area (RPA) and Resource Management Area (RMA) boundaries, and present use of adjoining tracts.
6. Existing topography with a maximum of two-foot (2') contour levels. Where existing ground is on a slope of less than two percent (2%), either one foot (1') contours or spot elevations where necessary but not more than fifty feet (50') apart in both directions.
7. The location, dimensions, and materials proposed for the construction of proposed streets, alleys, driveways, and the location, type, and size of vehicular entrance(s) to the site.
8. The location and amount (in square feet) of all existing and proposed impervious surface including but not limited to all off-street parking, loading spaces, and walkways. The type of surfacing, size, angle of stalls, width of aisles and a specific schedule showing the number of parking spaces provided should also be indicated.
9. All proposed water and sanitary sewer facilities indicating all pipe sizes, types, and grades and where connection is to be made to town or to other utility system; all proposed gas lines and other utilities and their easements.
10. The proposed location, general use, number of floors, height and floor area for each building, accessory and main, and where applicable, the number, size, and type of dwelling units.
11. Proposed finished grading by contours supplemented where necessary by spot elevations.
12. The location, sizes, types, and grades of ditches, catch basins, and pipes,

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- and connections to existing drainage system.
13. Provisions for the adequate control of erosion and sedimentation indicating the proposed temporary and permanent control practices and measures that will be implemented during all phases of clearing, grading, and construction.
 14. Delineation of any floodplain limits.
 15. Location, type, size, and height of fencing, retaining walls, and screen planting where required under the provisions of the chapter.
 16. A landscape plan, drawn to scale, delineating dimensions and distances and the location, type, size, and description of all existing and proposed plant materials. Any required buffer area and all existing trees on site six inches (6") or greater DBH shall be clearly shown on the landscape plan. Where there are groups of trees, stands may be outlined instead. Trees to be removed to create a desired construction footprint shall be clearly delineated on the plan. The landscape plan will include specifications for the protection of existing trees and buffer areas during clearing, grading, and all phases of construction.
 17. The location and dimensions of proposed recreation, open space, and required amenities and improvements including details of disposition.
 18. A storm water management plan to include maps, graphs, tables, narrative descriptions, and citations to support references as appropriate to communicate the information required by the Town Code. At a minimum, the storm water management plan shall contain: (a) location and design of all planned storm water control devices; (b) procedures for implementing non-structural storm water control practices and techniques as applicable; (c) pre- and post-development non-point source pollutant loadings with supporting documentation of all utilized coefficients and calculations; and (d) for facilities, verification of structural soundness including a Professional Engineer or Class IIIB Surveyor Certification. All engineering calculations must be performed in accordance with procedures outlined in the current edition of the Local Assistance Manual, the Virginia Erosion and Sediment Control Handbook, or the Virginia Department of Transportation Drainage Manual.
- C. All features and elements of the site plan required by this Article shall in all respects conform to all applicable provisions and standards of the Code of Virginia and this Code, including, but not limited to: The Cape Charles Comprehensive Zoning Ordinance, Subdivision Ordinance, Erosion and Sediment Control Ordinance, or any PUD zoning ordinance approved by Town Council.

Section 5: Procedure for Processing

- A. All applicants for site plan review shall submit to the Zoning Administrator a site plan for the proposed development. The site plan review fee, as established by the Council, shall be paid at this time.

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- B. The Zoning Administrator shall review all site plans which are submitted to him pursuant hereto. The administrator shall check the site plan for general completeness and compliance with all applicable requirements. The administrator shall circulate the site plan to the relevant town departments, agencies, and officials for written comments as to the proposed development's conformance to all applicable standards and requirements and whether approval of the site plan is recommended.
- C. Except under abnormal circumstances, within 45 days from the receipt of the site plan in his office, the Zoning Administrator shall approve, approve subject to conditions, or disapprove the site plan and notify the applicant in writing of the action taken. If the site plan is denied approval, the administrator, in notifying the applicant of the decision, shall set forth in detail the reasons for the denial, which shall be limited to any defect in form or required information, any violation of any provision or standard of this chapter or any other ordinance, or the inadequacy of any utility and shall state any changes which would make the site plan acceptable.

Section 6: Time for Obtaining Building Permit After Approval; Extension of Time

Approval of a site plan submitted under the provisions of this Article shall expire five years (5 yrs) after the date of such approval unless building permits have been obtained for construction in accordance therewith. A single one-year (1 yr) extension may be given upon written request by the applicant to the Zoning Administrator and Town Manager made within ninety (90) days before the expiration of the approved site plan. The Zoning Administrator and Town Manager shall acknowledge the request and shall make a decision regarding the requested extension within thirty (30) days after receipt of the request.

Section 7: Revision of Site Plan; Waiver of Requirements of Article

The Zoning Administrator may approve minor revisions to an approved site plan, provided that Town requirements and specifications are not affected. Major revisions shall require that a new site plan be drawn, and the review and approval process begun anew. Any revision to an approved site plan that does not change the proposed use, and that exceeds the ordinance requirements of the previously approved plan, shall be approved by the Zoning Administrator.

Section 8: Appeals

Any applicant aggrieved of any decision of the Zoning Administrator on a site plan review may, within ten (10) days of such decision, appeal to the Town Council. The Town Council shall act upon such an appeal by the owner at its next regularly scheduled meeting. The applicant may appeal Town Council's decision to the Northampton County Circuit Court as provided by law.

Section 9: Building Permits to Comply with Site Plans

No permit shall be issued for any structure in an area covered by the site plan that is required under the provisions of this Article in conformity to such a plan which has been duly approved or revised as provided in Section 7.

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***Section 10: Agreement and Bond for Construction of Certain Improvements;
Establishment of Fees for Examination and Issuance of Building Permits***

- A. Prior to the issuance of any building permits for which an approved site plan is required, there shall be executed by the owner, developer, or their contractor, an agreement to construct the agreed-upon physical improvements that are located within the public right-of-way or public easements in a form approved by the Town. Such agreements shall be in accordance with this ordinance and be accompanied by a letter of credit, escrow, or a bond with surety acceptable to the Town (hereinafter “security”) in the amount of the estimated cost of the required physical improvements as determined by the town departments, divisions, or agencies responsible for such improvements.
- B. Such security shall remain in force until the completion of the secured improvements within the public right-of-way or public easements shown on the approved site plan. Such security shall be partially and proportionally released within thirty (30) days of receipt by the Town of written notice from the contractor certifying completion of a distinguishable part of the secured improvements. If the Town notifies the contractor in writing of any defects or deficiencies in the secured improvements within this thirty (30) day period, then corrective measures must be taken by the contractor prior to any partial or complete release of the security.
- C. Such security shall be with a firm or bank acceptable to the Town Manager which approval shall not be unreasonably withheld.
- D. “Best Management Practices” (BMP) imposed by these regulations that require regular or periodic maintenance in order to continue their function shall be regulated by a maintenance agreement submitted to the Town by the owner, developer, homeowner association, or other entity responsible for said BMPs and, where approved by the Town, shall run with the land and be binding upon the entity that assumes responsibility for said BMPs.

Section 11: Compliance with Approved Site Plan

- A. Unless otherwise specifically provided in this chapter, the construction standards for all offsite improvements and site improvements required by this Article shall comply with approved site plan.
- B. Inspections during the installation of the offsite improvements and required onsite improvements shall be made by the department responsible for such improvements as are required to certify compliance with the approved site plan.
- C. The owner shall notify the Town Manager in writing three (3) days prior to the beginning of all street or storm sewer work shown to be constructed on the site plan.
- D. The owner or owner’s contractor shall provide adequate supervision on the

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site during the installation of all required improvements within the public right-of-way or public easements and have a responsible superintendent or foreman, together with one (1) set of approved plans, profiles, and specifications, available at the site at all times when work is being performed.

- E. Upon satisfactory completion of the installation of the required improvements, the owner shall receive a certificate of approval from the Zoning Administrator. The Town Manager will authorize the release of any bond which may have been furnished for the guarantee of satisfactory installation of such improvements or parts thereof upon notice by the Zoning Administrator that the improvements have been satisfactorily completed.
- F. The installation of improvements as required in this Article shall in no case serve to bind the Town except such improvements for the maintenance, repair, or operation thereof, but such acceptance shall be subject to the existing regulations concerning the acceptance of each type of improvement. Upon acceptance, the Town shall assume all ownership, maintenance, and repair obligations of the dedicated improvements.

Section 12: Occupancy Certificates

A final occupancy permit may be issued for any appropriately completed building or part of building located in a part of the total area of an approved site plan, such part of the total area to be known as a section, provided that:

- A. The other onsite construction and improvements included in the approved site plan for the section have been completed and have been inspected and accepted by the Zoning Administrator, the Town Manager, and the county health officer or their agents.
- B. The off-site improvements related to and necessary to service the section has been completed, inspected, and accepted by the Town Manager or his agents, or the developer has provided surety acceptable to the Town.

This ordinance was originally adopted on July 14, 1992, and subsequently amended on July 11, 1995, June 16, 1993, and December 9, 2010.

Modifications to Section 2-Definitions approved by Town Council on February 9, 2012.

Appendix D - Cape Charles/Coastal Primary Sand Dune Ordinance

Section 1: Authorization

The governing body of the Town of Cape Charles, acting pursuant to [§ 28.2-1403](#) of the Code of Virginia, adopts this ordinance regulating the use and development of coastal primary sand dunes. Whenever coastal primary sand dunes are referred to in this ordinance, such references shall also include beaches.

Section 2: Definitions

BEACH means the shoreline zone comprised of unconsolidated sandy material upon which there is a mutual interaction of the forces of erosion, sediment transport and deposition that extends from the low water line landward to where there is a marked change in either material composition or physiographic form such as a dune, bluff, or marsh, or where no such change can be identified, to the line of woody vegetation (usually the effective limit of storm waves), or the nearest impermeable manmade structure, such as a bulkhead, revetment, or paved road.

COASTAL PRIMARY SAND DUNE or DUNE means a mound of unconsolidated sandy soil which is contiguous to mean high water, whose landward and lateral limits are marked by a change in grade from ten percent (10%) or greater to less than ten percent (10%), and upon which is growing any of the following species: American beach grass (*Ammophilla breviligualata*); beach heather (*Hudsonia tomentosa*); dune bean (*Strophostylis* spp.); dusty miller (*Artemisia stelleriana*); saltmeadow hay (*Spartina patens*); seabeach sandwort (*Arenaria peploides*); sea oats (*Uniola paniculata*); sea rocket (*Caiile edentula*); seaside goldenrod (*Solidago sempervirens*); and short dune grass (*Panicum ararum*). For purposes of this ordinance, COASTAL PRIMARY SAND DUNE shall not include any mound of sand, sandy soil, or dredge spoil deposited by any person for the purpose of temporary storage.

COMMISSION means the Virginia Marine Resources Commission.

COMMISSIONER means the Commissioner of Marine Resources.

COUNTY, CITY, AND TOWN means the governing body of the county, city, and town.

GOVERNMENTAL ACTIVITY means any of the services provided by the Commonwealth or a county, city, or town to its citizens for the purpose of maintaining public facilities, including but not limited to, such services as constructing, repairing, and maintaining roads; providing streetlights and sewage facilities; supplying and treating water; and constructing public buildings.

WETLANDS BOARD or BOARD means the board created pursuant to § 28.2- 1303 of the Code of Virginia.

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Appendix D – Cape Charles/Coastal Primary Sand Dune Ordinance

Section 3: Uses and Activities

The following uses of and activities in dunes are authorized if otherwise permitted by law:

- A. the construction and maintenance of noncommercial walkways which do not alter the contour of the coastal primary sand dune;
- B. the construction and maintenance of observation platforms which are not an integral part of any dwelling, and which do not alter the contour of the coastal primary sand dune;
- C. the planting of beach grasses or other vegetation for the purpose of stabilizing coastal primary sand dunes;
- D. the placement of sand fences or other material on or adjacent to coastal primary sand dunes for the purpose of stabilizing such features, except that this provision shall not be interpreted to authorize the placement of any material which represents a public health or safety hazard;
- E. sand replenishment activities of any private or public concern, provided no sand shall be removed from any coastal primary sand dune unless authorized by lawful permit;
- F. the normal maintenance of any groin, jetty, riprap, bulkhead, or other structure designed to control beach erosion which may abut a coastal primary sand dune;
- G. the normal maintenance or repair of existing roads, highways, railroad beds, and facilities of the United States, this Commonwealth or any of its counties, cities, or towns, or of any person provided no coastal primary sand dunes are altered;
- H. outdoor recreational activities provided the activities do not alter the natural contour of the coastal primary sand dune or destroy the vegetation growing thereon;
- I. the conservation and research activities of the Commission, Virginia Institute of Marine Science, Department of Game and Inland Fisheries, and other conservation-related agencies;
- J. the construction and maintenance of aids to navigation which are authorized by governmental authority;
- K. activities pursuant to any emergency declaration by the governing body of any local government or the Governor of the Commonwealth or any public health officer for the purposes of protecting the public health and safety; and

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- L. governmental activity in coastal primary sand dunes owned or leased by the Commonwealth or a political subdivision thereof.

