

**ARTICLE 22**  
**CHESAPEAKE BAY PRESERVATION AREA (CBPA)**  
**OVERLAY DISTRICT**

**Statement of Intent**

- A. This ordinance is enacted to implement the requirements of Section 10.1-2100 et seq. of the Code of Virginia (The Chesapeake Bay Preservation Act (CBPA)) and amends the Zoning Ordinance of Colonial Beach. The intent of the Colonial Beach 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.
  6. Promote water resource conservation in order to provide for the health, safety, and welfare of the present and future citizens of Colonial Beach.
- 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 the Colonial Beach Zoning Ordinance, and the Erosion and Sediment Control Ordinance 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 et seq. (The Chesapeake Bay Preservation Act) and Section 15.1-489, of the Code of Virginia. Section 15.1-489 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 62.1-44.85 (8)."

**22-1 Title.**

This ordinance shall be known and referenced as the "Chesapeake Bay Preservation Area Overlay District" of the Town of Colonial Beach.

**22-2 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 Colonial Beach

and the Commonwealth of Virginia. The health of the Bay is vital to maintaining Colonial Beach's economy and the welfare of its citizens.

The Chesapeake Bay waters have been degraded significantly by many sources of pollution, including nonpoint 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 as Chesapeake Bay Preservation Areas (hereinafter "CBPAs"), need to be protected from destruction and damage in order to protect the quality of water in the Bay consequently the quality of life in Colonial Beach and Commonwealth of Virginia.

### **22-3 Areas of Applicability.**

- A. The Chesapeake Bay Preservation Area Overlay District shall apply to all lands identified as CBPAs as designated by the Colonial Beach Town Council and as shown on the Colonial Beach Chesapeake Bay Preservation Area Designation Maps, 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 (RPA) 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. Slopes equal to or greater than twenty-five (25) percent, as identified through a site-specific determination, where adjacent to and landward of Resource Protection area components and intermittent streams; and
    - e. A 100 foot wide vegetated buffer area located adjacent to and landward of the components listed in subsections a through d above, and along both sides of any water body with intermittent or perennial flow.
  2. The Resource Management Area (RMA) consists of all lands within the Town of Colonial Beach that are not classified as Resource Protection Area (RPA).
- B. The Colonial Beach Chesapeake Bay Preservation Area Designation Maps (also known as Development Constraints Map) show the general location of CBPAs and should be consulted by persons contemplating activities within Colonial Beach prior to engaging in a regulated activity. The specific location of RPAs on a lot or parcel shall be delineated on each site or parcel as required under Section 22-11 of this Article through the review and approval of the plan of development process or as required under Section 22-10 of

this Article through the review and approval of a water quality impact assessment.

- C. If the boundaries of a Chesapeake Bay Preservation Area include only a portion of a lot, parcel, or development project, the entire lot, parcel, or development project shall comply with the requirements of the Overlay District. The division of the property shall not constitute an exemption from this requirement.

#### **22-4 Use Regulations.**

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

#### **22-5 Lot Size.**

Lot size shall be subject to the requirements of the underlying zoning district(s), provided that any lot shall have sufficient area outside the RPA to accommodate an intended development in accordance with the performance standards in Section 22-11, when such development is not otherwise allowed in the RPA.

#### **22-6 Required Conditions.**

- A. All development and redevelopment exceeding 2500 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 Zoning Ordinance or a subdivision plat in accordance with the Subdivision Ordinance.
- B. Development in RPAs may be allowed only if it:
  - 1. is water-dependent; or
  - 2. constitutes redevelopment;
  - 3. is a new use subject to the provisions of Section 22-9.C of this Article;
  - 4. is a road or driveway crossing satisfying the conditions set forth in the Section 22-6.E.3 below
- C. A new or expanded water dependent facility may be allowed provided that the following criteria are met:
  - 1. It does not conflict with the comprehensive plan;
  - 2. It complies with the performance criteria set forth in Section 22-9 of this Article;
  - 3. Any non-water-dependent component is located outside of the RPA; and
  - 4. Access to the water-dependent facility will be provided with the minimum disturbance necessary. Where practicable, a single point of access will be provided

