

Wetlands and Coastal Dune Board

Public Hearing and Regular Meeting Agenda

September 8, 2021

Cape Charles Civic Center– 500 Tazewell Avenue

3:00 P.M.

1. Call to Order; Roll Call
2. Invocation and Pledge of Allegiance
3. Consent Agenda
 - a. Approval of Agenda Format
 - b. Approval of Minutes - none
4. Public Hearing:
 - A. VMRC JPA 2021-1510 – Robert M. Smith, Property Owner on behalf of Bay Creek Resorts – end of Palmers Landing Cul-de-Sac (Tax Map # 90-30-CA3)

Project Specifics: The portion of the project that is within the Wetlands and Coastal Dune Board's jurisdiction, pursuant to Cape Charles Zoning Ordinance Section 74.31, is the proposed installation of a 30 ft x 4 ft. gangplank and 4 modular 120 ft. x 80 ft. x 8 ft. ramp/floating dock with a T-Section of 2 modular 120 ft. x 80 ft. x 8 ft. with attached kayak sluice way as a community kayak launch and return.

- Overview of application
- Applicant's presentation
- Public comments
- Board discussion\deliberation
- Decision

5. Other Matters
 - A. 111 Creekside Landing: Possible Violation of clearcutting in Wetlands and Resource Protection Area (RPA) of the Chesapeake Bay Preservation Act (CBPA)
 - B. 104 Creekside Landing: Possible Violation of clearcutting in Wetlands and Resource Protection Area (RPA) of the Chesapeake Bay Preservation Act (CBPA)
6. Adjourn

**CAPE CHARLES
WETLANDS AND COASTAL DUNE BOARD
NOTICE OF PUBLIC HEARING**

The Cape Charles Town Wetlands and Coastal Dune Board will hold a public hearing on Wednesday, September 8, 2021 at 3:00 pm in the Cape Charles Civic Center at 500 Tazewell Avenue, on the following:

A) Wetlands Application for Robert M. Smith, Property Owner on behalf of Bay Creek Resorts – VMRC #2021-1510

The portion of the project that is within the Wetlands and Coastal Dune Board's jurisdiction, pursuant to Cape Charles Zoning Ordinance Section 74.31, is the proposed installation of a 30 ft x 4 ft. gangplank and 4 modular 120 ft. x 80 ft. x 8 ft. ramp/floating dock with a T-Section of 2 modular 120 ft. x 80 ft. x 8 ft. with attached kayak sluice way as a community kayak launch and return, located at Tax Map # 90-30-CA3 at the end of Palmers Landing Cul-de-Sac in Bay Creek.

The application is available for public review on www.capecharles.org, under Agendas and Minutes/Wetlands/Coastal Dune Board. Please contact the Zoning Administrator, at 757-331-2036, or by email at planner@capecharles.org if you have any questions or require additional information. Anyone interested in attending and needing special assistance please contact the Town at least forty-eight hours before the hearing.

AD PLACED: Eastern Shore Post – Friday, August 20, 2021

AD TO RUN: Friday, August 27, 2021 & September 3, 2021



WETLANDS & COASTAL DUNE BOARD

STAFF REPORT

Meeting Date: September 8, 2021

Item #: 4A

Prepared By: Katie H. Nunez, Interim Planning/Zoning Administrator
Site Address: End of Palmers Landing Cul-de-Sac (Tax Map # 90-30-CA3)
Applicant: Robert M. Smith, property owner on behalf of Owner
Owner: Bay Creek Resorts
JPA Number 2021-1510
Proposed Project: Community Kayak Launch and Return, gangplank and ramp/floating dock

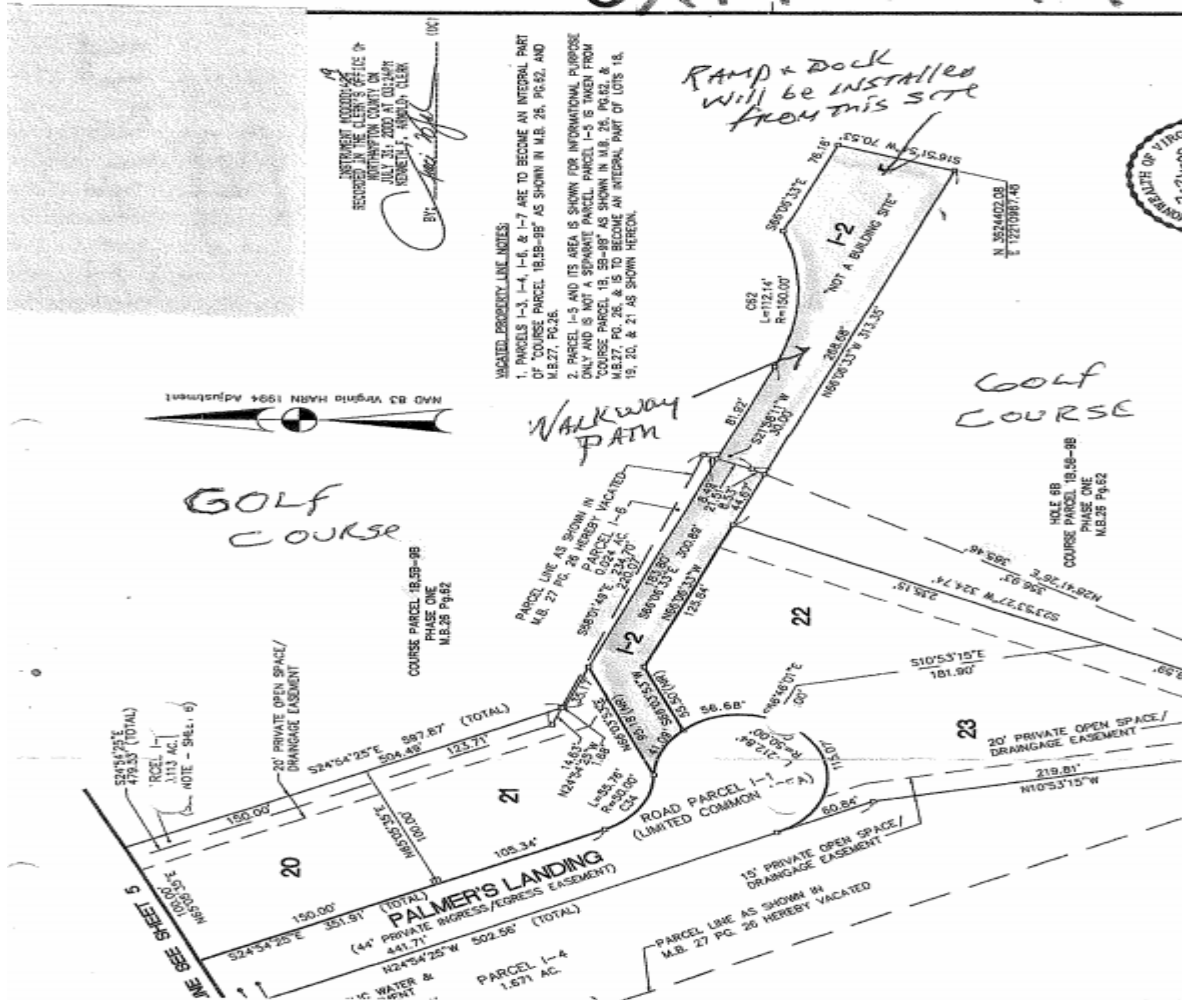
Item Specifics:

A joint permit application for the proposed installation of a 30 ft x 4 ft. gangplank and 4 modular 120 ft. x 80 ft. x 8 ft. ramp/floating dock with a T-Section of 2 modular 120 ft. x 80 ft. x 8 ft. with attached kayak sluice way as a community kayak launch and return has been received.

SITE LOCATION



SITE PLAN



The applicant indicates that there is an active Kayak Group/Club within the Baycreek Development and this is intended for their use. The property is owned by the Bay Creek Resort and they have provided permission for this application to be filed by Mr. Smith, adjacent property owner, on their behalf.