Section 4: Use Regulations

- A. Any person who desires to use or alter any coastal primary sand dune within this Town, other than for the purpose of conducting the activities specified in Section 3 of this ordinance, shall first file an application directly with the Wetlands Board or with the Commission.
- B. The permit application shall include the following: the name and address of the applicant; a detailed description of the proposed activities and a map, drawn to an appropriate and uniform scale, showing the area of dunes directly affected, the location of the proposed work thereon, the area of any proposed fill and excavation, the location, width, depth, and length of any disposal area, and the location of all existing and proposed structures, sewage collection and treatment facilities, utility installations, roadways, and other related appurtenances or facilities, including those on adjacent uplands; a description of the type of equipment to be used and the means of equipment access to the activity site; the names and addresses of owners of record of adjacent land; an estimate of cost; the primary purpose of the project; any secondary purposes of the project, including further projects; the public benefit to be derived from the proposed project; a complete description of measures to be taken during and after the alteration to reduce detrimental offsite effects; the completion date of the proposed work, project, or structure; and such additional materials and documentation as the Wetlands Board may require.
- C. A non-refundable processing fee shall accompany each permit application. The fee shall be set by the applicable governing body with due regard for the services to be rendered, including the time, skill, and administrator's expense. No person shall be required to file two separate applications for permits if the proposed project will require permits under this ordinance and Chapter 14 of Title 28.2 ([§ 28.2-1400](#) et seq.) of the Code of Virginia. Under those circumstances, the fee shall be established pursuant to this ordinance.

Section 5: Public Inspection

All applications, maps, and documents submitted shall be open for public inspection at the office of the recording secretary of the Town of Cape Charles.

Section 6: Public Hearing Requirements

Not later than sixty (60) days after receipt of a complete application, the Wetlands Board shall hold a public hearing on the application. The applicant, local governing body, Commissioner, owner of record of any land adjacent to the coastal primary sand dunes in question, the Virginia Institute of Marine Science, the Department of Game and Inland Fisheries, the State Water Control Board, the Department of Transportation, and any governmental agency expressing an interest in the application shall be notified of the hearing. The board shall mail these notices not less than twenty (20) days prior to the date set for the hearing. The Wetlands Board shall

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also cause notice of the hearing to be published at least once a week seven (7) days prior to such hearing in a newspaper of general circulation in the Town of Cape Charles. The board shall post a notice of the hearing on its website at least fourteen (14) days prior to such hearing. The board shall provide a copy of such notice to the Commission for submittal to the Virginia Regulatory Town Hall. The costs of publication shall be paid by the applicant.

Section 7: Permit Procedure

- A. Approval of a permit application shall require the affirmative vote of three (3) members of a five (5) member board or four (4) members of a seven (7) member board.
- B. The chairman of the board, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. Any person may appear and be heard at the public hearing. Each witness at the hearing may submit a concise written statement of his testimony. The board shall make a record of the proceedings, which shall include the application, any written statements of witnesses, a summary of statements of all witnesses, the findings and decision of the board, and the rationale for the decision.
- C. The board shall make its determination within thirty (30) days of the hearing. If the board fails to act within that time, the application shall be deemed approved. Within forty-eight hours (48 hrs) of its determination, the board shall notify the applicant and the Commissioner of its determination. If the board fails to make a determination with the thirty (30) day period, it shall promptly notify the applicant and the Commission that the application is deemed approved.
- D. If the board's decision is reviewed or appealed, the board shall transmit the record of its hearing to the Commissioner. Upon a final determination by the Commission, the record shall be returned to the board. The record shall be open for public inspection at the office of the recording officer of the Town of Cape Charles.

Section 8: Bond

The board may require a reasonable bond or letter of credit in an amount and with surety and conditions satisfactory to it, securing to the Commonwealth compliance with the conditions and limitations set forth in the permit. The board may, after a hearing held pursuant to this ordinance, suspend or revoke a permit if the applicant has failed to comply with any of the conditions or limitations set forth in the permit or has exceeded the scope of the work described in the application. The board may, after a hearing, suspend a permit if the applicant fails to comply with the terms and conditions set forth in the application.

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Section 9: Preservation

In fulfilling its responsibilities under this ordinance, the board shall preserve and protect coastal primary sand dunes and beaches and prevent their despoliation and destruction. However, whenever practical, the board shall accommodate necessary economic development in a manner consistent with the protection of these features.

Section 10: Criteria

- A. In deciding whether to grant, grant in modified form, or deny a permit, the board shall consider the following:
 - 1. the testimony of any person in support of or in opposition to the permit application;
 - 2. the impact of the proposed development on the public health, safety, and welfare; and
 - 3. the proposed development's conformance with standards prescribed in [§ 28.2-1408](#) of the Code of Virginia and guidelines promulgated pursuant to [§ 28.2-1401](#) of the Code of Virginia.
- B. The board shall grant the permit if all of the following criteria are met:
 - 1. The anticipated public and private benefit of the proposed activity exceeds its anticipated public and private detriment.
 - 2. The proposed development conforms with the standards prescribed in [§ 28.2-1408](#) of the Code of Virginia and guidelines promulgated pursuant to [§ 28.2-1401](#) of the Code of Virginia.
 - 3. The proposed activity does not violate the purposes and intent of this ordinance or Chapter 14 of Title 28.2 ([§ 28.2-1400](#) et seq.) of the Code of Virginia.
- C. If the board finds that any of the criteria listed in Subsection B of this section are not met, the board shall deny the permit application but allow the applicant to resubmit the application in modified form.

Section 11: Commissioner's Copy

The permit shall be in writing, signed by the chairman of the board, and notarized. A copy of the permit shall be transmitted to the Commissioner.

Section 12: Expiration Date

No permit shall be granted without an expiration date established by the board. Upon proper application, the board may extend the permit expiration date.

Section 13: Compensation Rights

No permit granted by a wetlands board shall in any way affect the right of any person to seek compensation for any injury in fact incurred by him because of the permitted activity.

This ordinance was originally adopted on July 14, 1992, and subsequently amended on July 11, 1995, June 16, 1997, and December 9, 2010.
Modifications to Section 2-Definitions approved by Town Council on February 9, 2012

Appendix E – Erosion and Sediment Control

Section 1.1: Title, Purpose, and Authority

- A. This ordinance shall be known as the ‘Erosion and Sediment Control Ordinance of the Town of Cape Charles.’ The purpose of this ordinance is to prevent the unreasonable degradation of properties, stream channels, waters and other natural resources of the Town of Cape Charles by establishing requirements for the effective control of soil erosion, sediment deposition and non-agricultural runoff and by establishing procedures whereby these requirements shall be administered and enforced.

- B. This ordinance is authorized by [§ 62.1-44.15:54](#) of the Code of Virginia.

Section 1.2: Definitions

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

AGREEMENT IN LIEU OF A PLAN means a contract between the Town of Cape Charles and the owner that specifies conservation measures that must be implemented to comply with the requirements of this ordinance for the construction of a (i) single-family detached residential structure or (ii) farm building or structure on a parcel of land with a total impervious cover percentage, including the impervious cover from the farm building or structure to be constructed, of less than five percent; this contract may be executed by the Town of Cape Charles in lieu of formal site plan.

APPLICANT means any person submitting an erosion and sediment control plan for approval in order to obtain authorization for land-disturbing activities to commence.

BOARD means the State Water Control Board.

CERTIFIED INSPECTOR FOR ESC means an employee or agent of the VESCP authority who:

- 1. holds a certificate of competence from the department in the area of project inspection or;
- 2. is enrolled in the department’s training program for project inspection and successfully completes such program within one year after enrollment.

CERTIFIED PLAN REVIEWER FOR ESC means an employee or agent of the VESCP authority who:

- 1. holds a certificate of competence from the department in the area of plan review;
- 2. is enrolled in the department’s training program for plan review and successfully completes such program within one year (1 yr) after enrollment, or;
- 3. is licensed as a professional engineer, architect, landscape architect,

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land surveyor pursuant to Article 1 ([§ 54.1-400](#) et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia, or professional soil scientist as defined in [§ 54.1-2200](#).

CERTIFIED PROGRAM ADMINISTRATOR FOR ESC means an employee or agent of the VESCP authority who holds a certification from the department in the classification of program administrator or (ii) is enrolled in the department’s training program for program administration and successfully completes such program within one year (1 yr) after enrollment.

CHESAPEAKE BAY PRESERVATION ACT means Article 2.5 ([§ 62.1-44.15:67](#) et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

CHESAPEAKE BAY PRESERVATION AREA means any land designated by a local government pursuant to Part III (9VAC25-830-70 et seq.) of the Chesapeake Bay Preservation Area Designation and Management Regulations and [§ 62.1-44.15:74](#) of the Code of Virginia. A Chesapeake Bay Preservation Area shall consist of a Resource Protection Area and a Resource Management Area as defined in the Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC25-830).

CLEARING means any activity which removes the vegetative ground cover including root mat removal or topsoil removal.

DEPARTMENT means the Virginia Department of Environmental Quality.

DISTRICT or **SOIL AND WATER CONSERVATION DISTRICT** refers to the Eastern Shore Soil and Water Conservation District.

EROSION AND SEDIMENT CONTROL PLAN or **PLAN** means a document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory and management information with needed interpretations, and a record of decisions contributing to conservation treatment. The plan shall contain all major conservation decisions to ensure that the entire unit or units of land will be so treated to achieve the conservation objectives.

EROISION IMPACT AREA means an area of land that is not associated with a current land-disturbing activity but is subject to persistent soil erosion resulting in the delivery of sediment onto neighboring properties or into state waters. This definition shall not apply to any lot or parcel of land of ten thousand square feet (10,000 SF) or less used for residential purposes [or to shorelines where the erosion results from wave action or other coastal processes.]

FARM BUILDING AND STRUCTURE means the same as that term is defined in [§ 36-97](#) of the Code of Virginia and also includes any building or structure used for agritourism activity, as defined in [§ 3.2-6400](#), and any related impervious surfaces including roads, driveways, and parking areas.

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EXCAVATING means any digging, scooping or other methods of removing earth materials. **FILLING** means any depositing or stockpiling of earth materials.

GRADING means any excavating or filling of earth material or any combination thereof, including the land in its excavated or filled conditions.

LAND DISTURBANCE or **LAND-DISTURBING ACTIVITY** means a man-made change to the land surface that may result in soil erosion or has the potential to change its runoff characteristics, including the clearing, grading, excavating, transporting, and filling of land.

LAND - DISTURBING PERMIT OR APPROVAL means a permit or an approval allowing a land- disturbing activity to commence issued by the Town of Cape Charles after the requirements of § 62.1-44.15:55 of the Code of Virginia have been met.

NATURAL CHANNEL DESIGN CONCEPTS means the utilization of engineering analysis and fluvial geomorphic processes to create, rehabilitate, restore, or stabilize an open conveyance system for the purpose of creating or recreating a stream that conveys its bank full storm event within its banks and allows larger flows to access its bankfull bench and its floodplain.

OWNER means the same as provided in [§ 62.1-44.3](#) of the Code of Virginia. For a land-disturbing activity that is regulated under Article 2.4 ([§ 62.1-44.15:51](#) et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia and this ordinance, "owner" also includes the owner or owners of the freehold of the premises or lesser estate therein, mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person, firm, or corporation in control of a property.

PEAK FLOW RATE means the maximum instantaneous flow from a prescribed design storm at a particular location.

PERCENT IMPERVIOUS means the impervious area within the site divided by the area of the site multiplied by one hundred (100).

PERMITTEE means the person to whom the permit is issued.

PERSON means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town, or other political subdivision of the Commonwealth, governmental body, including a federal or state entity as applicable, any interstate body, or any other legal entity.

RESPONSIBLE LAND DISTURBER or **RLD** means an individual holding a certificate issued by the department who is responsible for carrying out the land-disturbing activity in accordance with the approved erosion and sediment control plan. The RLD may be the owner, applicant, permittee, designer, superintendent, project manager,

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contractor, or any other project or development team member. The RLD must be designated on the erosion and sediment control plan or permit as defined in the Virginia Erosion and Stormwater Management Regulation (9VAC25-875) as a prerequisite for engaging in land disturbance. The RLD must be designated on the erosion and sediment control plan or permit as defined in this ordinance as a prerequisite for engaging in land disturbance.

RUNOFF VOLUME means the volume of water that runs off the land development project from a prescribed storm event.

SINGLE-FAMILY DETACHED RESIDENTIAL STRUCTURE means a noncommercial dwelling that is occupied exclusively by one (1) family.

STATE WATERS means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands.

TRANSPORTING means any moving of earth materials from one place to another place other than such movement incidental to grading, when such movement results in destroying the vegetative ground cover either by tracking or the buildup of earth materials to the extent that erosion and sedimentation will result from the soil or earth materials over which such transporting occurs.