- D. Redevelopment sites shall be permitted only if there is not increase in the amount of impervious cover and no further encroachment within the RPA and it shall conform to applicable erosion and sediment control and stormwater management requirements as outlined under Section 22-9.B.4 and Section 22-9.B.7, respectively, of this Article.
- E. Roads and driveways not exempt under Section 22-14 and which, therefore, must comply with the provisions of this Article, may be constructed in or across RPAs if each of the following conditions are met:
  - 1. The Zoning Administrator makes a finding that there are no reasonable alternatives to aligning the road or drive in or across the RPA;
  - 2. The alignment and design of the road or driveway are optimized, consistent with other applicable requirements, to minimize encroachment in the RPA and minimize adverse effects on water quality;
  - 3. The design and construction of the road or driveway satisfy all applicable criteria of this Article;
  - 4. The Zoning Administrator reviews the plan for the road or driveway proposed in or across the RPA in coordination with the plan of development requirements as required under Section 22-11 or subdivision plan.
- F. A water quality impact assessment shall be required for any proposed land disturbances, 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 22-10, of this Article.

#### **22-7 Conflict with other Regulations.**

In any case where the requirements of this Article conflict with any other provision of the Colonial Beach Code or existing state or federal regulations, whichever imposes the more stringent restrictions shall apply.

#### **22-8 Interpretation of Resource Protection Area Boundaries**

- A. Delineation by the Applicant.

The site-specific boundaries of the Resource Protection Area shall ordinarily 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 22-10 (Water Quality Impact Assessment) or Section 22-11, (Plan of Development) of this Article. The Colonial Beach Chesapeake Bay Preservation Area Designation Maps 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 22-11, (Plan of Development) 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 22-11.H (Denial/Appeal of Plan)

**22-9 Performance Standards.**

A. Purpose and Intent.

The performance standards establish the means to minimize erosion and sedimentation potential, reduce land application of nutrients and toxics, and maximize rainwater infiltration. Natural groundcover, especially woody vegetation, is most effective in holding soil in place and preventing site erosion. Indigenous vegetation, with its adaptability to local conditions without the use of harmful fertilizers or pesticides, filters stormwater runoff. Minimizing impervious cover enhances rainwater infiltration and effectively reduces stormwater runoff potential. The purpose and intent of these requirements are also to implement the following objectives: prevent a net increase in nonpoint source pollution from new development; achieve a ten (10) percent reduction in nonpoint source pollution from redevelopment; and achieve a forty (40) reduction in nonpoint source pollution from agricultural uses.