The intent is to install a low-profile (5 1/2" freeboard) floating dock comprised of 4 (120" x 8") modules, coupled to a T-Section at the creek end comprised of 2 (120" x 80" x 8") modules with a kayak sluice way attached. This unit will be entirely floating over subaqueous lands/water and attached on the shore side to a 30 ft. x 4 ft. ramp or gangway which is over vegetated wetlands and non-vegetated tidal wetlands. The only pilings required will be 16' x 2 1/2" galvanized pipe sleeves

with PVC. The ramp at the uplands end will be hinged to a solid, countersunk base comprised of precast concrete or treated RR Ties. No clearing or grading is required, as an existing path has been in use for many years. The materials are EZ Docks polyethylene.

Staff Recommendation:

Review the application materials and public comment. After discussion, determine whether issuance of a permit would be appropriate. It should be noted that approval by this Board is valid only for the local Wetlands Board, and authorization from all other jurisdictions and agencies is required prior to any work being done.

Attachments:

Attachment 1 – Application and Documents

Virginia Marine Resources Commission

Permit Application 20211510

Printed: Friday July 16, 2021 11:09 AM



Applicant: Robert M. Smith
208 Churchill Downs
Cape Charles, VA 23310

Application Number:	20211510	Engineer:	Ben Nettleton
Application Date:	July 13, 2021	Locality:	Cape Charles
Permit Type:		Waterway:	
Permit Status:	Pending	Expiration Date:	
Wetlands Board Action:		Public Hearing Date:	

Project Description: Community Kayak Dock/Ramp @ Plantation Creek

7-10-21

Mr. Ben Nettleton
Environmental Engineer, Habitat Management
Virginia Marine Resources Commission

Subject: Application for a kayak Dock @ Plantation Creek, Cape Charles

Dear Ben:

As requested find enclosed the permit application for subject kayak ramp.

We have completed the Basic Information pages as well as the Appendix A in Part 3. If, after review, any additional input is required don't hesitate to call or e-mail and I will be responsive.

We look forward to your response and await approval prior to placing the materials order and finalizing the Contractor.

Thank you for your assistance in completing the request.

All the best
Robert M. Smith
484-888-9881
rowingsmit1@aol.com



✓ check enclosed

Part 1 - General Information (continued)

1. Applicant's legal name* and complete mailing address: *HOME OWNER IN Bay Creek Comm. REPRESENTING OUR KAYAK CLUB 208 Church Hill Downs Cape Charles, VA. 23310* Contact Information: *Robert M. Smith*
 Home () _____
 Work () _____
 Fax () _____
 Cell *(484) 888-9881*
 e-mail *ROWINGSMITH1@aol.com*
 State Corporation Commission Name and ID Number (if applicable) _____

2. Property owner(s) legal name* and complete address, if different from applicant: *BAY CREEK RESORT, LLC 1 CLUBHOUSE WAY Cape Charles, VA. 23310* Contact Information:
 Home () _____
 Work *(757) 678 6276*
 Fax () _____
 Cell *(910) 742 6716*
 e-mail *bmaster5@preservecommunities.com*
 State Corporation Commission Name and ID Number (if applicable) *EN: 84-3309850 - com*

3. Authorized agent name* and complete mailing address (if applicable): *N/A* Contact Information:
 Home () _____
 Work () _____
 Fax () _____
 Cell () _____
 e-mail _____
 State Corporation Commission Name and ID Number (if applicable) _____

*** If multiple applicants, property owners, and/or agents, each must be listed and each must sign the applicant signature page.**

4. Provide a detailed description of the project in the space below, including the type of project, its dimensions, materials, and method of construction. Be sure to include how the construction site will be accessed and whether tree clearing and/or grading will be required, including the total acreage. If the project requires pilings, please be sure to include the total number, type (e.g. wood, steel, etc), diameter, and method of installation (e.g. hammer, vibratory, jetted, etc). If additional space is needed, provide a separate sheet of paper with the project description.

WE INTEND TO INSTALL A LOW-PROFILE (5 1/2" FREEBOARD) FLOATING DOCK COMPRISED OF 4-120"X80"X8" MODULES, COUPLED TO A T-SECTION @ THE CREEK END COMPRISED OF 2-120"X80"X8" MODULES w/a KAYAK SLUICE WAY ATTACHED. (SEE EZ-DOCK SKETCH, ENCLOSED). THIS UNIT WILL BE ENTIRELY FLOATING OVER SUBAQUEOUS LANDS/WATER. AND ATTACHED, ON THE SHORE SIDE TO A 30 foot X 4 foot RAMP OR GANGWAY WHICH IS OVER VEGETATED WETLANDS AND NON-VEGETATED (FLATS) TIDAL WETLANDS. THE ONLY PILING REQUIRED WILL BE 16'X2 1/2" GALVANIZED PIPE SLEEVES WITH PVC. THE RAMP @ THE UPLANDS END WILL BE HINGED TO A SOLID COUNTERSUNK BASE COMPRISED OF PRECAST CONCRETE OR TREATED RR TIES. NO CLEARING OR GRADING IS REQUIRED, AS AN EXISTING PATH HAS BEEN IN USE FOR MANY YEARS.

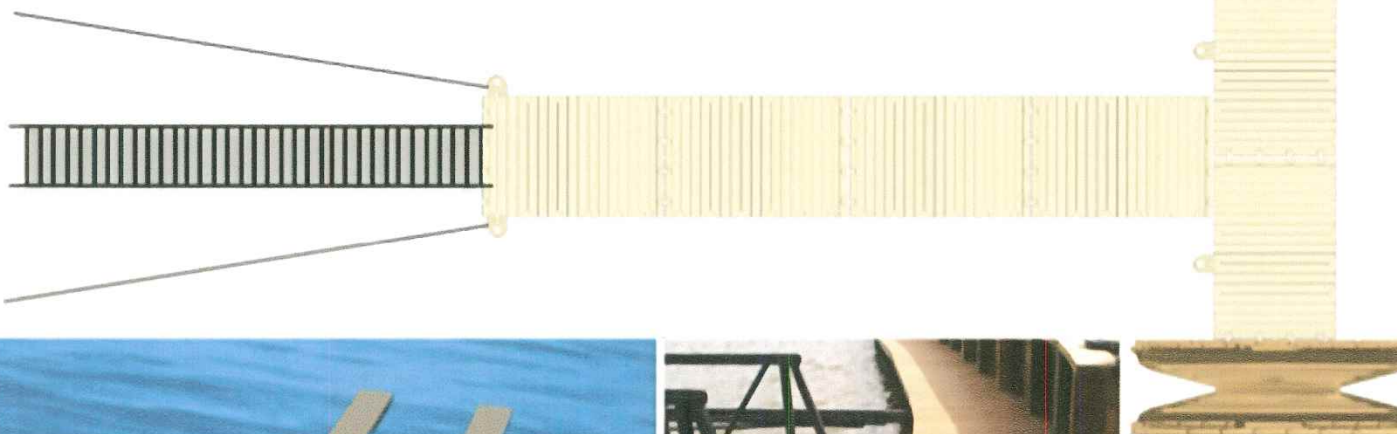
Application Revised: October 2019

THE MATERIALS ARE EZ DOCKS POLYETHYLENE (SPECS ENCL.)

SHOCO
INCORPORATED



MARINE DISTRIBUTION & MARKETING SINCE 1956



Dock to Shore Cable Anchoring



affordablefloatingdocks@gmail.com



Affordable Floating
Docks, Inc

AFFORDABLE FLOATING DOCKS, Inc.
5760 Northampton BLVD.- Suite 102
Virginia Beach, VA 23455

757-375-3274

"Specs"

Our Low Profile Rowing Dock provides the utmost stability and convenience for you and your crew. Designed to meet FISA and USA rowing standards, it's a favorite among clubs and universities, giving crews of all sizes easy access to the water upon entry and exit.

With a modular design, our rowing dock is easy to install and integrates seamlessly into existing EZ Dock systems or traditional dock designs.