TOWN means the incorporated town of Cape Charles.

VIRGINIA EROSION AND SEDIMENT CONTROL PROGRAM or **VESCP** means a program approved by the department that is established by a VESCP authority for the effective control of soil erosion, sediment deposition, and nonagricultural runoff associated with a land-disturbing activity to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources and shall include such items where applicable as local ordinances, rules, policies and guidelines, technical materials, and requirements for plan review, inspection, and evaluation consistent with the requirements of the Erosion and Sediment Control Law (ESCL).

VIRGINIA EROSION AND SEDIMENT CONTROL PROGRAM AUTHORITY or **VESCP AUTHORITY**, for purposes of this ordinance means the Town of Cape Charles, through the Code Official, that has been approved by the department to operate a Virginia Erosion and Sediment Control Program in accordance with Article 2.4 ([§ 62.1-44.15:51](#) et seq.) of Chapter 3.1, the State Water Control Law, of Title 62.1 of the Code of Virginia.

VESCP PLAN-APPROVING AUTHORITY means the Cape Charles Code Official responsible for determining the adequacy of a plan submitted for land-disturbing activities on a unit or units of lands and for approving plans.

VPDES PERMIT means a General VPDES (Virginia Pollutant Discharge Elimination System) Permit for Discharges of Stormwater from Construction Activities, 9VAC25-

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880, issued by the department pursuant to [§ 62.1-44.15](#) of the Code of Virginia for stormwater discharges from a land-disturbing activity.

Section 1.3: Local Erosion and Sediment Control Program

Pursuant to [§ 62.1-44.15:54](#) of the Code of Virginia, the Town of Cape Charles hereby establishes a Virginia Erosion and Sediment Control Program (VESCP) and adopts the regulations promulgated by the Board (for the effective control of soil erosion and sediment deposition to prevent the unreasonable degradation of properties, stream channels, waters and other natural resources) and the Virginian Stormwater Management Handbook. In accordance with [§ 62.1-44.15:52](#) of the Code of Virginia, any plan approved prior to July 1, 2014 that provides for stormwater management that addresses any flow rate capacity and velocity requirements for natural or man-made channels shall satisfy the flow rate capacity and velocity requirements for natural or man-made channels if the practices are designed to (i) detain the water quality volume and to release it over forty-eight hours (48 hrs); (ii) detain and release over a twenty-four hour (24 hr) period the expected rainfall resulting from the one year (1 yr), twenty-four hour (24 hr) storm; and (iii) reduce the allowable peak flow rate resulting from the one and a half (1.5), two (2), and ten (10) year, twenty-four hour (24 hr) storms to a level that is less than or equal to the peak flow rate from the site assuming it was in a good forested condition, achieved through multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume from the site when it was in a good forested condition divided by the runoff volume from the site in its proposed condition, and shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels.

- A. For plans approved on and after July 1, 2014, the flow rate capacity and velocity requirements for natural and man-made channels shall be satisfied by compliance with water quantity requirements specified 9VAC25-875-600, unless such land-disturbing activities are in accordance with the grandfathering provisions of 9VAC25-875-490.
- B. Pursuant to [§ 62.1-44.15:53](#) of the Code of Virginia, an erosion control plan shall not be approved until it is reviewed by a certified plan reviewer for ESC. Inspections of land-disturbing activities shall be conducted by a certified inspector for ESC. The Erosion and Sediment Control Program of Cape Charles shall contain a certified program administrator for ESC, a certified plan reviewer for ESC, and a certified inspector for E SC (who may be the same person.)
- C. The Town of Cape Charles hereby designates the Cape Charles Code Official as the SCP plan-approving authority.
- D. The program and regulations provided for in this ordinance shall be made available for public inspection at the office of the Code Official for the Town of Cape Charles.

Section 1.4: Regulated Land-Disturbing Activities

- A. Land-disturbing activities that meet one of the criteria below are regulated as

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follows:

1. Land-disturbing activity that disturbs ten thousand square feet (10,000 SF) or more, is less than one acre (1ac), not in an area of a locality designated as a Chesapeake Bay Preservation Area, and not part of a common plan of development or sale, is subject to criteria defined in Article 2 (9VAC25-875-540 et seq.) of Part V of the Virginia Erosion and Stormwater Management Regulation (Regulation).
2. Land-disturbing activity that disturbs two thousand five hundred square feet (2,500 SF) or more, is less than one acre (1 ac), and in an area of a locality designated as a Chesapeake Bay Preservation Area is subject to criteria defined in Article 2 (9VAC25-875-540 et seq.) and Article 3 (9VAC25-875-570 et seq.) of Part V unless Article 4 (9VAC25-875-670 et seq.) of Part V of the Regulation is applicable, as determined in accordance with 9VAC25-875-480 and 9VAC25-875-490.]

Section 1.5: ESCL Activities Not Required to Comply with the ESCL

Notwithstanding any other provisions of the Erosion and Sediment Control Law for Localities Not Administering a Virginia Erosion and Stormwater Management Program (ESCL), the following activities are not required to comply with the ESCL unless otherwise required by federal law:

1. Disturbance of a land area of less than ten thousand square feet (10,000 SF) in size and not in the CBPA;
2. Minor land-disturbing activities such as home gardens and individual home landscaping, repairs, and maintenance work;
3. Installation, maintenance, or repair of any individual service connection;
4. Installation, maintenance, or repair of any underground utility line when such activity occurs on an existing hard surfaced road, street, or sidewalk, provided the land-disturbing activity is confined to the area of the road, street, or sidewalk that is hard surfaced;
5. Installation, maintenance, or repair of any septic tank line or drainage field unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;
6. Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted pursuant to [Title 45.2](#) of the Code of Virginia;
7. Clearing of lands specifically for bona fide agricultural purposes; the management, tilling, planting, or harvesting of agricultural, horticultural, or forest crops; livestock feedlot operations; agricultural engineering operations, including construction of terraces, terrace

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outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; or as additionally set forth by the board in regulations. However, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 ([§ 10.1-1100](#) et seq.) of Title 10.1 of the Code of Virginia or is converted to bona fide agricultural or improved pasture use as described in subsection B of [§ 10.1-1163](#) of the Code of Virginia;

8. Installation of fence and signposts or telephone and electric poles and other kinds of posts or poles;
9. Shoreline erosion control projects on tidal waters when all of the land-disturbing activities are within the regulatory authority of and approved by local wetlands boards, the Virginia Marine Resources Commission, or the United States Army Corps of Engineers; however, any associated land that is disturbed outside of this exempted area shall remain subject to the ESCL and the regulations adopted pursuant thereto;
10. Land-disturbing activities in response to a public emergency where the related work requires immediate authorization to avoid imminent endangerment to human health or the environment. In such situations, the VESCP authority shall be advised of the disturbance within seven days of commencing the land-disturbing activity, and compliance with the administrative requirements of subsections 1.6, 1.7 and 1.8 of this ordinance are required within thirty (30) days of commencing the land-disturbing activity;
11. Discharges to a sanitary sewer or a combined sewer system that are not from a land-disturbing activity; and
12. Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities, and other related structures and facilities of a railroad company.

Section 1.6: Submission and Approval of Plans; Contents of Plans

- A. Except as provided herein, no person may engage in any regulated land-disturbing activity until he or she has submitted to the Town of Cape Charles an erosion and sediment control plan for the regulated land-disturbing activity and such plan has been approved by the Town of Cape Charles. No approval to begin a land disturbing activity will be issued unless evidence of VPDES permit coverage is obtained where it is required. Where the land-disturbing activity results from the construction of a (i) single-family detached residential structure or (ii) farm building or structure on a parcel of land with a total impervious cover percentage, including the impervious cover from the farm

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building or structure to be constructed, of less than five percent, an agreement in lieu of a plan may be substituted for an erosion and sediment control plan if executed by the VESCP plan-approving authority.

- B. The standards contained within the "Virginia Erosion and Stormwater Management Regulation (9VAC25-875)" and the Virginia Stormwater Management Handbook, as amended, are to be used by the applicant when making a submittal under the provisions of this ordinance and in the preparation of an erosion and sediment control plan. The VESCP plan-approving authority, in considering the adequacy of a submitted plan, shall be guided by the same standards, regulations and guidelines. When the standards vary between the publications, the Virginia Erosion and Stormwater Management Regulation shall take precedence.
- C. The VESCP plan-approving authority shall review erosion and sediment control plans submitted to it and grant written approval within sixty (60) days of the receipt of the plan if it determines that the plan meets the requirements of the Erosion and Sediment Control Law for Localities not Administering a Virginia Erosion and Stormwater Management Program and 9VAC25-875, and if the person responsible for carrying out the plan certifies that he or she will properly perform the erosion and sediment control measures included in the plan and will comply with the provisions of this ordinance. In addition, as a prerequisite to engaging in the land-disturbing activities shown on the approved plan, the person responsible for carrying out the plan shall provide the name of the responsible land disturber to the VESCP authority, as required by 9VAC25-875-300 and 9VAC25-875-550, who will be in charge of and responsible for carrying out the land-disturbing activity. Failure to provide the name of the responsible land disturber, prior to engaging in land-disturbing activities may result in revocation of the approval of the plan and the person responsible for carrying out the plan shall be subject to the penalties provided in this ordinance.

However, the VESCP plan-approving authority may waive the Responsible Land Disturber certificate requirement for an agreement in lieu of a plan for construction of a single-family detached residential structure. If a violation occurs during the land-disturbing activity associated with the construction of the single-family detached residential structure, then the person responsible for carrying out the agreement in lieu of a plan shall correct the violation and provide the name of the responsible land disturber to the VESCP authority. Failure to provide the name of the responsible land disturber shall be a violation of this ordinance.

- D. When the plan is determined to be inadequate, written notice of disapproval stating the specific reasons for disapproval shall be communicated to the applicant within forty-five (45) days. The notice shall specify such modifications, terms and conditions that will permit approval of the plan. If no action is taken within forty-five (45) days, the plan shall be deemed approved and the person authorized to proceed with the proposed activity.

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- E. The Town of Cape Charles shall act on any erosion and sediment control plan that has been previously disapproved within forty-five (45) days after the plan has been revised, resubmitted for approval, and deemed adequate.
- F. The Town of Cape Charles may require changes to an approved plan when:
 - 1. The inspection reveals that the plan is inadequate to satisfy applicable regulations; or
 - 2. The person responsible for carrying out the plan finds that because of changed circumstances or for other reasons the approved plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of this ordinance, are agreed to by the VESCP plan- approving authority and the person responsible for carrying out the plans.
- G. Variances: The VESCP plan-approving authority may waive or modify any of the standards that are deemed to be inappropriate or too restrictive for site conditions, by granting a variance. A variance may be granted under these conditions:
 - 1. At the time of plan submission, an applicant may request a variance to become part of the approved erosion and sediment control plan. The applicant shall explain the reasons for requesting variances in writing. Specific variances which are allowed by the VESCP plan-approving authority shall be documented in the plan.
 - 2. During construction, the person responsible for implementing the approved plan may request a variance in writing from the VESCP plan-approving authority. The VESCP plan-approving authority shall respond in writing either approving or disapproving such a request. If the VESCP plan-approving authority does not approve a variance within ten (10) days of receipt of the request, the request shall be considered to be disapproved. Following disapproval, the applicant may resubmit a variance request with additional documentation.
 - 3. The Town of Cape Charles shall consider variance requests judiciously, keeping in mind both the need of the applicant to maximize cost effectiveness and the need to protect off-site properties and resources from damage.
- H. In order to prevent further erosion, the Town of Cape Charles may require approval of a plan for any land identified in the local program as an erosion impact area.
- I. When a land-disturbing activity will be required of a contractor performing construction work pursuant to a construction contract, the preparation, submission, and approval of an erosion and sediment control plan shall be the

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responsibility of the owner.

- J. As an alternative to submitting soil erosion control and stormwater management plans pursuant to [§ 62.1-44.15:34](#) of the Code of Virginia to the Town of Cape Charles, any person engaging in more than one jurisdiction in the creation and operation of a wetland mitigation or stream restoration bank that has been approved and is operated in accordance with applicable federal and state guidance, laws, or regulations for the establishment, use, and operation of (i) a wetlands mitigation or stream restoration bank, pursuant to a mitigation banking instrument signed by the Department, the Marine Resources Commission, or the U.S. Army Corps of Engineers, or (ii) a stream restoration project for purposes of reducing nutrients or sediment entering state waters may submit standards and specifications for Department approval that describe how land-disturbing activities shall be conducted.