B. General Performance Standards for Development and Redevelopment

1. Land disturbance shall be limited to the area necessary to provide for the proposed use or development.
  - a. In accordance with an approved site plan, the limits of land disturbance, including clearing or grading shall be strictly defined by the construction footprint. The Zoning Administrator shall review and approve the construction footprint through the plan of development process. These limits shall be clearly shown on submitted plans and physically marked on the development site.
  - b. The construction footprint shall not exceed the limits for such as designated by the zoning district of the lot or parcel.
  - c. 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 proposed use and development permitted and in accordance with the *Virginia Erosion and Sediment Control Handbook*.
  - a. Existing trees over six (6) inches diameter at breast height (DBH) shall be preserved outside the construction footprint. Diseased trees or trees weakened by age, storm, fire, or other injury may be removed when approved by the Zoning Administrator. Other woody vegetation on site shall also be preserved outside the approved construction footprint.
  - b. When a diseased tree or tree weakened by age, storm, fire, or other injury is to be removed and the tree is outside the RPA, it shall be replaced at a 2:1 ratio.
    - i. Specifications for Tree Restoration:
      1. All replacement plantings shall be a native species as identified in Table 24.1 of this ordinance or as identified in the Virginia Department of Conservation and Recreation's pamphlet entitled "*Native Plants for Conservation, Restoration and Landscaping for the Coastal Plain of Eastern Virginia*".
      2. If the replacement planting is to be a deciduous tree it shall have a minimum two and one-half (2.5) inch caliper at breast height at the time of planting.
      3. If the replacement planting is to be an evergreen tree it shall have a minimum height of six (6) feet at time of planting.
  - c. When a diseased tree or tree weakened by age, storm, fire, or other injury is to be removed and the tree is inside the RPA, it shall be replaced at a 3:1 ratio as specified in Section 22-11 of this article.
    - i. Specifications for Tree Restoration:
      1. All replacement plantings shall be a native species as identified in **Table 24.1** of the Colonial Beach Zoning Ordinance or as identified in the Virginia Department of Conservation and Recreation's pamphlet entitled "*Native Plants for Conservation, Restoration and Landscaping for the Coastal Plain of Eastern Virginia*".
      2. If the replacement planting is to be a deciduous tree it shall have a minimum 3.5 inch caliper at breast height at the time of planting.
      3. If the replacement planting is to be an evergreen tree it shall have a minimum height of 6 feet at time of planting.

ii. Woodlot Management Permit Required

1. When requesting to remove trees in the Town of Colonial Beach which are larger than six (6) inches diameter at breast height, a property owner shall obtain a woodlot management permit.
  2. The woodlot management permit shall be reviewed by the Zoning Administrator prior to removal of the tree(s). Upon approval of the permit the property owner may remove the tree(s) specified in the permit.
  3. Tree restoration shall be required within six (6) months of removal. A subsequent inspection for the replanting of tree(s) shall be performed by the Zoning Administrator. If in the opinion of the Zoning Administrator, the replanting requirements may lead to further future structural damage to the principal building, the replanting requirement may be reduced or waived.
  4. Site clearing shall be allowed only to provide necessary access, positive site drainage, water quality BMPs, and the installation of utilities, as approved by the Zoning Administrator through the plan of development review process outlined under Section 22-11 of this Article.
  5. Prior to clearing or grading, suitable protective barriers, such as safety fencing, shall be erected 5 feet outside of the dripline of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
3. Land development shall minimize impervious cover to promote infiltration of stormwater into the ground consistent with the proposed use or development. Use of low impact development as specified in the Town Code shall be used to the maximum extent possible to promote infiltration.
- a. Porous asphalt pavements shall be used for any required parking area, alley, or other low traffic driveway, unless otherwise approved by the Zoning Administrator.
  - b. Parking space size shall be one-hundred sixty-two (162) square feet. Parking space width shall be nine (9) feet; parking space length shall be eighteen (18) feet. Two-way drives shall be a maximum of twenty-two (22) feet in width (Handicapped Parking spaces shall be as specified in the Virginia Uniform Statewide Building Code).

Notwithstanding any other provisions of this Article or exemptions thereto, any land disturbing activity exceeding 2,500 square feet, including construction of all single-family houses, septic tanks, and drainfields shall comply with the requirements of the Colonial Beach Erosion and Sediment Control Ordinance.