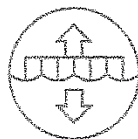
MAINTENANCE-FREE & BAREFOOT FRIENDLY

- EZ Dock's polyethylene docks are durable and slip resistant
- Won't splinter or rot, never needs to be painted
- Cleans easily with soap and water



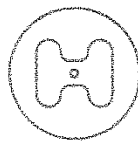
ADAPTABLE DESIGN

- Unique design delivers outstanding load capacity, functionality, and safety
- Variety of dock sections, boat/PWC lifts, and kayak launches
- Easily customizable design to make your perfect waterfront retreat



FLEXIBLE FLOTATION TECHNOLOGY

- Flotation chambers are constructed for optimal strength and structural integrity
- Designed to provide additional stability on the water
- Dock sections adapt easily to changing water conditions and levels



INNOVATIVE COUPLING

- Made of recycled materials
- Nuts and bolts made of heavy duty, rust resistant composite
- Strength and durability even in the harshest weather conditions

Part 1 - General Information (continued)

5. Have you obtained a contractor for the project? ☒ Yes* ☒ No. *If your answer is "Yes" complete the remainder of this question and submit the Applicant's and Contractor's Acknowledgment Form (enclosed)

Contractor's name* and complete mailing address:

AWAITING RESPONSE DATES FROM
a) SHORE DIVING @ LIVE-LOM
b) GEORGE @ DILLEY CONTRACTING - LOM
c) OTHERS

Contact Information:

Home () _____
Work () _____
Fax () _____
Cell () _____
email _____

State Corporation Commission Name and ID Number (if applicable) _____

*** If multiple contractors, each must be listed and each must sign the applicant signature page.**

6. List the name, address and telephone number of the newspaper having general circulation in the area of the project. Failure to complete this question may delay local and State processing.

Name and complete mailing address:

Telephone number

() _____

7. Give the following project location information:

Street Address (911 address if available) *PALMERS LANDING*

Lot/Block/Parcel# *1-2 NOT A BUILDING SITE, PART OF THE GOLF COURSE BETWEEN LOTS 21 & 22*

Subdivision *THE SIGNATURE @ BAY CREEK*

City / County *CAPE CHARLES / NORTHAMPTON* ZIP Code *23310*

Latitude and Longitude at Center Point of Project Site (Decimal Degrees):

SEE EXHIBITS A+B 1 - ENCLOSED (Example: 36.41600/-76.30733)

If the project is located in a rural area, please provide driving directions giving distances from the best and nearest visible landmarks or major intersections. Note: if the project is in an undeveloped subdivision or property, clearly stake and identify property lines and location of the proposed project. A supplemental map showing how the property is to be subdivided should also be provided.

ALL ACCESS WILL BE BY EITHER WALKING OR GOLF CART USING EXISTING GOLF CART PATH OR EXISTING CRUSHED SHELL PATH

8. What are the primary and secondary purposes of and the need for the project? For example, the primary purpose may be "to protect property from erosion due to boat wakes" and the secondary purpose may be "to provide safer access to a pier."

1. - THE PRIMARY IS TO ENABLE KAYAKERS ACCESS TO PLANTATION CREEK W/O DISTURBING THE WETLANDS VIA GUIDING THEM TO WATER ON A PROTECTED PATH

2. - SECONDARY IS SAFE ACCESS, SINCE ONE MUST NOW WADE THRU HEAVY MUD FLAT. THIS BRIDGE WILL ACCOMPLISH BOTH 1. AND 2.

EXHIBIT A

INSTRUMENT #000001424
RECORDED IN THE CLERK'S OFFICE OF
NORTHAMPTON COUNTY ON
JULY 31, 2000 AT 03:24PM
KENNETH F. ARNOLD, CLERK

123

益

VACATED PROPERTY LINE NOTES:

1. PARCELS 1-3, 1-4, 1-6, & 1-7 ARE TO BECOME AN INTEGRAL PART OF "COURSE PARCEL 1B5B-9B" AS SHOWN IN M.B. 26, PG.62, AND M.B.27, PG.26.
2. PARCEL 1-5 AND ITS AREA IS SHOWN FOR INFORMATIONAL PURPOSE ONLY AND IS NOT A SEPARATE PARCEL. PARCEL 1-5 IS TAKEN FROM "COURSE PARCEL 1B, 5B-9B" AS SHOWN IN M.B. 26, PG.62, & M.B.27, PG. 26, & IS TO BECOME AN INTEGRAL PART OF LOTS 18, 19, 20, & 21 AS SHOWN HEREON.

RAMP & DOCK
will be installed
from this site

7-20-00
COMMONWEALTH OF VIRGINIA

GOLF COURSE

HOLE 6B
COURSE PARCEL 18.58-9B
PHASE ONE
M.B.26 Pg.62

GOLF COURSE

COURSE PARCEL 1B,5B--9B
PHASE ONE
M.B.26 Pg.62

PARCEL LINE AS SHOWN IN
M.B. 27 PG. 26 HEREBY VACATED
38°01'49"E PARCEL 1-6
0.024 AC
20234 AC

SEE SHEET 5
100.00
155-0535'E
RCEL 1-
0.113 AC.
NOTE - SHEET 6'
479.53' (TOTAL)
524.54 ± 25'E

20' PRIVATE OPEN SPACE/
DRAINAGE EASEMENT

20

105.5
PALMER'S LANDING
INGRESS/EGRESS EASEMENT
(TOTAL)
56' (TOTAL)

PARCEL 1-4
1.671 AC.

PARCEL LINE AS SHOWN IN
M.B. 27 PG. 26 HEREBY VACATED

23

20' PRIVATE OPEN SPACE/
DRAINAGE EASEMENT

Received by VMRC July 13, 2021 /blh

Part 1 - General Information (continued)

9. Proposed use (check one):
☐ Single user (private, non-commercial, residential)
☒ Multi-user (community, commercial, industrial, government)
10. Describe alternatives considered and the measures that will be taken to avoid and minimize impacts, to the maximum extent practicable, to wetlands, surface waters, submerged lands, and buffer areas associated with any disturbance (clearing, grading, excavating) during and after project construction. Please be advised that unavoidable losses of tidal wetlands and/or aquatic resources may require compensatory mitigation. *We, community of Bay Creek, have a large kayaking group who have for years trekked thru the buffer areas to access the creek. Bay Creek is "exploding" in terms of new owners who want the kayak access. This will provide a "controlled" route which will greatly protect the environment and eliminate the need for any further clearing, etc.*
11. Is this application being submitted for after-the-fact authorization for work which has already begun or been completed? ☐ Yes ☒ No. If yes, be sure to clearly depict the portions of the project which are already complete in the project drawings.
12. Approximate cost of the entire project (materials, labor, etc.): \$ ^{\$}~~1~~- ^{\$}25,000 - ^{\$}30,000
13. Completion date of the proposed work: Fall of 2021 -
14. Adjacent Property Owner Information: List the name and complete **mailing address**, including zip code, of each adjacent property owner to the project. (NOTE: If you own the adjacent lot, provide the requested information for the first adjacent parcel beyond your property line.) Failure to provide this information may result in a delay in the processing of your application by VMRC.
ON EITHER SIDE OF THIS ACCESS POINT IS THE GOLF COURSE, HOLES 14 + 15 OF THE ARNOLD PALM COURSE, TO THE LEFT OF THE PROPOSED SITE (ACROSS THE CREEK) IS LOT #19 IN PLANTATION POINT (PART OF BAY CREEK). ACROSS THE CREEK ON JACOBIAN LANE IS A FARM BELONGING TO DANIEL SCOTT. BOTH OF THESE ARE DETAILED ON THE ENCLOSED NORTHAMPTON CO. OVERHEAD MAPS AND OWNER/PROPERTY INFORMATION MAPS #1 + #2 BUT ARE NOT ADJACENT.

Northampton County, Virginia

Legend

- County Boundaries
- Town Names
- Route Numbers
- Road Labels
- Parcels
- Driveways



Map # 2

Map Printed from Northampton
<https://parcelviewer.geodecisions.com/Northampton/>

Feet
0 200 400 600 800
1:9,026 / 1"=752 Feet

Title:

Date: 7/6/2021

DISCLAIMER: This drawing is neither a legally recorded map nor a survey and is not intended to be used as such. The information displayed is a compilation of records, information, and data obtained from various sources, and Northampton County is not responsible for its accuracy or how current it may be.

Part 2 - Signatures

1. Applicants and property owners (if different from applicant).

NOTE: REQUIRED FOR ALL PROJECTS

PRIVACY ACT STATEMENT: The Department of the Army permit program is authorized by Section 10 of the Rivers and Harbors Act of 1899, Section 404 of the Clean Water Act, and Section 103 of the Marine Protection Research and Sanctuaries Act of 1972. These laws require that individuals obtain permits that authorize structures and work in or affecting navigable waters of the United States, the discharge of dredged or fill material into waters of the United States, and the transportation of dredged material for the purpose of dumping it into ocean waters prior to undertaking the activity. Information provided in the Joint Permit Application will be used in the permit review process and is a matter of public record once the application is filed. Disclosure of the requested information is voluntary, but it may not be possible to evaluate the permit application or to issue a permit if the information requested is not provided.