Section 1.7: Erosion and Sediment Control Plan; Contents of Plans

- A. An erosion and sediment control plan shall be filed for a development and the buildings constructed within, regardless of the phasing of construction. The erosion and sediment control plan shall be consistent with the criteria, techniques, and methods in 9VAC25-875-560. The erosion and sediment control plan shall contain all major conservation decisions to ensure that the entire unit or units of land will be so treated to achieve the conservation objectives in 9VAC25-875-560. The erosion and sediment control plan may include:
 - 1. Appropriate maps;
 - 2. An appropriate soil and water plan inventory and management information with needed interpretations; and;
 - 3. A record of decisions contributing to conservation treatment.
- B. The person responsible for carrying out the plan shall provide the name of an individual holding a certificate who will be in charge of and responsible for carrying out the land-disturbing activity to the VESMP authority. [Note: The VESMP authority may waive the Responsible Land Disturber certificate requirement for an agreement in lieu of a plan in accordance with [§ 62.1-44.15:34](#) or [§ 62.1-44.15:55](#) of the Code of Virginia.]
- C. If individual lots or sections in a residential development are being developed by different property owners, all land-disturbing activities related to the building construction shall be covered by an erosion and sediment control plan or an "Agreement in Lieu of a Plan" signed by the property owner.
- D. Land-disturbing activity of less than ten thousand square feet (10,000 SF) on individual lots in a residential development shall not be considered exempt from the provisions of the VESMA, ESCL, or this ordinance if the total land-disturbing activity in the development is equal to or greater than ten thousand square feet (10,000 SF).

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Appendix E – Erosion and Sediment Control

Section 1.8: Permits; Fees; Security for Performance

- A. Agencies authorized under any other law to issue grading, building, or other permits for activities involving land-disturbing activities shall not issue any such permit unless the applicant submits with his application an approved erosion and sediment control plan, certification that the plan will be followed and evidence of VPDES permit coverage where it is required.
- B. No person may engage in any land-disturbing activity until he or she has acquired a land-disturbing permit (unless the proposed land-disturbing activity is specifically exempt from the provisions of this ordinance), has paid the fees and has posted the required bond.
- C. An administrative fee as determined by the Cape Charles Town Council as part of an adopted fee structure for the Building, Planning & Zoning Department as part of the Annual Budget Ordinance shall be paid to the Town of Cape Charles at the time of submission of the erosion and sediment control plan.
- D. No land-disturbing permit shall be issued until the applicant submits with his or her application an approved erosion and sediment control plan [or agreement in lieu of an approved erosion and sediment control plan] and certification that the plan will be followed.
- E. All applicants for permits shall provide to the Town of Cape Charles a performance bond with surety, cash escrow, or an irrevocable letter of credit acceptable to the Cape Charles Code Official, to ensure that measures could be taken by the Town of Cape Charles at the applicant's expense should the applicant fail, after proper notice, within the time specified to initiate or maintain appropriate conservation measures required of him or her by the approved plan as a result of his land-disturbing activity.

The amount of the bond or other security for performance shall not exceed the total of the estimated cost to initiate and maintain appropriate conservation action based on unit price for new public or private sector construction in the locality and a reasonable allowance for estimated administrative costs and inflation which shall not exceed twenty-five percent (25%) of the cost of the conservation action. Should it be necessary for the Town of Cape Charles to take such conservation action, the Town may collect from the applicant any costs in excess of the amount of the surety held. Within sixty (60) days of adequate stabilization, as determined by the Cape Charles Code Official in any project or section of a project, such bond, cash escrow or letter of credit, or the unexpended or unobligated portion thereof, shall be either refunded to the applicant or terminated, based upon the percentage of stabilization accomplished in the project or project section. These requirements are in addition to all other provisions relating to the issuance of permits and are not intended to otherwise affect the requirements for such permits.

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Section 1.9: Monitoring, Reports, and Inspections

- A. The responsible land disturber, as provided by § [62.1-44.15:52](#), shall be in charge of and responsible for carrying out the land-disturbing activity and provide for periodic inspections of the land-disturbing activity. The person responsible for carrying out the plan shall monitor the land-disturbing activity. The person responsible for carrying out the plan will maintain records of these inspections and maintenance, to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation.
- B. The Cape Charles Code Official shall periodically inspect the land-disturbing activity in accordance with 9VAC25-875-330 to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation. The owner, permittee, or person responsible for carrying out the plan shall be given notice of the inspection and shall such inspection in accordance with [§ 62.1-44.15:60](#) and the land-disturbing permit.

If the Cape Charles Code Official determines that there is a failure to comply with the plan, notice to comply may be served upon the permittee or person responsible for carrying out the plan. Such notice shall be served by delivery by facsimile, e-mail, or other technology; by mailing with confirmation of delivery to the address specified in the permit application or in the plan certification, if available, or in the land records of the locality; or by delivery at the site of the land-disturbing activities to the agent or employee supervising such activities.

The notice to comply shall specify the measures needed to comply with the land-disturbance approval conditions or shall identify the plan approval or land-disturbance approval needed to comply with this article and shall specify a reasonable time within which such measures shall be completed. Upon failure to comply within the specified time, any plan approval or land-disturbance approval may be revoked and the permittee or person responsible for carrying out the plan shall be subject to the penalties provided by this ordinance.

- C. Upon issuance of an inspection report denoting a violation of [§ 62.1-44.15:55](#) of the Code of Virginia, the Cape Charles Code Official may, in conjunction with or subsequent to a notice to comply as specified in this ordinance, issue an order requiring that all or part of the land-disturbing activities permitted on the site be stopped until the specified corrective measures have been taken.

If land-disturbing activities have commenced without an approved plan, the Cape Charles Code Official may issue an order requiring that all of the land-disturbing activities be stopped until an approved plan or any required permits are obtained.

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Where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth, or where the land-disturbing activities have commenced without an approved plan, such a stop work order may be issued without regard to whether the alleged violator has been issued a notice to comply as specified in this ordinance. Otherwise, such an order may be issued only after the alleged violator has failed to comply with such a notice to comply.

The stop work order shall be served in the same manner as a notice to comply and shall remain in effect for a period of seven (7) days from the date of service pending application by the Town or permit holder for appropriate relief to the Circuit Court of Northampton County. The Town shall serve such order for disturbance without an approved plan upon the owner by mailing with confirmation of delivery to the address specified in the land records. The order shall be posted on the site where the disturbance is occurring and shall remain in effect until permits and plan approvals are secured, except in such situations where an agricultural exemption applies.

If the alleged violator has not obtained an approved plan within seven days from the date of service of the stop work order, the Cape Charles Code Official may issue an order to the owner requiring that all construction and other work on the site, other than corrective measures, be stopped until an approved plan has been obtained.

Such an order shall be served upon the owner by mailing with confirmation of delivery to the address specified in the plan or the land records of Northampton County.

The owner may appeal the issuance of an order to the Circuit Court of Northampton County.

Any person violating or failing, neglecting or refusing to obey an order issued by Cape Charles Code Official may be compelled in a proceeding instituted in the Circuit Court of Northampton County to obey same and to comply therewith by injunction, mandamus or other appropriate remedy.

Upon completion and approval of corrective action or obtaining an approved plan, the order shall immediately be lifted.

Nothing in this section shall prevent the Cape Charles Code Official from taking any other action authorized by this ordinance or other applicable laws.

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Section 1.10: Penalties, Injunctions, and Other Legal Actions

- A. Any person who has violated or failed, neglected, or refused to obey any order, notice, or requirement of the Town of Cape Charles, any condition of a land-disturbance approval, or any provision of this ordinance shall, upon a finding of the District Court of Northampton County, be assessed a civil penalty. The civil penalty for any one (1) violation shall be not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000), except that the civil penalty for commencement of land-disturbing activities without an approved plan shall be one thousand dollars (\$1,000). Each day during which the violation is found to have existed shall constitute a separate offense. In no event shall a series of specified violations arising from the same operative set of facts result in civil penalties which exceed a total of then ten thousand dollars (\$10,000), except that a series of violations arising from the commencement of land-disturbing activities without an approved plan for any site shall not result in civil penalties which exceed a total of ten thousand dollars (\$10,000).
- B. The Cape Charles Code Official, or the owner or property which has sustained damage, or which is in imminent danger of being damaged, may apply to the Circuit Court of Northampton County to enjoin a violation or a threatened violation of §§ [62.1-44.15:55](#) or [62.1-44.15:58](#) of the Code of Virginia, without the necessity of showing that an adequate remedy at law does not exist.

However, an owner of property shall not apply for injunctive relief unless (i) he has notified in writing the person who has violated the local program, and the program authority, that a violation of the local program has caused, or creates a probability of causing, damage to his property, and (ii) neither the person who has violated the local program nor the program authority has taken corrective action within fifteen days to eliminate the conditions which have caused, or create the probability of causing, damage to his property.

- C. In addition to any criminal or civil penalties provided under this ordinance, any person who violates any provision of the Erosion and Sediment Control Law may be liable to the Town in a civil action for damages.
- D. Without limiting the remedies which may be obtained in this section, any person violating or failing, neglecting, or refusing to obey any injunction, mandamus or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to exceed two thousand dollars (\$2,000) for each violation. A civil action for such violation or failure may be brought by the Town. Any civil penalties assessed by a court shall be paid into the treasury of the Town, except that where the violator is the locality itself, or its agent, the court shall direct the penalty to be paid into the state treasury.
- E. With the consent of any person who has violated or failed, neglected or refused to obey any regulation or condition of a permit or any provision of this ordinance, or order of the Town of Cape Charles, the Town may provide for the

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payment of civil charges for violations in specific sums, not to exceed the limit specified in Subsection D of this section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under Subsection A or D.

- F. The Commonwealth's Attorney shall, upon request of the Town, take legal action to enforce the provisions of this ordinance.

Section 1.11: Appeals and Judicial Review

- A. Final decisions of the Town under this ordinance shall be subject to review by the Northampton Circuit Court, provided an appeal is filed within thirty (30) days from the date of any written decision adversely affecting the rights, duties, or privileges of the person engaging in or proposing to engage in land-disturbing activities.

Appendix F - Wetlands Ordinance

Article I - In General

Section 74.1 - 74.19: Reserved

Article II - Wetlands Zoning Ordinance

Division I - Generally

Section 74.20: Definitions

For the purpose of this article:

BACK BAY AND ITS TRIBUTARIES means the following as shown on the United States Geological Survey Quadrangle Sheets for Virginia Beach, North Bay, and Knotts Island: Back Bay north of the Virginia - North Carolina State line; Capsies Creek north of the Virginia - North Carolina State line; Deal Creek; Devil Creek; Nawney Creek; Redhead Bay, Sand Bay, Shipps Bay, North Bay, and the waters connecting them; Beggars Creek; Muddy Creek; Ashville Bridge Creek; Hells Point Creek; Black Gut; and all coves, ponds, and natural waterways adjacent to or connecting with the above-named bodies of water.

COMMISSION means the Virginia Marine Resources Commission.

COMMISSIONER means the Commissioner of Marine Resources.

GOVERNMENTAL SERVICES means any or all of the services provided by this Town to its citizens for the purpose of maintaining this Town and shall include but shall not be limited to such services as constructing, repairing, and maintaining roads, sewage facilities, and streetlights supplying and treating water, streetlights, and construction of public buildings.

PERSON means any individual, corporation, association or partnership, business, trust, joint venture, or other legal entity.

NONVEGETATED WETLANDS means all that land lying contiguous to mean low water and which land is between mean low water and mean high water not otherwise included in the term “vegetated wetlands” as defined and also includes those non-vegetated areas of Back Bay and its tributaries and the North Landing River and its tributaries subject to flooding by tides including wind tides but not including hurricane or tropical storm tides.

NORTH LANDING RIVER AND ITS TRIBUTARIES means the following as based on the United States Geological Survey Quadrangle Sheets for Pleasant Ridge, Creeds, and Fentress: the North Landing River from the Virginia - North Carolina line to Virginia Highway 165 at North Landing Bridge; the Chesapeake and Albemarle Canal from Virginia Highway 165 at North Landing Bridge to the locks

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at Great Bridge; all named and unnamed streams, creeks, and rivers flowing into the North Landing River and the Chesapeake and Albemarle Canal except the following: West Neck Creek north of Indian River Road; Pocaty River west of Blackwater Road; Blackwater River west of its forks located at a point approximately 6,400 feet due west of the point where the Blackwater Road crosses the Blackwater River at the village of Blackwater; Millbank Creek west of Blackwater Road.