CERTIFICATION: I am hereby applying for all permits typically issued by the DEQ, VMRC, USACE, and/or Local Wetlands Boards for the activities I have described herein. I agree to allow the duly authorized representatives of any regulatory or advisory agency to enter upon the premises of the project site at reasonable times to inspect and photograph site conditions, both in reviewing a proposal to issue a permit and after permit issuance to determine compliance with the permit.

In addition, I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Robert M. Smith

Applicant's Legal Name (printed/typed)

(Use if more than one applicant)

[Signature]

Applicant's Signature

(Use if more than one applicant)

7-7-21

Date

BAY CREEK RESORT, LLC

Property Owner's Legal Name (printed/typed)
(If different from Applicant)

(Use if more than one owner)

Robert Masters

Property Owner's Signature

(Use if more than one owner)

ROBERT MASTERS
GENERAL MANAGER

7/6/21

Date

Part 2 – Signatures (continued)

2. Applicants having agents (if applicable)

CERTIFICATION OF AUTHORIZATION

I (we), Robert Smith, hereby certify that I (we) have authorized N/A
(Applicant's legal name(s)) (Agent's name(s))

to act on my behalf and take all actions necessary to the processing, issuance and acceptance of this permit and any and all standard and special conditions attached.

We hereby certify that the information submitted in this application is true and accurate to the best of our knowledge.

N/A
(Agent's Signature)

(Use if more than one agent)

(Date)

[Signature]
(Applicant's Signature)

(Use if more than one applicant)

7-7-21
(Date)

3. Applicant's having contractors (if applicable)

CONTRACTOR ACKNOWLEDGEMENT

I (we), _____, have contracted _____
(Applicant's legal name(s)) (Contractor's name(s))
to perform the work described in this Joint Permit Application, signed and dated _____.

We will read and abide by all conditions set forth in all Federal, State and Local permits as required for this project. We understand that failure to follow the conditions of the permits may constitute a violation of applicable Federal, state and local statutes and that we will be liable for any civil and/or criminal penalties imposed by these statutes. In addition, we agree to make available a copy of any permit to any regulatory representative visiting the project to ensure permit compliance. If we fail to provide the applicable permit upon request, we understand that the representative will have the option of stopping our operation until it has been determined that we have a properly signed and executed permit and are in full compliance with all terms and conditions.

Contractor's name or name of firm

Contractor's or firms address

Contractor's signature and title

Contractor's License Number

Applicant's signature

(use if more than one applicant)

Date

Part 3 – Appendices

Please complete and submit the appendix questions applicable to your project, and attach the required vicinity map(s) and drawings to your application. If an item does not apply to your project, please write "N/A" in the space provided.

Appendix A: (TWO PAGES) Projects for Access to the water such as private and community piers, boathouses, marinas, moorings, and boat ramps. Answer all questions that apply.

- Briefly describe your proposed project.** *A 40ft long, low profile ^{FLOATING} DOCK 6'-6" wide with a floating T-section, 20 ft long x 6'-6" wide including a KAYAK SHUTE. BRIDGING THE NON-VEGETATED AND VEGETATED WETLANDS will be a GANGPLANK/RAMP 30 ft long x 4 ft wide. The intent is for KAYAK LAUNCH AND RETURN.*
- For private, noncommercial piers:**
 - Do you have an existing pier on your property? ☒ Yes ☐ No
 - If yes, will it be removed? ☐ Yes ☒ No
 - Is your lot platted to the mean low water shoreline? ☒ Yes ☐ No
 - What is the overall length of the proposed structure? 76 feet. *30' RAMP + 46' DOCK + T*
 - Channelward of Mean High Water? 10 feet. *THIS IS THE RAMP*
 - Channelward of Mean Low Water? 46 feet. *THIS IS THE FLOATING DOCK*
 - What is the area of the piers and platforms that will be constructed over
 - Tidal non-vegetated wetlands 80 square feet.
 - Tidal vegetated wetlands 40 square feet.
 - Submerged lands 263 square feet.
 - What is the total size of any and all L- or T-head platforms? 130 sq. ft.
 - For boathouses, what is the overall size of the roof structure? N/A sq. ft.
 - Will your boathouse have sides? ☐ Yes ☒ No. *N/A*

NOTE: All proposals for piers, boathouses and shelter roofs must be reviewed by the Virginia Marine Resources Commission (Commission or VMRC), however, pursuant to § 28.2-1203 A 5 of the Code of Virginia a VMRC permit may not be required for such structures (except as required by subsection D of § 28.2-1205 for piers greater than 100 feet in length involving commercially productive leased oyster or clam grounds), provided that (i) the piers do not extend beyond the navigation line or private pier lines established by the Commission or the United States Army Corps of Engineers (USACE), (ii) the piers do not exceed six feet in width and finger piers do not exceed five feet in width, (iii) any L or T head platforms and appurtenant floating docking platforms do not exceed, in the aggregate, 400 square feet, (iv) if prohibited by local ordinance open-sided shelter roofs or gazebo-type structures shall not be placed on platforms as described in clause (iii), but may be placed on such platforms if not prohibited by local ordinance, and (v) the piers are determined not to be a navigational hazard by the Commission. Subject to any applicable local ordinances, such piers may include an attached boat lift and an open-sided roof designed to shelter a single boat slip or boat lift. In cases in which open-sided roofs designed to shelter a single boat, boat slip or boat lift will exceed 700 square feet in coverage or the open-sided shelter roofs or gazebo structures exceed 400 square feet, and in cases in which an adjoining property owner objects to a proposed roof structure, permits shall be required as provided in § 28.2-1204.

Part 3 – Appendices (continued)

3. For **USACE permits**, in cases where the proposed pier will encroach beyond one fourth the waterway width (as determined by measuring mean high water to mean high water or ordinary high water mark), the following information must be included before the application will be considered complete. For an application to be considered complete:
- The USACE MAY require depth soundings across the waterway at increments designated by the USACE project manager. Typically 10-foot increments for waterways less than 200 feet wide and 20-foot increments for waterways greater than 200 feet wide with the date and time the measurements were taken and how they were taken (e.g., tape, range finder, etc.).
 - The applicant **MUST** provide a justification as to purpose if the proposed work would extend a pier greater than one-fourth of the distance across the open water measured from mean high water or the channelward edge of the wetlands.
 - The applicant **MUST** provide justification if the proposed work would involve the construction of a pier greater than five feet wide or less than four feet above any wetland substrate.
4. Provide the type, size, and registration number of the vessel(s) to be moored at the pier or mooring buoy.

Type	Length	Width	Draft	Registration #
<u>No Vessels will be moored! This is solely for the use of owners kayaks which upon return will be stored on land.</u>				

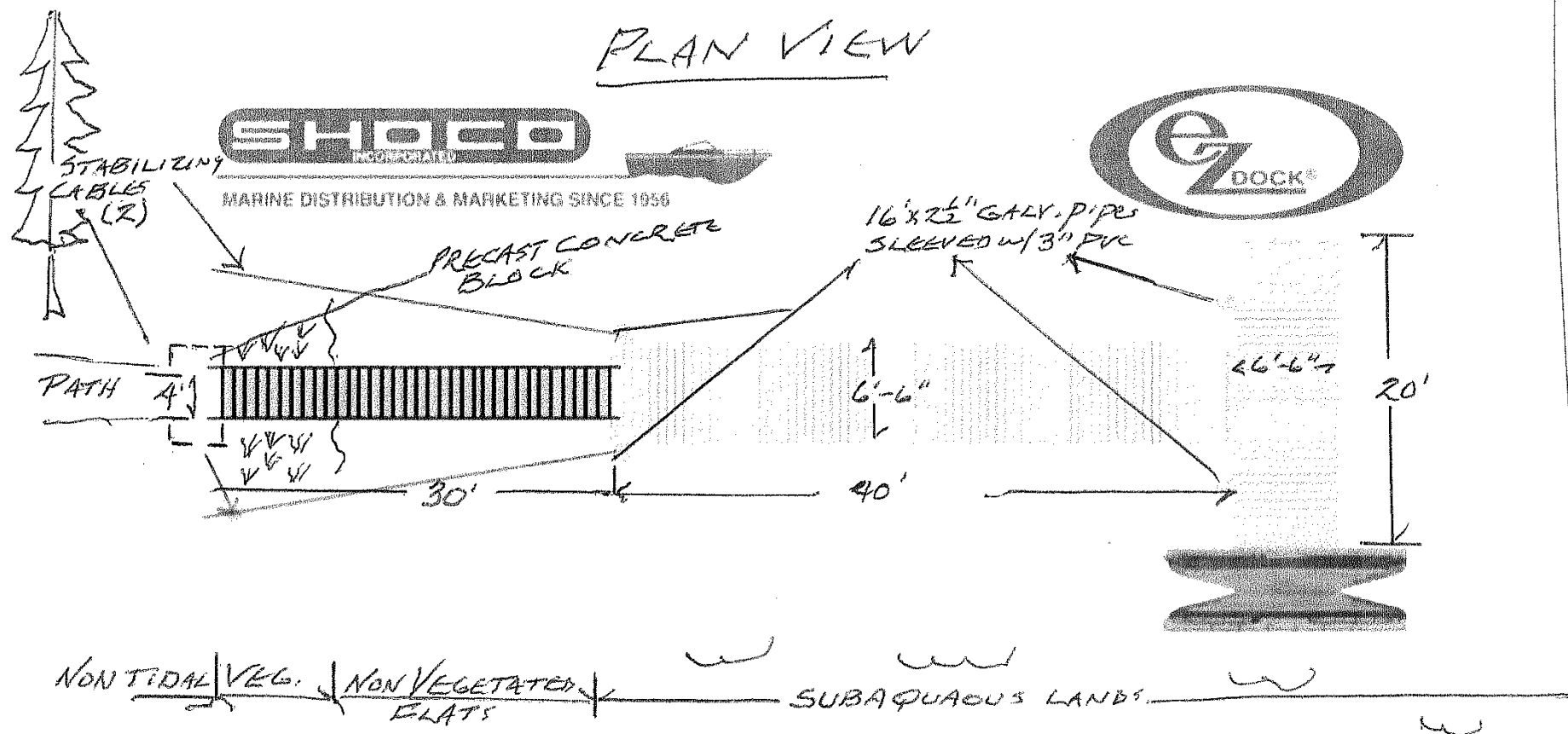
5. For **Marinas, Commercial Piers, Governmental Piers, Community Piers** and other non-private piers, provide the following information:

- Have you obtained approval for sanitary facilities from the Virginia Department of Health? N/A (required pursuant to Section 28.2-1205 C of the Code of Virginia). Will utilize homes and golf club facilities.
- Will petroleum products or other hazardous materials be stored or handled at your facility? No
- Will the facility be equipped to off-load sewage from boats? N/A
- How many wet slips are proposed? N/A. How many are existing? 0
- What is the area of the piers and platforms that will be constructed over
 - Tidal non-vegetated wetlands 80 square feet
 - Tidal vegetated wetlands 40 square feet
 - Submerged lands 263 square feet

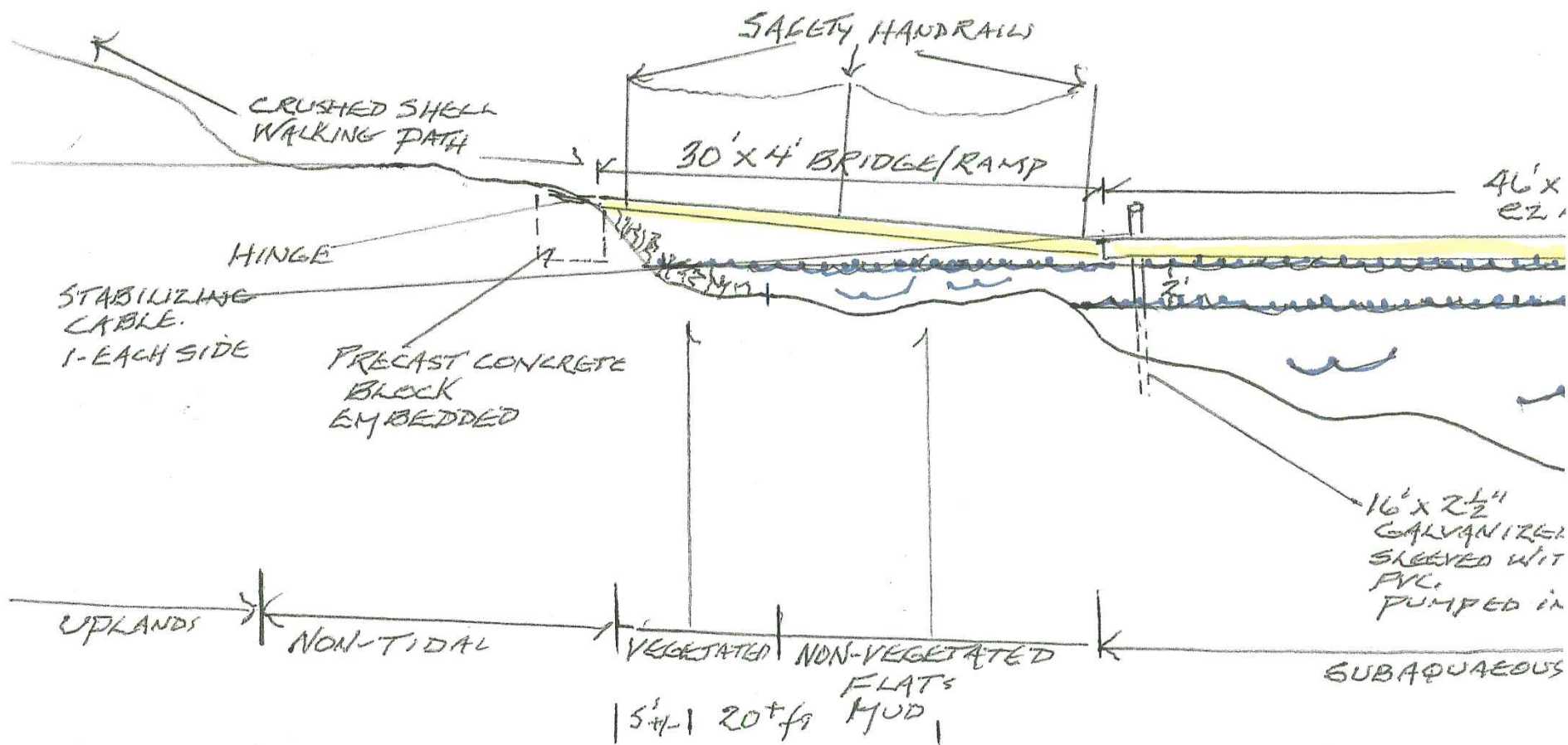
6. For **boat ramps**, what is the overall length of the structure? _____ feet.
- From Mean High Water? _____ feet.
- From Mean Low Water? _____ feet.