VEGETATED WETLANDS means all that land lying between and contiguous to mean low water and an elevation above mean low water equal to the factor 1.5 times the mean tide range at the site of the proposed project in this Town; and upon which is growing on the effective date of this act or grows thereon subsequent thereto, any one or more of the following: saltmarsh cordgrass (*Spartina alterniflora*), Salt meadow hay (*Spartina patens*) Saltgrass (*Distichlis spicata*), black needlerush (*Juncus roemerianus*), saltwort (*Salicornia* sp.), sea lavender (*Limonium* sp.), marsh elder (*Iva frutescens*), groundsel bush (*Baccharis halimifolia*), wax myrtle (*Myrica* sp.), sea oxeye (*Borrichia frutescer*), arrow arum (*Peltandra virginica*), pickerelweed (*Pontederia cordata*), big cordgrass (*Spartina cynosuroides*), rice cutgrass (*Leersia oryzoides*), wildrice (*Zizania aquatica*), bulrush (*Scirpus validus*), spikerush (*Eleocharis* sp.), sea rocket (*Cakile ecentula*), southern wildrice (*Zizaniopsis Miliacea*), cattails (*Typha* sp.), three-squares (*Scirpus* sp.), buttonbush (*Cephalanthus occidentalis*), bald cypress (*Taxodium distichum*), black gum (*Nyssa sylvatica*), tupelo (*Nyssa aquatica*), dock (*Rumex* sp.), yellow pond lily (*Nuphar* sp.), marsh fleabane (*Pluchea purpurascens*), royal fern (*Osmunda regalis*), marsh hibiscus (*Hibiscus moscheutos*), beggar's ticks (*Bidens* sp.), smartweed (*Polygonum* sp.), arrowhead (*Sagittaria* sp.), sweet flag (*Acorus calamus*), water hemp (*Amaranthus cannabinus*), reed grass (*Phragmites communis*), and switch grass (*Panicum virgatum*).

VEGETATED WETLANDS OF BACK BAY AND ITS TRIBUTARIES and the VEGETATED WETLANDS OF THE NORTH LANDING RIVER AND ITS

TRIBUTARIES shall mean all marshes subject to flooding by tides, including wind tides, provided this shall not include hurricane or tropical storm tides, and upon which one or more of the following vegetation species are growing or grows thereon subsequent to the passage of this amendment: saltmarsh cordgrass (*Spartina alterniflora*), Salt meadow hay (*Spartina patens*), black needlerush (*Juncus roemerianus*), marsh elder (*Iva frutescens*), groundsel bush (*Baccharis halimifolia*), wax myrtle (*Myrica* sp.), arrow arum (*Peltandra virginica*), pickerelweed (*Pontederia cordata*), big cordgrass (*Spartina cynosuroides*), rice cutgrass (*Leersia oryzoides*), wildrice (*Zizania aquatica*), bulrush (*Scirpus validus*), spikerush (*Eleocharis* sp.), cattails (*Typha* sp.), three-squares (*Scirpus* sp.), dock (*Rumex* sp.), smartweed (*Polygonum* sp.), yellow pond lily (*Nuphar* sp.), royal fern (*Osmunda regalis*), marsh hibiscus (*Hibiscus moscheutos*), beggar's tick (*Bidens* sp.), arrowhead (*Sagittaria* sp.), water hemp (*Amaranthus cannabinus*), reed grass (*Phragmites communis*), and switch grass (*Panicum virgatum*).

WETLANDS means both vegetated and non-vegetated wetlands.

WETLANDS BOARD or **BOARD** means a board created pursuant to Code of Virginia,

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28.2-1303.

(Ord. No. 9341, 2, 4-13-93)

Section 74.21: Permitted Uses of and Activities on Wetlands

The following uses of and activities on wetlands are permitted if otherwise permitted by law:

- A. the construction and maintenance of non-commercial catwalks, piers, boathouses, boat shelters, fences, duck blinds, wildlife management shelters, footbridges, observation decks and shelters, and other similar structures provided that such structures are so constructed on pilings as to permit the reasonably unobstructed flow of the tide and preserve the natural contour of the wetlands;
- B. the cultivation and harvesting of shellfish and worms for bait;
- C. noncommercial outdoor recreational activities, including hiking, boating, trapping, hunting, fishing, shell fishing, horseback riding, swimming, skeet and trapshooting, and shooting preserves provided that structure shall be constructed except as permitted in Subsection 1 of this section;
- D. the cultivation and harvesting of agricultural, forestry, or horticultural products; grazing and haying;
- E. conservation, repletion, and research activities of the Virginia Marine Resources Commission, the Virginia Institute of Marine Science, the Department of Game and Inland Fisheries, and other related conservation agencies;
- F. the construction or maintenance of aides to navigation which are authorized by governmental authority;
- G. emergency measures decreed by any duly appointed health officer of a governmental subdivision acting to protect the public health;
- H. the normal maintenance, repair, or addition to presently existing roads, highways, railroad beds, or the facilities of any person, firm, corporation, utility, federal, state, county, city, or town abutting on or crossing wetlands provided that no waterway is altered, and no additional wetlands are covered;
- I. governmental activity on wetlands owned or leased by the Commonwealth of Virginia or a political sub-division thereof.
- J. the normal maintenance of man-made drainage ditches provided that no additional wetlands are covered and provided further that this paragraph shall not be deemed to authorize construction of any drainage ditch;
- K. outdoor recreational activities provided that such activities do not impair the

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natural functions of the wetlands or alter the natural contour of the wetlands.

(Ord. No. 9341, 3, 4-13-93)

Section 74.22 - 74.30: Reserved

Division II - Permit to Use or Develop Wetlands

Section 74.31: Application Generally

- A. Any person who desires to use or develop any wetland within this Town, other than for those activities specified in Section 74.21 above, shall first file an application for a permit with the wetlands board directly or through the Commission.
- B. An application shall include the following: the name and address of the applicant; a detailed description of the proposed work thereon, indicating the area of existing and proposed fill and excavation, especially the location, width, depth, and length of any proposed channel and the disposal area, all existing and proposed structures; sewage collection and treatment facilities, utility installations, roadways, and other related appurtenances of facilities, including those on adjacent uplands, and the type of equipment to be used and the means of equipment access to the activity site; the names and addresses of owners of record of adjacent land and known claimants of water rights in or adjacent to the wetlands of whom the applicant has notice; an estimate of cost; the primary purpose of the project; any secondary purposes of the project including further projects; the public benefit to be derived from the proposed project; a complete description of measures to be taken during and after the alteration to reduce detrimental offsite effects; the completion date of the proposed work, project, or structure and such additional materials and documentation as the wetlands board may deem necessary.
- C. All fees shall be governed as set forth by the Town Council of the Town of Cape Charles.

(Ord. No. 9341, 4, 4-13-93)

Section 74.32: Application and Related Data Open for Public Inspection

All applications and maps and documents relating thereto shall be open for public inspection at the office of the Town Clerk of this Town. (Ord. No. 9341, 5, 4-13-93)

Section 74.33: Hearing on Application; Grant or Denial

- A. Not later than sixty (60) days after receipt of such application, the wetlands board shall hold a public hearing on such application. The applicant, the local governing body, the commissioner, the owner of record of any land adjacent to the wetlands in question, the Virginia Institute of Marine Science, the Department of Wildlife Resources, the State Water Control Board, the Department of Transportation, and governmental agencies expressing an

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interest therein shall be notified by the board of the hearing by mail not less than twenty (20) days prior to the date set for the hearing. The wetlands board shall also cause notice of such hearing to be published at least once seven days prior to such hearing in the newspaper having a general circulation in this Town. The wetlands board shall post a notice of the hearing on its website at least fourteen (14) days prior to the hearing. The wetlands board shall provide a copy of such notice to the Commission for submittal to the Virginia Regulatory Town Hall. Every such advertisement shall contain a reference to the place or places within the county or municipality where copies of the proposed application may be examined. The costs of such publication shall be paid by the applicant.

- B. In acting on any application for a permit, the board shall grant the application upon the concurring favorable vote of three (3) members of a five (5) member board or four (4) members of a seven (7) member board. The chairman of the board, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. Any person may appear and be heard at the public hearing. Each witness at the hearing may submit a concise written statement of his testimony. The board shall make a record of the proceedings, which shall include the application, any written statements of witnesses, a summary of statements of all witnesses, the findings and decision of the board, and the rationale for the decision. The board shall make its determination within thirty (30) days from the hearing. If the board fails to act within such time, the application shall be deemed approved. Within forty-eight hours (48 hrs) of its determination, the board shall notify the applicant and the commissioner of such determination; and if the board has not made a determination, it shall notify the applicant and the commission that thirty (30) days has passed, and that the application is deemed approved. The term “act” referred above shall be the action of taking a vote on the application. If the application receives less than four (4) concurring favorable votes for a seven (7) member board and three (3) concurring favorable votes for a five (5) member board, this will be a determination to deny the permit.
- C. The board shall transmit a copy of the permit to the commissioner. If the application is reviewed or appealed, then the board shall transmit the record of its hearing to the commissioner. Upon a final determination by the commission, the record shall be returned to the board. The record shall be open for public inspection at the office of the Town Clerk of this Town.
- D. In making its decision whether to grant, to grant in modified form, or to deny an application for a permit, the board shall base its decision on these factors:
 - 1. such matters raised through the testimony of any person in support of or in opposition to the permit application;
 - 2. impact of the development on the public health, safety, and welfare;
 - 3. the proposed development’s conformance with standards prescribed in [§ 28.2-1308](#) of the Code of Virginia, and guidelines promulgated

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pursuant to [§28.2-1301](#) of the Code of Virginia.

- E. If the board, in applying the standards above, finds that the anticipated public and private benefit of the proposed activity exceeds the anticipated public and private detriment and that the proposed activity conforms with the standards prescribed in [§ 28.2-1308](#) of the Code of Virginia, and guidelines promulgated pursuant to [§ 28.2- 1301](#) of the Code of Virginia, and the proposed activity does not violate the purpose and intent of this ordinance or Chapter 13 of Title 28.2 ([§ 28.2-1300](#) et seq.) of the Code of Virginia.
- F. If the board finds that any criteria listed in Subsection B of this section are not met, the board shall deny the permit application but allow the applicant to resubmit the application in modified form.

(Ord. No. 9341, 6, 7, 10, 4-13-93)

Section 74.34: Bond or Letter of Credit to Assure Compliance with Conditions and Limitations

The board may require a reasonable bond or letter of credit in an amount and with surety and conditions satisfactory to it securing to the commonwealth compliance with the conditions and limitations set forth in the permit. The board may, after a hearing as provided herein, suspend or revoke a permit if the board finds that the applicant has failed to comply with any of the conditions or limitations set forth in the permit or has exceeded the scope of the work as set forth in the application. The board, after hearing, may suspend a permit if the applicant fails to comply with the terms and conditions set forth in the application. (Ord. No. 9341, 8, 4-13-93)

Section 74.35: Preservation and Development

In fulfilling its responsibilities under this article, the board shall preserve and prevent the despoliation and destruction of wetlands within its jurisdiction, while accommodating necessary economic development in a manner consistent with wetlands preservation. (Ord. No. 9341, 9, 4-13-93)

Section 74.36: Copy to be Transmitted to Commissioner

The permit shall be in writing, signed by the chairman of the board, and notarized. A copy of the permit shall be transmitted to the commissioner. (Ord. No. 9341, 11, 4-13-93)

Section 74.37: Expiration

No permit shall be granted without an expiration date established by the board. The board, however, may upon proper application, therefore, grant extensions. (Ord. No. 9341, 12, 4- 13-93)

Section 74.38: Not to Affect Zoning and Land Use Ordinances

No permit granted by a wetlands board shall affect in any way the applicable zoning and land use ordinance of this Town or the right of any person to seek compensation for any injury in fact incurred by him because of the proposed activity. (Ord. No. 9341,

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13, 4- 13-93)

This ordinance was adopted by the Town Council of Cape Charles, Virginia, on April 13, 1993, amended July 11, 1995, and ratified and confirmed on June 16, 1977.

On December 19, 2024, this subdivision ordinance was revised and amended as part of a full review and revision of the Town’s Zoning Ordinance, which was adopted on December 19, 2024 (Ord. No. 20241219A; 12/19/2024).

Appendix G - Tree Conservation and Preservation Ordinance

Article I – General

Section 1.1: Narrative

Trees are proven producers of oxygen, a necessary element for the survival of man. Trees appreciably reduce the ever-increasing and environmentally dangerous carbon dioxide contents in the air, and they play a vital role in purifying the air that man breathes.

Trees, through their root systems, stabilize the water table and play an important and effective part in soil conservation and erosion control.

Trees are an invaluable physical and psychological counterpart to the town setting, making town life more comfortable by providing shade and cooling of the air and land, reducing noise levels and glare.

The Town Council of Cape Charles has determined that the planting and preservation of trees within the Town of Cape Charles is not only desirable but essential to the present and future health, safety and welfare of all its citizens.

Section 1.2: Intent and Purpose

The intent of the Cape Charles Tree Master Plan is to develop vibrant green infrastructure in all town districts by promoting the planting of appropriate new trees and protecting appropriate existing trees. The Plan’s purpose is to ensure the beauty and ecological health of Cape Charles for its citizens and guests. The general intent and purpose of this Tree Conservation and Preservation Ordinance is to implement the Cape Charles Tree Master Plan.