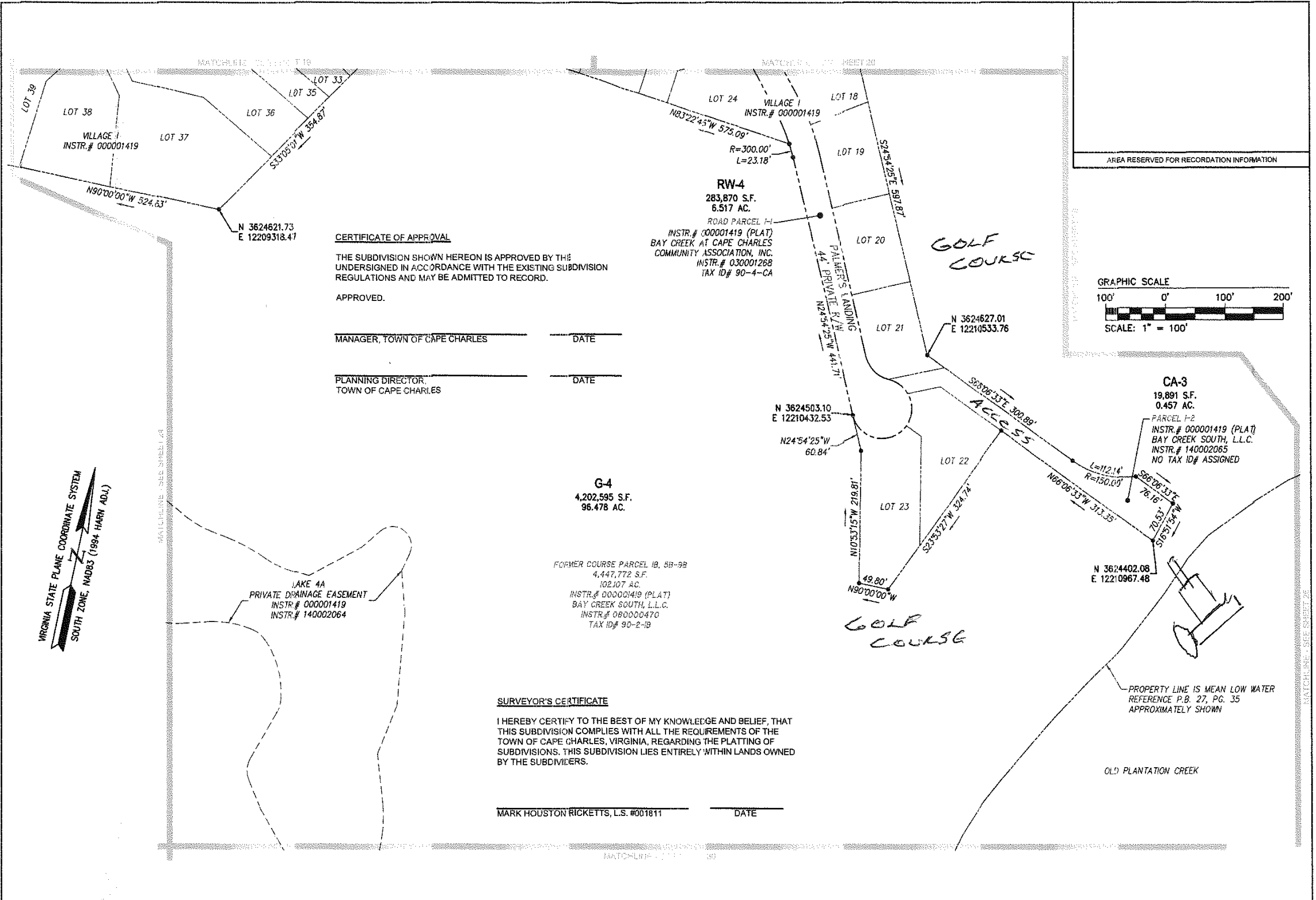
Note: drawings must include the construction materials, method of installation, and all dimensions. If tending piers are proposed, complete the pier portion.

Note: If dredging or excavation is required, you must complete the Standard Joint Point Permit application.



ELEVATION





CERTIFICATE OF APPROVAL

THE SUBDIVISION SHOWN HEREON IS APPROVED BY THE UNDERSIGNED IN ACCORDANCE WITH THE EXISTING SUBDIVISION REGULATIONS AND MAY BE ADMITTED TO RECORD.

APPROVED.

MANAGER, TOWN OF CAPE CHARLES _____ DATE _____

PLANNING DIRECTOR, TOWN OF CAPE CHARLES _____ DATE _____

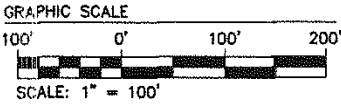
G-4
4,202,595 S.F.
96.478 AC.

FORMER COURSE PARCEL 1B, 5B-9B
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102.107 AC.
INSTR. # 000001419 (PLAT)
BAY CREEK SOUTH, L.L.C.
INSTR. # 080000470
TAX ID# 90-2-1B

SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY TO THE BEST OF MY KNOWLEDGE AND BELIEF, THAT THIS SUBDIVISION COMPLIES WITH ALL THE REQUIREMENTS OF THE TOWN OF CAPE CHARLES, VIRGINIA, REGARDING THE PLATTING OF SUBDIVISIONS. THIS SUBDIVISION LIES ENTIRELY WITHIN LANDS OWNED BY THE SUBDIVIDERS.

MARK HOUSTON RICKETTS, L.S. #001811 _____ DATE _____



VIRGINIA STATE PLANE COORDINATE SYSTEM
SOUTH ZONE, NAD83 (1984 HARN ADJ.)

LAKE 4A
PRIVATE DRAINAGE EASEMENT
INSTR. # 000001419
INSTR. # 140002064

PROPERTY LINE IS MEAN LOW WATER
REFERENCE P.B. 27, PG. 35
APPROXIMATELY SHOWN

OLD PLANTATION CREEK

Rev.	Date	Description	Revised By



816 Greenbrier Circle, Suite F
Chesapeake, Virginia 23320
Phone: (757) 410-7436
www.aesva.com

Hampton Roads | Central Virginia | Middle Peninsula

RESUBDIVISION OF

BAY CREEK SOUTH

BAY CREEK AT CAPE CHARLES

TOWN OF CAPE CHARLES CAPEVILLE DISTRICT NORTHAMPTON COUNTY VIRGINIA

Project Contacts: MHR

Project Number: H10069-07

Scale: 1" = 100' Date: 12/11/2019

Sheet Number

25 of 38



1024



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U.S. POSTAGE PAID
FCM LG ENV
CAPE CHARLES, VA
23310
JUL 09, 21
AMOUNT

\$1.60

R2305K135879-14

MR. BEN Nettleton
ENVIRONMENTAL ENGINEER
HABITAT MANAGEMENT
VIRGINIA MARINE RESOURCES COMMISSION
380 FENWICK RD.
FORT MONROE, VA.
23651



WETLANDS & COASTAL DUNE BOARD

STAFF REPORT

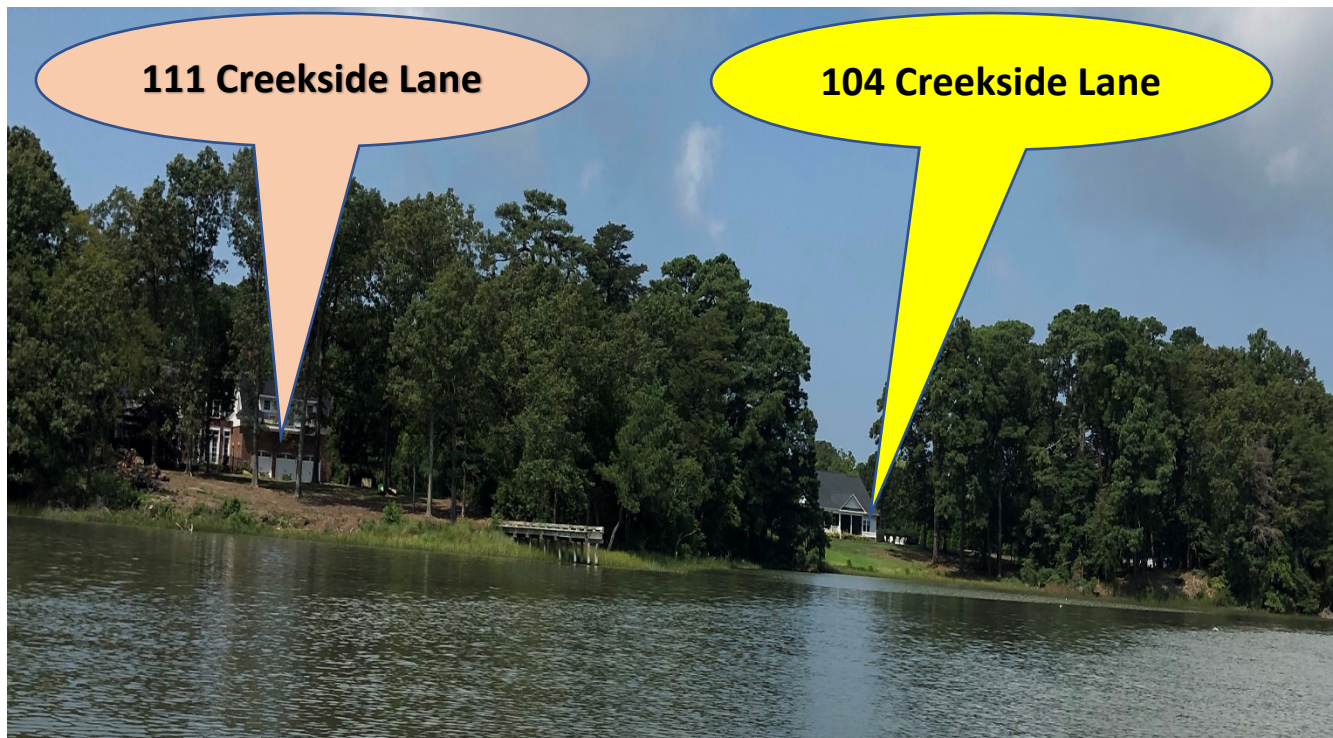
Meeting Date: September 8, 2021

Item: 5A & 5B – Possible Violations

Prepared By: Katie H. Nunez, Interim Planning/Zoning Administrator
Site Address: 104 & 111 Creekside Lane
Property Owner: Anthony & Susan Cataldo
Robert & Cheryl Nelson
Violation of: Cape Charles Zoning Ordinance – Appendix E: Wetlands Ordinance & Article VII – Chesapeake Bay Preservation Area Overlay District

I am seeking the Board's assistance in reviewing a complaint that the office has received alleging violations of the Wetlands Act and the Chesapeake Bay Preservation Act for clearcutting of two lots located on Creekside Lane in the Bay Creek Development at the waterside edge.

PHOTO FROM CREEK TO SHORE AUGUST 2021



While I have experience in planning and zoning, I do not have a tremendous background in the administration of the Wetlands Act and am rapidly coming up to speed in the administration of the Chesapeake Bay Preservation Act and would appreciate the input of the Board in looking at this matter and confirming the nature and type of violation and I will then proceed with the enforcement action.

Enclosed is the aerial photos from the County GIS System which was taken in February 2017 with both lots outlined in blue and the wetlands information included on the mapping.



The County GIS System does not have an overlay layer of Chesapeake Bay Preservation Act (CBPA), specifically for the Resource Protection Area (RPA). However, when I look at the CBPA Map for the Town, this area is clearly identified within an RPA.

No permits were applied for to remove any trees or other vegetation.

Staff paid a visit to 111 Creekside Lane (the original address of complaint) in late July 2021 and took photos (see attached) which show evidence of tree cutting at that time.

The complaint about 104 Creekside Lane was only recently received in the office and I have not had time to conduct site visit.

I believe that both lots are in violation of the Chesapeake Bay Preservation Overlay Ordinance and that 111 Creekside Lane is in violation of the Wetlands Act. I would like to discuss the particulars of each lot with the Board and, if in violation, the remedies available to correct the situation, including the imposition of fines per the Cape Charles Zoning Ordinance.

ATTACHMENTS:

- PHOTOS OF 111 Creekside Lane
- Cape Charles Zoning Ordinance Article VII
- Cape Charles Zoning Ordinance Appendix E
- Cape Charles CBPA Map



























Town of Cape Charles

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 Section 10.1-2100 et seq. of the Code of Virginia, 1950 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 waters 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 Section 10.1-2100, The Chesapeake Bay Preservation Act, and Section 15.2-2283 of the Code of Virginia. Section 15.2-2283 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 Section 62.1-255.”

Section 7.3 Definitions

The following words and terms used in the Chesapeake Bay Overlay District shall have the following meanings unless the context clearly indicates otherwise. Words and terms not defined in this Article but defined in this zoning ordinance shall be given the meanings set forth therein.

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.

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.

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.

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, 9 VAC 10-20 et seq., Section 10.1-2107 of the Code of Virginia. A Chesapeake Bay Preservation Area shall consist of a Resource Protection Area and a Resource Management Area.

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.

DEVELOPMENT 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 4.5 feet above ground.

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

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.

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.

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, dated November 13, 1986.

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

PLAN OF DEVELOPMENT means the process for site plan or subdivision plat review to ensure compliance with Section 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.

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 (§ 10.1-603.1 et seq. of the Code of Virginia). This definition includes those roads where the Virginia Department of Transportation exercises direct supervision over the design or construction activities, or both, 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.

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

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

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.

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

TIDAL SHORE or **SHORE** means land contiguous to a tidal body of water between the mean low water level and the mean high water level.

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

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 (5) fisheries or other marine resources facilities.

WETLANDS means tidal and non-tidal wetlands.

Section 7.4 Areas of Applicability

- A. The Chesapeake Bay Preservation Act Overlay District shall apply to all lands identified as CBPAs 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.
1. The Resource Protection Area includes:
 - a. tidal wetlands
 - b. non-tidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow
 - c. tidal shores
 - d. a 100-foot vegetated 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
 2. 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 100 feet in width landward of the Resource Protection Area , whichever is greatest.
- B. 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.
- C. Portions of RPAs and RMAs designated by the Town Council as Intensely Developed Areas shall serve as redevelopment areas. Areas so designated shall comply with all erosion and sediment control requirements and the performance standards for redevelopment in Section 7.10, Performance Standards.

Section 7.5 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 7.6 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 7.10 when such development is not otherwise allowed in the RPA.

Section 7.7 Development Criteria for Resource Protection Areas

- A. Development in RPAs may be allowed only if it: (1) is water dependent (2) constitutes redevelopment or development within IDAs, or (3) constitutes redevelopment

1. 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 7.10 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 minimum disturbance necessary. Where practicable, a single point of access will be provided.
 2. 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 stormwater management requirements outlined under Section 7.10.B.8 and erosion and sediment control requirements outlined under Section 7.10.B.4 of this Article.
- 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 7.11 of this Article.

Section 7.8 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 7.9 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 7.12, Plan of Development Process or Section 7.11 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. Delineation by the Zoning Administrator. The Zoning Administrator, when requested by an applicant wishing to construct a single-family residence, may waive the requirement for an environmental site assessment and perform the delineation. The Zoning Administrator may use hydrology, soils, plant species, and other data and consult other appropriate resources as needed to perform the delineation.

- C. 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 7.12, 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 7.12.H of this ordinance.

1 Section 7.10 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 10 percent reduction in nonpoint source pollution from redevelopment; and achieve a 40 percent 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 Handbook.
 - a. Site clearing for construction activities shall be allowed as approved by the Zoning Administrator through the plan of development review process.
 - b. 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 storm water 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 2,500 square feet, 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 2,500 square feet 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 in accordance with the provisions of the State Health Code.
7. A reserve sewage disposal site with a capacity at least equal to that of the primary sewage disposal site shall be provided in accordance with the State Health Code. 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 department. Building or construction of any impervious surface shall be prohibited on the area of all sewage disposal sites or on an on-site sewage treatment system which operates under a permit issued by the State Water Control Board until the structure is served by public sewer.
8. 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 10 percent. 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 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.

- c. 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.
9. Prior to initiating grading or other on-site activities on any portion of a lot or parcel, all wetlands permits required by federal, state, and local laws and regulations shall be obtained and evidence of such submitted to the Zoning Administrator in accordance with Section 7.12 of this Article.
10. 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.

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 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 7.4, Areas of Applicability, and Section 7.12, Plan of Development Process, of this Article.

The 100-foot buffer area shall be deemed to achieve a 75 percent reduction of sediments and a 40 percent 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 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 7.12, 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 7.12, 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 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 5-15 et seq.)” administered by the Virginia Department of Conservation and Recreation.
- b. Agricultural activities may encroach within the landward 75 feet of the 100-foot wide buffer area when agricultural 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 100-foot wide buffer area.
 - e. 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 local Soil and Water Conservation District to address the more predominant water quality issue on the adjacent land – either erosion control or nutrient management
4. When agricultural or silvicultural uses within the buffer area cease, and the lands are proposed to be converted to other uses, the full 100-foot wide buffer area shall be reestablished. In reestablishing the buffer, management measures shall be undertaken to provide woody vegetation that assures the buffer functions are maintained or established.