The specific purposes of this ordinance are to perpetuate tree growth; to encourage tree preservation; to provide adequate tree canopy and density; and to protect water quality by minimizing erosion and sedimentation, enhancing the infiltration of storm water runoff, and maximizing nutrient intake. The intent of these regulations is also to preserve and enhance the aesthetics of the Town, and to reduce the negative impact such as noise and glare of uses and structures which are in close proximity to each other and which are generally regarded as incompatible, and to promote attractive landscaping in residential, commercial and industrial districts of the Town. A comprehensive plan for each individual lot or parcel is essential for the visual enhancement of the Town and for the protection and promotion of appearance, character, and economic values. The purpose and intent of such landscaping requirements are to reduce the visibility of paved areas from adjacent properties and streets, moderate climatic effects, minimize noise and glare, and enhance public safety. Landscaping will provide transition and buffers between neighboring properties.

Town of Cape Charles Zoning Ordinance
Appendix G – Tree Conservation and Preservation Ordinance

The terms and provisions of this article shall apply to real property in the town as follows:

- A. All undeveloped property and property undergoing redevelopment.
- B. Streetscape area of all developed property including existing developed areas and the historic district.
- C. Public rights-of-way, parks and public grounds.

Section 1.3: Definitions.
All terms in this chapter will be interpreted as defined in Appendix A of this Ordinance.

Section 1.4: Standards

Section 1.4.1: General Standards

- A. A subdivision plat, site, or plot plan for any subdivision or site development activity shall include the planting and/or replacement of trees on the site to the extent that, at twenty years (20 yrs) of growth, minimum tree canopy shall be provided in accord with the following standards:
- B. Ten percent (10%) tree canopy for a site zoned business, commercial, or industrial. Existing trees which are to be preserved may be included to be all or in part of the canopy requirements and may include wooded preserves, if the approved site plan identifies such trees, and the trees meet the standards of appropriateness of the Cape Charles Tree Master Plan.
- C. Twenty (20%) tree canopy for a residential site zoned ten (10) units or less per acre is provided as a maximum goal in [§ 15.2-961](#) of the Code of Virginia. On the typical forty feet by one hundred forty feet (40' x 140') residential lot one (1) tree per twenty feet (20') of lot frontage is required. The location of the trees on the lot shall be at the owner's discretion. Existing trees which are to be preserved may be included to be all or in part of the canopy requirements if the approved site plan identified such trees, and the trees meet the standards of appropriateness (see the Cape Charles Tree Master Plan).
- D. Trees shall be selected from the specifications and standards and shall conform with the following minimum size or height (at date of planting) standards:
 - 1. Deciduous shade trees 6' height
 - 2. Streetscape trees 6' height
 - 3. Ornamental and understory trees 6' height
 - 4. Coniferous trees 6' height
 - 5. Evergreen shrubs 18" spread or height
 - 6. Deciduous shrubs 24" spread or height
- E. Tree canopy requirements may be reduced on a case-by-case basis by waiver of the Zoning Administrator during the site plan approval process where it can

Town of Cape Charles Zoning Ordinance
Appendix G – Tree Conservation and Preservation Ordinance

be clearly demonstrated by the applicant that either (a) the reduced canopy achieves the intended landscape design objective through a combination of alternative landscape architectural and landscaping techniques or (b) where the characteristics of the property are such that the canopy coverage would not be effective and other methods of landscaping provide equal and adequate design responses. The above stipulated sizes may be modified based on specific property conditions and site design requirements.

Section 1.4.2: General Requirements

- A. Landscaping shall be required in all residential, commercial and industrial districts. The owner or his agent shall be responsible for the maintenance, repair, and replacement of all landscaping materials as may be required under Town ordinances.
- B. All plant material, including trees, shall be tended and maintained in a healthy growing condition and free from refuse and debris and invasive species as identified by the Virginia Division of Forestry or the Virginia Department of Agriculture, at all times. All unhealthy, dying, or dead plant materials shall be replaced during the next planting season.
- C. Commercial and industrial district uses that abut residential zones shall provide a landscape buffer or screened areas between districts.
- D. All parking lots shall be screened and landscaped from adjoining properties or every other use and zoning district.
- E. Land disturbance shall be limited to the area necessary to provide for the desired use or development.
- F. The Cape Charles Historic District Guidelines referencing Street Trees and Plantings are incorporated by reference (Streetscape, pgs. 65-66).

Section 1.4.3: Streetscape Tree Planting

- A. All streetscape trees shall be a minimum of six feet (6') in height at the time of planting. Trees shall be guaranteed to be in good physical condition as determined by the Zoning Administrator or his designee, for a period of one year by the developer or owner. The one-year (1 yr) period shall commence from the time of final inspection.
- B. Tree selection: Trees shall be selected from the specifications and standards identified in the Cape Charles Master Tree Plan 2006.

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Article II – Tree Removal, Replacement, and Conservation

The goal of the Cape Charles Master Tree Plan is to retain a “no net loss” in terms of trees in the streetscapes throughout the Town. However, the private property rights of landowners shall be respected in order to permit the uses of the property in accordance with the Town’s Zoning Ordinance. Therefore, removal of trees is allowed within the building envelope. Removal of diseased or unsafe trees is also allowed. Clearing shall be allowed only to provide a building site, necessary access, positive site drainage, water quality BMPs, and the installation of utilities as approved by Town officials. Replacement should be provided as described herein.

The Virginia Department of Transportation (“VDOT”) governs the public rights of way in Cape Charles and no work may be initiated in these rights of way without VDOT approval.

Section 2.1: Tree protection during construction.

- A. Existing trees that are to be used to meet the requirements of Section 1.4 shall be protected in accordance with the following:
 1. Before construction activity begins, protective barriers must be securely in place.
 2. Minimum undisturbed areas shall be determined. This area is approximately the ground area covered by the outermost branches (drip line), as defined in the Virginia Erosion and Sediment Control Handbook.
 3. All construction activities shall also be prohibited within the minimum undisturbed areas provided for any tree(s) for which credit is given toward satisfying the residential canopy requirements.
 4. All temporary construction activities shall also be prohibited within the minimum undisturbed areas, including all excavating, filling, trenching, construction storage and dumping, and parking of construction equipment/vehicles or employee vehicles.
- B. Inspection: Each lot shall be inspected and approved prior to the issuance of the certificate of occupancy or final inspection approval. All new trees must be identified with species identification tags and must remain tagged until after the inspection is complete. The inspection shall be performed by either the Zoning Administrator or a representative of the Department of Planning. Where additional residential lot trees are required, no certificate of occupancy or final inspection approval shall be issued until the required trees have been planted in accordance with Town of Cape Charles’ typical planting standards. When the occupancy of a structure is desired prior to the completion of the residential lot tree planting requirement, a temporary certificate of occupancy may be issued if the owner or developer provides to the Department of Code Enforcement a disclosure statement accepting responsibility for the installation of the required trees.

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Section 2.2: Removal or Treatment of Trees on Private Property

A. Permit--Required.

1. A tree removal permit shall be required before any tree (or shrub which is in tree form) on property described in Article I, Section 1.2 may be destroyed or removed.
2. When a site plan, plot plan, or other development plan is required, application for a tree removal permit shall consist of a plan acceptable to the Zoning Administrator in form and content, submitted as part of the site plan or other development plan. The Zoning Administrator shall determine the plan's compliance with the requirements of the town. No plan shall be approved which does not comply with these requirements.
3. When no site plan, plot plan, or other development plan is required, application for a tree removal permit shall be submitted to the Zoning Administrator in a form which provides the information deemed necessary by the Zoning Administrator. Where no emergency exists, the Zoning Administrator shall act upon a tree removal permit application within eight (8) days from receipt of application.
4. Factors to consider: In addition to reviewing for conformance to standards and guidelines promulgated in the Cape Charles Master Tree Plan, the following factors shall also be taken into consideration:
 - a. The extent to which tree clearing is shown to avoid excessive clearing and still permit the applicant to achieve the proposed development or land use.
 - b. The extent to which the actual or intended use of the property is in accordance with the regulations of the zoning district in which the property lies requires clearing of trees.
 - c. The hardship to the applicant which will result from a modification or rejection of the required permit.
 - d. The desirability of preserving any tree by reason of its size, age or some other outstanding quality, such as uniqueness, rarity or status as a landmark or species specimen.
 - e. The extent to which the area would be subject to environmental degradation due to removal of the trees.
 - f. The heightened desirability of preserving tree cover in densely developed or densely populated areas.
 - g. Whether the tree is diseased, injured beyond restoration, in danger of falling, interferes with utility services or creates unsafe visual clearance.

- B. Replacement of trees. When warranted in the judgment of the Zoning Administrator, the applicant may be required to replace, in accordance with a tree replacement plan, any tree being removed with a suitable replacement tree elsewhere on the site. In determining whether the replacement of trees is reasonable and shall be required, the Zoning Administrator shall consider the intended use of the property together with an evaluation of the following:

1. Existing tree coverage, size and type;

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2. Number of trees to be removed;
 3. Area to be covered with structures, parking and driveways;
 4. Grading plan and drainage requirements; and
 5. Character of the site and its environs.
- C. Approval. If the permit application conforms to standards and guidelines and there are no objections resulting from consideration of the factors listed above in this section, the permit application shall be approved.
- D. Rejection. If the permit application does not conform to standards and guidelines or there is an objection resulting from consideration of the factors listed above in this section, the permit application shall be rejected. The Zoning Administrator may require that the application be modified to bring it into conformance with the standards and guidelines or to eliminate any objections to the application.
- E. The area of land to be cleared of trees and other vegetation in conjunction with proposed development or land use shall not include any trees which are unique by reason of size, age or some other outstanding quality, such as rarity or status as a landmark or species specimen (see definition of “historic tree”). Subject to the Zoning Administrator's approval, the area to be cleared shall generally be limited to that area needed for:
1. Street construction and necessary slope construction.
 2. Public service or utility easements and rights-of-way. This shall include area for utility line installation with any construction easements necessary for such installation and easements for maintenance access. These easements shall not be cleared prior to actual line installation.
 3. Building roof coverage area and ancillary structures such as patios and porches plus fifteen feet (15') on all sides for construction activity. (building envelope)
 4. Driveways, alleyways, walkways, parking lots and other land area necessary to the installation of the proposed development or use.
 5. Sediment basins. Only those trees within the area necessary for construction of the dam, the area in which sediment will collect, and the area necessary for construction and maintenance of the basin shall be cleared of trees.

Section 2.3: Activities of public utilities.

The authority of the zoning administrator shall extend to the control of the activities of utility companies in the matter of treating, trimming, planting or removing trees or shrubs on the public grounds and streets of the town.

It shall be unlawful for any such company to treat, trim, plant or remove trees or shrubs on any property, grounds or streets of the city without the written permission of the Zoning Administrator, who is hereby expressly given the right to withdraw any permission where inspection by the Zoning Administrator indicates that the work has

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not been or is not being done in compliance with good horticultural standards.

Section 2.4: Plantings along streets and public use easements (rights of way)

- A. The planting, pruning or other treatment of trees upon the streets and public use easements shall be under the direction of the Town Manager or his designee. No tree upon any street or public use easement in the town shall be destroyed, cut down or otherwise removed without the consent of the Town Manager or his designee. No trees or plants of any kind shall be planted upon any street, public use easement or public property except with the consent of the Town Manager or his designee.
- B. No trees shall be planted at public expense upon private property unless a public use easement has been granted; except, that, with the consent of the owner, trees may be planted upon the line between any street and the abutting private property, and trees may be planted in connection with public works projects which have disturbed private property and where the town has easements, on condition that the planting, pruning, removal or other treatment of the trees so planted shall be under the control of the Town Manager or his designee.
- C. It shall be unlawful to girdle, break, bend, wound, tack signs or notices upon or in any manner injure any tree planted upon any public use easement or street or on the line thereof within the corporate limits, except with the approval of the Town Manager or his designee.

Section 2.5: Failure to comply with plan.

If the Zoning Administrator determines that the permit holder has failed to comply with the plan, the Zoning Administrator shall immediately serve upon the permit holder a notice to comply which shall be sent by registered or certified mail to the address specified by the permit holder in his permit application. Such notice shall set specifically the measures needed to come into compliance with such plan and shall specify the time within which such measures shall be completed. If the permit holder fails to comply within the time specified, he may be subject to revocation of the permit and the town, at the direction of the Zoning Administrator, may correct the noted deficiencies at the permit holder's expense; furthermore, the permit holder may be deemed to be in violation of this article and upon conviction could be subject to the penalties provided by this article.

Section 2.6: Exceptions; waiver of chapter

- A. In the event that any tree shall be determined to be in a hazardous or dangerous condition so as to endanger the public health, welfare or safety, and require immediate removal without delay, verbal authorization may be given by the Zoning Administrator and the tree removed without obtaining a permit as herein required.
- B. During the period of an emergency, such as a tornado, ice storm, flood or any

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other act of nature, the requirements of this article may be waived by the town manager or his designee.

Section 2.7: Replacement of Trees Destroyed in Violation of Chapter

When trees are destroyed in violation of this article, replacement trees shall be required unless exemption is granted by the Zoning Administrator. The size, species and quantity of these replacements shall be determined by the Zoning Administrator based on the value of the trees removed as calculated by the latest formula published by the International Society of Arboriculture.