Section 7.11 Water Quality Impact 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 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 a RPA, including any buffer area modification or encroachment as provided in Section 7.10 of this Article; (2) any development in a RMA as deemed necessary by the Zoning Administrator due to the unique characteristics of the site or intensity of the proposed development. 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 5,000 square feet of land disturbance and requires any modification or encroachment into the landward 50 feet of the 100-foot 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 75 percent of sediments and 40 percent 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 100-foot 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 100-foot buffer area;
2. Location and nature of the proposed encroachment into the buffer area if needed including: type of paving material; areas of clearing or grading; location of any structures, drives, or other impervious cover;
3. Type and location of proposed best management practices to mitigate the proposed encroachment.
4. 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;
5. Revegetation plan that supplements the existing buffer vegetation in a manner that provides for pollutant removal, erosion and runoff control.

D. Major Water Quality Impact Assessment

A major water quality impact assessment shall be required for any development which (1) exceeds 5,000 square feet of land disturbance within CBPA and requires any modifications or encroachment into the landward 50 feet of the 100-foot buffer area; (2) proposes to disturb any portion of any other component of an RPA or proposes to disturb any portion of the buffer area within 50 feet 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.

The following elements shall be included in the preparation and submission of a major water quality assessment:

1. All of the information required in a minor water quality impact assessment as specified in Section 7.11.C;
2. A hydro-ecological element that:
 - a. describes the existing topography, soils, hydrology, and geology of the site and adjacent lands
 - b. indicates the following:
 - i. disturbance or destruction of wetlands and justification for such action
 - ii. disruptions or reductions in the supply of water to wetlands, streams, or other water bodies
 - iii. disruptions to existing hydrology including wetlands and stream circulation patterns
 - iv. source location and description of proposed fill material
 - v. location of dredge material and location of dumping area for such material
 - vi. location of and impacts on shellfish beds or submerged aquatic vegetation
 - vii. estimation of pre- and post-development pollutant loads in runoff
 - viii. estimation of percent increase in impervious surface on site and type(s) of surfacing materials used
 - ix. percent of site to be cleared for project
 - x. anticipated duration and phasing schedule of construction project
 - xi. listing of all requisite permits from all applicable agencies necessary to develop project
 - d. describes the proposed mitigation measures for the potential hydroecological impacts. Potential mitigation measures include:
 - i. 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
 - ii. proposed water quality and quantity stormwater management system
 - iii. creation of wetlands to replace those lost
 - iv. minimizing cut and fill
3. A landscape element that:
 - a. 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.

- b. describes the impacts the development or use will have on the existing vegetation. Information should include:
 - i. limits of clearing based on all anticipated improvements including buildings, drives, and utilities
 - ii. clear delineation of all trees and other woody vegetation proposed to be removed
 - iii. description of plant species to be disturbed or removed
- c. describes the potential measures for mitigation. Possible mitigation measures should include:
 - i. replanting schedule for trees and other significant vegetation removed for construction including a list of possible plants and trees to be used
 - ii. 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
 - iii. demonstration that native plants are to be used to the greatest extent possible

E. Submission and Review Requirements

- 1. Eight 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 7.12, 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 7.12 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). Upon receipt of a major water quality impact assessment, the Zoning Administrator will determine if such review is warranted and may request CBLAD to review the assessment and respond with written comments. Any comments by such CBLAD will be incorporated into the final review by the Zoning Administrator provided that such comments are provided by CBLAD within 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 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 7.12.
- 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.

Section 7.12 Plan of Development Process

Any development or redevelopment exceeding 2,500 square feet of land disturbance shall be accomplished through a plan of development process prior to 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.

The following plans or studies shall be submitted unless otherwise provided for:

1. 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;
2. An environmental site assessment;
3. A landscaping plan;
4. A storm water management plan;
5. 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 tidal wetlands or water bodies with perennial flow
 - d. a 100-foot 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.

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 5,000 square feet of disturbed area.

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.**

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

1. Contents of the plan
 - a. The landscaping plan shall be drawn to scale and clearly delineate the location, size, and description of existing and proposed plant material. All existing trees on the site two inches or greater DBH shall be shown on the landscaping plan. Where there are groups of trees, stands may be outlined instead. The specific number of trees two inches 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.
 - c. Within the buffer area, trees to be removed for sight lines, vistas, access paths, 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.
 - d. Trees to be removed for shoreline stabilization projects and any replacement vegetation required by this Article shall be shown on the landscaping plan.
 - e. The plan shall depict grade changes or other work adjacent to 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. 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.
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. Storm water Management Plan

A stormwater management plan shall be submitted 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. Erosion and Sediment Control Plan

An erosion and sediment control plan shall be submitted that satisfies the requirements of this Article and in accordance with the Cape Charles Erosion and Sediment Control Ordinance in conjunction with site plan or subdivision plan approval.

F. 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. the delineation of the Resource Protection Area boundary
 - b. the delineation of required buffer areas
 - c. all wetlands permits required by law
 - d. 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
2. 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 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 specifications shall be installed and approved within 18 months 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 60 days following the receipt of the applicant's request for final inspection. The Zoning Administrator may require a certificate of substantial completion from a professional engineer or Class IIIB surveyor before making a final inspection.

G. Administrative Responsibility

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

H. 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 15 days of the negative decision. Further appeals by the applicant shall be as established by law.

Section 7.13 Non-Conforming Use and Development Waivers

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 2,500 square feet 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 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 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.

Section 7.14 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 Erosion and Sediment Control Law (§ 10.1-

560 et seq. of the Code of Virginia) and the Stormwater Management Act (§ 10.1-603.1 et seq. of the Code of Virginia), (ii) an erosion and sediment control plan and a stormwater management plan approved by the Virginia Department of Conservation and Recreation, or (iii) local water quality protection criteria at least as stringent as the above state requirements are deemed to comply with this 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 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 2,500 square feet complies with all Cape Charles erosion and sediment control requirements.

B. Exemptions for Silvicultural Activities

Silvicultural activities 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].

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 2,500 square feet shall comply with all Cape Charles erosion and sediment control requirements.

Section 7.15 Exceptions

- A. A request for an exception to the requirements of Sections 7.7 and 7.10.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 7.11.
- 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 Section 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;
 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.
- E. A request for an exception to the requirements of provisions of this Article other than those in Sections 7.7 and 7.10.C shall be made in writing to the Zoning

Administrator. The Zoning Administrator may grant these exceptions provided that:

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.
Exceptions to § 7.10.B may be made provided that the findings noted in § 7.15.C are made.

Section 7.16 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 \$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 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 \$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 7.17 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 7.18 Effective Date

This ordinance was duly considered following a required public hearing held on November 12, 2003 and was adopted by the Town Council of Cape Charles, Virginia, at its regular meeting held November 12, 2003. (Ord. No. 11122003; 11-12-03)

Town of Cape Charles

APPENDIX E

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 street lights supplying and treating water, street lights, 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 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*), saltmeadow 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 (*Borrchia 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*).

The **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*), saltmeadow 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, 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:

1. the construction and maintenance of noncommercial 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;
2. the cultivation and harvesting of shellfish and worms for bait;
3. 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;
4. the cultivation and harvesting of agricultural, forestry, or horticultural products; grazing and haying;
5. 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;
6. the construction or maintenance of aides to navigation which are authorized by governmental authority;
7. emergency measures decreed by any duly appointed health officer of a governmental subdivision acting to protect the public health;
8. 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;
9. governmental activity on wetlands owned or leased by the Commonwealth of Virginia or a political sub-division thereof.

10. 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;
11. outdoor recreational activities provided that such activities do not impair the 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 2 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 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 Game and Inland Fisheries, Water Control Board, the Department of Transportation, and governmental agencies expressing an interest therein shall be notified by the board of the hearing by mail not less than 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 a week for two weeks prior to such hearing in the newspaper having a general circulation in this Town. 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 members of a five-member board or four members of a seven-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 proceeding, 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 30 days from the hearing. If the board fails to act within such time, the application shall be deemed approved. Within 48 hours 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 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 concurring favorable votes for a seven-member board and three concurring favorable votes for a five-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 Code of Virginia, 28.2-1308, and guidelines promulgated pursuant to Code of Virginia, 28.2-1301.
- 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 Code of Virginia, 28.2-1308, and guidelines promulgated pursuant to Code of Virginia, 28.2-1301, and the proposed activity does not violate the purpose and intent of this ordinance or Chapter 13 (28.2-1300 et seq.) of Title 28.2 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, 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.

Map 8 - Chesapeake Bay Preservation Areas

0 0.1 0.2 0.4 Miles