Section 2.8: Appeals

An appeal to the Board of Zoning Appeals may be taken by any person aggrieved by any decision of the Town Manager, his designee or Zoning Administrator relative to the administration of this chapter. An appeal shall be taken within thirty (30) working days from the date of the issuance of the Zoning Administrator's written order, by filing with the Zoning Administrator and the Town Manager a notice of appeal specifying the grounds thereof. The Zoning Administrator shall then transmit to the Board of Zoning Appeals the record upon which the appeal is based. All decisions by the Town Manager, his designee or the Zoning Administrator shall be appealed first to the Board of Zoning Appeals, then to the Northampton County Circuit Court. An appeal stays all compliance with the action being appealed, unless the Zoning Administrator certifies to the Town Manager that by reason of stated facts a stay would, in his opinion, cause imminent endangerment to life or property. In such cases, compliance shall not be stayed other than by a restraining order which may be granted by a court of record, on application and on notice to the Zoning Administrator and on due cause shown.

Section 2.9: Violations and penalties; remedies

Any person, whether as an owner, lessee, principal, agent, employee or otherwise, who violates any of the provisions of this chapter or permits any such violation or fails to comply with any of the requirements, or who erects any building or who uses any building or any land in violation of any detailed statement of plan submitted by him and approved under the provision of this chapter shall be subject to a civil penalty not to exceed two thousand five hundred dollars (\$2,500.00) for each violation. Each day upon which such violation continues shall constitute a separate violation. Furthermore, the town manager, through the town attorney, may apply to the circuit court of the county for injunctive relief to enjoin a violation or a threatened violation of this chapter, it being determined that vegetation in general and trees in particular are unique and thus a proper subject of equitable relief.

Definitions to be Added or Amended

TERMS and/or EDITS TO BE ADDED TO APPENDIX A – DEFINITIONS

**As part of the Zoning Text Amendments to the Article VII – Chesapeake Bay
Preservation Act Overlay Ordinance**

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

CANOPY TREE means a tree that typically reaches 35 feet in height or taller when mature.

Adding to the Definition of Development already in the Ordinance the following: DEVELOPMENT within the Chesapeake Bay Preservation Act Overlay Ordinance means the construction or substantial alteration of residential, commercial, industrial, institutional, recreation, transportation, or utility facilities or structures.

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

Adding to the definition of Floodplain already in the Ordinance the following: FLOODPLAIN within the Chesapeake Bay Preservation Act Overlay Ordinance means all lands that would be inundated by floodwater as a result of a storm event of a 100-year return interval.

FREEBOARD means an additional amount of height above the Base Flood Elevation used as a factor of safety (e.g., 2 feet above the Base Flood) in determining the level at which a structure's lowest floor must be elevated or floodproofed to be in accordance with state or community floodplain management regulations.

LAND DISTURBANCE or LAND DISTURBING ACTIVITY means. a man-made change to the land surface that may result in soil erosion or has the potential to change its runoff characteristics, including construction activity such as the clearing, grading, excavating, or filling of land.

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

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

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

NATURE-BASED SOLUTION means an approach that reduces the impacts of sea-level rise, flooding, and storm events through the use of environmental processes and natural systems.

Adding to the definition of Plan of Development already in the Ordinance, the following: **PLAN OF DEVELOPMENT** within the Chesapeake Bay Preservation Act Overlay Ordinance, plan of development means any process for site plan review in local zoning and land development regulations designed to ensure compliance with Va. Code § 62.1-44.15:74 and with this Ordinance, prior to issuance of a building permit.

PUBLIC ROAD means a publicly owned road designed and constructed in accordance with water quality protection criteria at least as stringent as requirements applicable to the Virginia Department of Transportation, including regulations promulgated pursuant to (i) the Erosion and ~~Sediment Control Law~~ **Stormwater Management Act** (§ 62.1-44.15:24 51 et seq. of the Code of Virginia). This definition includes those roads where the Virginia Department of Transportation

exercises direct supervision over the design or construction activities, or both, and cases where secondary roads are constructed and maintained, or both, by the Town of Cape Charles in accordance with the standards of the Town of Cape Charles.

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

UNDERSTORY TREE means a tree that typically reaches 12 to 35 feet in height when mature.

Standing Staff Reports



**JUNE & JULY 2025
MONTHLY REPORT**

Katie H. Nunez, Planning/Zoning Administrator

This monthly report encompasses the months of June & July 2025.

A. SUBDIVISION AGENT: Village L (The Villas at Magnolia Park) & Vacation of Lot Line in The Hollies

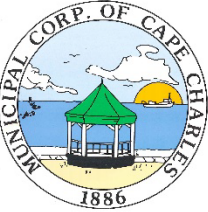
B. BOARD OF ZONING APPEALS - CODE OF VIRGINIA SECTION 15.2-2310

[Planning Commission shall be provided any applications filed with the Board of Zoning Appeals.] – No applications filed in either month.

C. HARBOR DEVELOPMENT CERTIFICATES: No applications were filed.

D. WETLANDS and COASTAL SAND DUNE BOARD: No applications were filed.

E. TOWN COUNCIL

 TOWN OF CAPE CHARLES	AGENDA TITLE: Resolution of Intent – Zoning Text Amendment Request from the Cape Charles Historic District Civic League		AGENDA DATE: July 17, 2025
	SUBJECT/PROPOSAL/REQUEST: Adoption of resolution of intent to refer the request from the Civic League to the Planning Commission for consideration		ITEM NUMBER: 7C
	ATTACHMENTS: Resolution of Intent #20250717, Request from the Cape Charles Historic District Civic League, Sections from Zoning Ordinance		FOR COUNCIL: Action (X) Information ()
	STAFF CONTACT (s): Libby Hume	REVIEWED BY: Rick Keuroglan, Town Manager	

ITEM SPECIFICS:

The Cape Charles Historic District Civic League is an organization of residents whose goal is to work together with the municipality to improve the overall quality of life in the Historic District by facilitating greater engagement and participation in Town affairs. Town Manager Rick Keuroglan attended their July 9, 2025 meeting as a guest speaker. One topic that was raised by some of the attendees was the use of Accessory Dwelling Units (ADUs) as short-term rentals (STRs).

The Town’s current ordinance (§ 4.1.J.2.a) states that an ADU may not be rented as a STR and that it may be occupied by any person or persons for a period no less than 30 consecutive calendar days. The initial intent for ADUs was for long-term rentals to help with the issue of affordable housing.

DISCUSSION:

The letter from the Cape Charles Historic District Civic League is attached for Council’s review. In the letter, the Civic League is requesting “*consideration for continuing discussion that the use of ADUs permitted use by right for long-term rentals be evaluated to also include the use of ADUs permitted use by right for short-term rentals as a viable option.*” The Civic League has communicated that even though the intent for ADUs was for long-term rentals, the reality is that we do not know the numbers of ADUs being rented or unavailable for long-term rentals. Town staff have not made any assessment to determine how many actual ACUs are being rented. The Civic League would like residents to have more options with their ADUs and even suggested limiting this to full-time residents who live in their primary home in the historic district.

RECOMMENDATION:

Staff recommends Council review and discussion of the request from the Cape Charles Historic District Civic League and, if deemed appropriate, approval of Resolution of Intent #20250717 referring this matter to the Planning Commission for their consideration and recommendation to Town Council related to the use of Accessory Dwelling Units as short-term rentals.

RESOLUTION OF INTENT 20250717

ZONING TEXT AMENDMENT REQUEST FROM
CAPE CHARLES HISTORIC DISTRICT CIVIC LEAGUE

WHEREAS, § 15.2-2286 (A) (7) of the Code of Virginia requires that amendments to a zoning ordinance shall be initiated by a resolution of the local governing body; a motion of the planning commission; or in the case of zoning district map amendments, by application of the landowner or the landowner’s authorized agent; and

WHEREAS, Section 15.2-2285 (B) of the Code of Virginia provides that no zoning ordinance shall be amended or re-enacted unless the governing body has referred the amendment or reenactment to the local planning commission for its recommendation; and

WHEREAS, the Cape Charles Historic District Civic League is an organization of residents whose goal is to work together with the municipality to improve the overall quality of life in the Historic District by facilitating greater engagement and participation in Town affairs; and

WHEREAS, at their meeting on July 9, 2025, they asked that Town Manager Rick Keuroglan bring a request to the Town Council to consider a zoning text amendment to permit full-time residents the ability to use their accessory dwelling units for short-term rentals; and

WHEREAS, this request would impact Cape Charles Zoning Ordinance, Article IV, Section 4.1.J.2.a; and

WHEREAS, the Cape Charles Town Council finds that the public necessity, convenience, general welfare, and good zoning practice requires that a zoning text amendment be considered.

NOW, THEREFORE, BE IT RESOLVED that for purposes of public necessity, convenience, general welfare or good zoning practice, the Cape Charles Town Council hereby adopts a resolution of intent to consider amending the Cape Charles Zoning Ordinance Section 4.1.J.2.a and refer the matter to the Cape Charles Planning Commission for consideration of the request from the Cape Charles Historic District Civic League, and to convene the requisite public hearings and public notifications, which may be done jointly between the Cape Charles Planning Commission and the Cape Charles Town Council and for the Cape Charles Planning Commission to prepare its recommendation of the zoning text amendments, if deemed appropriate, for the Cape Charles Town Council’s consideration.

Adopted by the Town Council of the Town of Cape Charles on July 17, 2025

By: _____
Mayor Charney

Attest:

Town Clerk



July 14, 2025

Rick Keuroglian, Cape Charles Town Manager
2 Plum Street
Cape Charles, VA 23310

Thank you for being our guest speaker at our recent Cape Charles Historic District Civic League General Meeting on July 9, 2025. One discussion topic that was raised by members of the audience was the use of Accessory Dwelling Units (ADUs) as short-term rentals (STRs). The Town has made great advances in our regulation of STRs with regards to occupancy rates, safety, management and oversight, fees and taxes, and business and licensing requirements. Countless hours and efforts to date made by Town Staff, Town Boards and Commissions, and you as Town Council, have created the framework for property owners to utilize the use of STRs as a source of income while ensuring the common interests of our community. On many fronts, the enacted policies appear to have clearly outlined and streamlined the STR regulations and requirements for property owners.

Within the past ten years, the use of ADUs has evolved from

- 1) an outright prohibition; to
- 2) being conditionally permitted for family/guest overflow (without compensation); to
- 3) being a conditional use for long-term rentals; to
- 4) being a permitted use by right for long-term rentals.

The Planning Commission recommended addressing the lack of affordable housing in the Historic District by encouraging long-term rentals of ADUs. However, one question that has emerged is if the permitted use by right of an ADU for long-term rentals has successfully supported the Town's goals for expanding housing diversity, particularly for long-term and workforce housing as anticipated. Do we as a community have an accounting of how well long-term renting of ADUs has met the goal of increasing the number of affordable housing units? There is a perception that the long-term rental of ADUs to increase the diversity of housing options has not increased the number of long-term and workforce residents and the policy as written unfairly limits the ability for property owners to rent their ADU for fewer days.

As this was a topic raised by the audience during our civic league meeting, I am requesting that Town Council along with Town Management consider conducting a follow up review on whether limiting the use of ADUs by property owners to long-term rentals has had an impact on the diversity of housing options for long-term and workforce residents. The implemented Town zoning and applicable codes (certified on December 19, 2024) have made great efforts to clearly outline ADUs, dwelling and STR definitions; lot coverage regulations, dwelling size requirements, land use, etc. to ensure clear requirements. If the review of the use of ADUs to support the intended long-term housing diversity has not met the intended goals, consideration for continuing discussions that the use of ADUs permitted use by right for long-term rentals be evaluated to also include the use of ADUs permitted use by right for short-term rentals as a viable option.

In this instance, preservation of the current Town Code which includes a prohibition against operating two short-term rentals on the same property, one from the main residence and a second from an ADU, would still remain in effect. Specifically, property owners would be permitted to utilize their ADU or the main residence as a STR, within the requirements that only one of the dwellings, the ADU or the main residence, would be permitted to be utilized as a STR but not both dwellings during that term of the calendar year business license.

The evolution of the use of ADUs over time has adapted to the changing needs in our community. An objective review of the target goals for the use of an ADU for permitted use by right for both long-term or short-term rentals allows the flexibility of Town Management to adapt to the changing needs of the community



while continuing to ensure guest safety, to meet town requirements, to not change the character of the town, and meet current zoning requirements in the districts in which STRs operate.

Thank you in advance for all the hard work you and your entire staff accomplish for our Town. I am confident that Town will foster all appropriate public input and comment processes for any further discussion on this topic as it is considered. The Cape Charles Historic District Civic League is poised to support Town efforts in communication, coordination, and collaboration within our community and provide assistance in gathering and compiling any additional information you may need to support discussions.

Respectfully,
Claudette L. Lajoie, PhD
Cape Charles Historic District Civic League - President

Section 3.1: Residential District R-1

- A. Statement of intent. The intent of this basic zoning district is to provide quiet, medium density, single-family residential development plus provide open areas where similar residential development appears likely to occur. The regulations for this district are designed to stabilize and protect the essential characteristics of the district, to promote and encourage a suitable environment for family life where there are children, and to restrict all activities of a commercial nature as described in Section 3.5 (A) of this ordinance, known as Commercial Districts C-1, C-2, and C- 3 which are characterized by heavy traffic, noise, and congestion of people and passenger vehicles and by large office buildings and retail establishments, and to promote a convenient, attractive, and harmonious community. This section is created in recognition of the existence of developed areas where single-family and duplex dwellings currently exist on lots of five thousand six hundred square feet (5,600 SF) and where the characteristics of the neighborhood include both permanent as well as seasonal residents.
- B. Permitted Uses. The following uses are permitted by right:
1. Single-family dwellings.
 2. Duplex dwellings provided off-street parking is provided.
 3. Condominium dwellings.
 4. Cooperative dwellings.
 5. Manufactured home dwellings.
 6. Churches and places of worship.
 7. Parks and playgrounds.
 8. Schools, community centers, and public facilities
 9. Group Homes per § 15.2-2291 of the Code of Virginia.
- C. Accessory Uses.
1. Accessory buildings.
 2. Accessory Dwelling Units by right in compliance with the requirements of Section 4.1 (J).
 3. Home occupations in accordance with Section 4.0.
 4. Short Term Rentals, in accordance with Section 4.14
 5. Up to two (2) single electric vehicle charging stations.
 6. Uses which are customarily accessory and clearly incidental and subordinate to the principal use and structure.
- D. Conditional Uses: The following uses may also be permitted, subject to securing a use permit as provided for in this ordinance:
1. Outdoor recreation facilities
 2. Residential dwelling units in square footage area below the minimum or above the maximum stated in Section 3.1 (E)
 3. Bed and Breakfast Establishments, in accordance with Section 4.1(M)

Section 4.1: Exceptions to the Regulations

- J. Accessory Dwellings. One accessory dwelling may be maintained on a property in the R-1, R-2, R-3 and CR zoning districts subject to the following:
1. Physical characteristics.
 - a. Accessory dwellings shall be located in an accessory building.
 - b. Accessory dwellings shall not have a floor area exceeding forty-five percent (45%) of the floor area of the main building.
 - c. Accessory dwellings shall have one kitchen, one bathroom, and a sleeping area.
 - d. Accessory buildings shall not have the appearance of a single-family dwelling.
 2. Occupancy characteristics.
 - a. Length of stay – An Accessory Dwelling Unit may not be rented as a short- term rental. An accessory dwelling unit may be occupied by any person or persons for a period no less than thirty (30) consecutive calendar days either paying a fee for such occupancy at his own expense or at the expense of another thirty (30) day rental or greater. Upon request from any building, zoning, finance, or public safety official acting on behalf of the Town of Cape Charles the owner of the subject lot of record upon which the Accessory Dwelling Unit Accessory sits shall provide occupancy documentation and/or information as requested in writing.
 - b. The property owner where the Accessory Dwelling Unit (ADU) is located may utilize the ADU as an overflow residential space for members of their family and guests.
 3. Other requirements.
 - a. Accessory dwellings located in accessory buildings may have a separate water meter from the principal dwelling.
 - b. Accessory dwellings will be required to have their own municipality issues trash receptacle, separate from the main residence/structure.
 - c. Accessory dwellings meeting the requirements of all of the physical characteristics of 4.1 (J) (1) and (2) above must obtain a Certificate of Completion for Accessory Dwellings from the Code Official, which is equivalent to a Certificate of Occupancy. In order to issue said Certificate, the Code Official will conduct an inspection to determine compliance with the Building Code.
 - d. The lot on which an accessory dwelling is located shall have the required minimum lot area for the district in which it is located.
 - e. Parking shall be in compliance with Section 4.5 using both on and off-street parking areas.
 - f. Exterior elevations shall also be approved by the Historic District Review Board when required by Article VIII, Historic Overlay.
 - g. Annual Certifications to be submitted to the Town by March 15 of each year to the Building and Planning Departments.
 - i. The property owner will submit an annual affidavit on Town Affidavit Form for Accessory Dwellings attesting to their acknowledgement and adherence to the Zoning Ordinance requirements for Accessory Dwelling Units.
 - ii. The property owner will submit an annual affidavit on Town Affidavit Form for Safety Compliance for Accessory Dwelling Units.
 - iii. If the property owner changes between March 16 and December 31 of the calendar year, the new property owner will be required to submit both a new Town Affidavit Form for Accessory Dwellings and a Town Affidavit Form for Safety Compliance for Accessory Dwelling Units no later than thirty (30) days from the property transfer.

A. Purpose and intent

1. The purpose and intent of this section is to regulate Short-Term Rentals (STRs). STRs are common in America today, including in the town. However, given that they are commercial uses which must co-exist with residential uses, and often in neighborhoods not designed for commercial activity, limits and regulations are needed. This article is intended to provide the requirements to allow these certain limited commercial uses in town zoning districts containing residential uses per Article III.
2. The regulations for short-term rentals are designed to accommodate an STR Owner's and operator's limited commercial use in a way that is safe for the guest, meets town requirements, does not change the character of the town, and fits in with the districts in which STRs operate.
3. This Section is intended to work in tandem with the town's business license requirements as contained in the Town Code, as a measure for the town to monitor the number of STRs and enforce regulations.
4. Owners and operators are allowed a one-year (1 yr) grace period, from the date Zoning Ordinance No. 20241121 is adopted, to come into compliance, and pay the zoning permit fee. However, this grace period is not intended to limit or change existing rules, regulations, or fees, including but not limited to requirements to obtain a business license, pay taxes, and comply with the building code.

B. Permitting Requirements

1. A short-term rental unit shall not be operated until an annual business license is issued in accordance with Town Code Chapter 18, Article II by the Finance Department.
2. A short-term rental unit shall not be operated until a Short-Term Rental (STR) zoning permit is issued by the Planning Department. The application for a zoning permit will require, as a minimum, the following:
 - a. Name of owner and operator of the short-term rental property
 - b. Address of the short-term rental property
 - c. Town business license number
 - d. For operators that are a lessee or sublessee, an attestation that the property owner has granted permission for use of such property as a short-term rental.
 - e. Contact information for all owner(s), operator(s), and property management companies (if applicable), to include: names, telephone numbers, mailing addresses, and e-mail addresses. If ownership is via partnership or corporation, a list of all partners, officers, and shareholders (as appropriate) must be provided with the same contact information.
 - f. Contact information for the twenty-four (24) hour/seven (7) days a week contact who is the responsible party to address immediate concerns associated with a short-term rental, and who has the authority to act as the owner's and operator's agent.
 - g. If the property is governed by a homeowners' or condominium association, proof that authorization to operate the short-term rental was provided by the homeowners' or condominium association.
 - h. Certification that Town prepared STR training information has been reviewed annually.
 - i. Certification that adjacent property owners have been notified that an application for a STR zoning permit has been submitted.
3. Short-term rental zoning permits will be valid for one year (1 yr) and may be renewed each subsequent year, if there were no permit violations, and upon approval of the associated annual business license and re-inspection.
4. Any change to information on the (STR) zoning permit application will require notification to the Planning Department within ten (10) business days.
5. Any change in ownership of the property or short-term rental owner or operator will require a new application for the business license, short-term rental zoning permit, and inspection within twenty (20) business days.

6. An owner (which includes, but is not limited to, corporations or partnerships, and entities or individuals that are stockholders, members or partners in corporations, companies, or partnerships) may only operate up to five (5) short-term rental units within the entire town.
7. An operator is not prohibited from offering a property as a short-term rental solely on the basis that such operator is a lessee or sublessee, provided that the property owner has granted permission for such property's use as a short-term rental. However, a lessee or sublessee is limited to one (1) short-term rental within the town. An operator will be required to meet any subleasing requirements, if any, from any applicable homeowner's or condominium association.

C. Additional Requirements

1. Every short-term rental is required to submit transient occupancy tax (TOT) in accordance with Town Code Chapter 18, Article V.
2. Short-term rentals are only permitted in those districts as specified in Article III.
3. Simultaneous short-term rentals under separate contracts in the same dwelling are prohibited.
4. Commercial gatherings providing direct or indirect compensation, including but not limited to luncheons, banquets, parties, weddings, charitable fund-raising, commercial or advertising activities, or other similar occurrences are prohibited.
5. Occupancy: There shall be no more than two (2) lodgers per bedroom, plus two; with the maximum number of overnight lodgers per dwelling being no greater than ten (10). Occupancy shall not exceed any limit set by the Virginia Uniform Statewide Building Code (VA USBC) or local building official. This shall be identified as the Base Occupancy for STRs (BOSTR). For the purpose of the BOSTR, an occupant shall not include any person two years (2 yrs) of age or under.

Occupancy of greater than above may be approved, provided the property can accommodate sufficient off-street parking consisting of one (1) spot for every two (2) additional lodgers over the base occupancy for STRs (BOSTR), the property meets any other life safety requirements as may be reasonably required for such higher occupancy, and the property will not exceed the VA USBC or local building code official limitations.

The town retains the right to investigate violations and complaints of permit violations, and to periodically contact STR lodgers to determine occupancy. If town investigators determine that a violation has occurred, notice of such violation will be provided to the STR zoning permit holder or agent who will be responsible to cure the violation.

6. The business license and emergency information must be conspicuously posted inside each rental, including the twenty-four/seven (24/7) contact information for the STR responsible party.
7. Signage is to comply with Article V, Section 11.1.
8. Refuse requirements: one (1)- and two (2)-bedroom dwelling units used as short-term rental units will require one (1) trash receptacle; three (3) or more-bedroom units will require two (2) receptacles; five (5) or more bedrooms will require three (3) receptacles. Owners and operators are required to maintain the receptacles so that they do not overflow.
9. Lodgers and their guests will be required to observe noise requirements contained in Town Code Chapter 20, Article I, Section 20-3.
10. Safety Equipment: Operable smoke detectors, fire extinguishers, and carbon monoxide detectors shall be present in compliance with the Virginia Uniform Statewide Building Code.
11. Under no circumstances shall the issuance of a certificate of zoning compliance (permit for short-term rental) by the Administrator (Town) be construed as abrogating, nullifying or invalidating any other provision of Federal, State or local law: any deed covenant or property right; or any homeowners' or condominium association bylaw, or rule.

D. Inspections

1. An initial inspection will be required for all short-term rentals in accordance with Town Code Chapter 8, Section 8-4.

2. An annual re-inspection by the Code Official or designee is required when filing for a term rental business license renewal.
3. The Building Code Official or designee maintains the right to inspect a short-term rental, based on complaints or reasonable suspicion, to verify that the rental is being operated in accordance with the Virginia Uniform Statewide Building Code, the permit, and other applicable laws and regulations.

E. Violations

1. A Short-Term Rental (STR) zoning permit may be denied for any of the following violations:
 - a. Failure to obtain/maintain a town business license
 - b. Failure to pay all town real property taxes
 - c. Failure to pay all business taxes from the prior year
 - d. Failure to file and pay (if applicable) payment of transient occupancy taxes due the town for the previous three (3) months or more
 - e. Falsifying town forms or applications
 - f. Other applicable town zoning violations
 - g. Failure to provide responsive actions to issues raised to the twenty- four seven (24/7) contacts, as determined through town investigations.
 - h. Two (2) violations of safety/building code requirements within the same calendar year, that are not cured following reasonable notice.
 - i. Two (2) violations of occupancy limits within the same calendar year, that are not cured following reasonable notice.

Reasonable notice is satisfied when an authorized town official notifies the zoning permit holder or agent of a condition violating requirements of this section, and twenty-four hours (24 hrs.) pass without resolution of the violation.

Note: individual nuisance or noise violations will be issued directly to the offending party in addition to any consequence to the zoning permit holder.

Violations may be investigated by the Town Manager, Treasurer, Zoning Administrator, Building Code Official, Police Chief or their designees as appropriate. Once investigated, violations pursuant to this section will be issued by the Zoning Administrator.

2. An owner or operator, whose Short-Term Rental (STR) zoning permit has been denied pursuant to this Section, shall not be eligible to obtain another STR zoning permit for the subject short-term rental for the entire succeeding calendar year. Thereafter, the owner or operator will be required to apply for a new business license, STR zoning permit, and an inspection.
3. Before the denial of Short-Term Rental (STR) zoning permits is made effective, the town shall give written notice to the short-term rental owner or operator as noted on the STR zoning permit. The notice of permit denial under the provisions of the section shall contain:
 - a. A description of the violations constituting the basis of the denial, suspension or revocation;
 - b. If applicable, a statement of acts necessary to correct the violation(s); and
 - c. A statement that the owner may have a right to appeal the notice of a permit denial within thirty (30) days in accordance with the Code of Virginia Section 15.2-2311 (A) and that the decision of permit denial shall be final and unappealable if not appealed within thirty (30) days.