4. All development and redevelopment within RMAs and RPAs that exceed 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 provision of the Zoning Ordinance; or a subdivision plan in accordance with the Subdivision Ordinance; or a Water Quality Impact Assessment in accordance with Section 22-10 of this Article
5. All on-site sewage disposal systems not requiring Virginia Permitted Discharge Effluent Standards permit shall be pumped out at least once (1) every five (5) years, in accordance with the provisions of the Westmoreland County Health Code.
6. For any development or redevelopment, stormwater run-off shall be controlled by the use of best management practices consistent with the water quality protection provisions of the Virginia Stormwater Management Regulations (4 VAC 3-20-10 et seq.):
  - a. For **development**, the post-development nonpoint source pollution runoff load shall not exceed the pre-development load, based on Colonial Beach's watershed default value of **thirty-six (36) percent** (impervious cover) as calculated by the Chesapeake Bay Local Assistance Department. Undeveloped property that was annexed by the Town from Westmoreland County in 1993 or any undeveloped property that may be annexed in the future shall meet the Westmoreland County standard of sixteen (**16) percent** impervious cover.
  - b. For **redevelopment** sites, the nonpoint 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 stormwater runoff quality control, provided the following provisions are satisfied:
    - i. In no case may the post-development nonpoint 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 nonpoint source pollution;
    - iii. If best management practices are structural, evidence shall be provided that 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 post-development loadings shall be calculated by the same procedures. However, where the design data is available, the original post-development nonpoint source pollution loadings can be substituted for the existing development loadings.

7. 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 22-13, of this Article.
8. Land upon which agricultural activities are being conducted shall have a soil and water quality conversation 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 this 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 wide 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 Sections 22-3 (Areas of Applicability) and 22-11 (Plan of Development) of this Article.

The 100-foot wide buffer area shall be deemed to achieve a seventy-five (75) percent reduction of sediments and a forty (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, subject to approval by the Zoning Administrator, indigenous vegetation may be removed 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, they shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion, and filtering non-point 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 rosa) may be removed and silvicultural thinning may be conducted as permitted by the Zoning

- Administrator based upon sound horticultural practices.
- 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 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, through an administrative process, permit encroachments into the buffer area in accordance with Section 22-11 (Plan of Development) 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, 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; and
    - c. The encroachment may not extend into the seaward fifty (50) feet of the buffer area.
  3. On agricultural lands the agricultural buffer area shall be managed to prevent concentrated flows of surface water from breaching the buffer area and 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 fifty (50) feet of the one-hundred (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 one-hundred (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 seventy-five (75) feet of the one-hundred (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.

- c. The buffer area is not required to be designated adjacent to agricultural drainage ditches if the adjacent agricultural land has in place at least one best management practices as considered by the local Soil and Water Conservation District to address the more predominant water quality issue on the adjacent land – either erosion control or nutrient management.
5. When agricultural or silvicultural uses within the buffer area cease, and the lands are proposed to be converted to other uses, the full one-hundred (100) foot wide buffer area shall be re-established. In re-establishing the buffer, management measures shall be undertaken to provide woody vegetation that assures the buffer functions are maintained or established.

## **22-10 Water Quality Impact Assessment**

### **A. Purpose and Intent.**

The purpose of the water quality impact assessment is to:

1. Identify the impacts of proposed land disturbances, development, or redevelopment on water quality and lands within RPAs and other environmentally-sensitive lands;
2. Ensure that, where land disturbances, development, or redevelopment 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. Protect individuals from investing funds for improvements proposed for location on lands unsuited for such development because of high ground water, erosion, or vulnerability to flood and storm damage;
4. Provide for administrative relief from the terms of this Article when warranted and in accordance with the requirements contained herein; and
5. Specify mitigation that will address water quality protection.

### **B. Water Quality Impact Assessment Required.**

A water quality impact assessment is required for:

1. Any proposed land disturbances, development, or redevelopment within an RPA, including any buffer area encroachment as provided for in Section 22-9.C.2 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.
3. There shall be two (2) 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 land disturbance, development, or redevelopment within CBPAs which causes no more than 5,000 square feet of land disturbance and which proposes to encroach into the landward fifty (50) feet of the one-hundred (100) foot wide buffer area as permitted under Section 22-9.C.2 of this Article. A minor assessment must demonstrate through acceptable calculations that the remaining buffer area and necessary best management practices will result in removal of no less than seventy-five (75) percent of sediments and forty (40) percent of nutrients from post-development stormwater runoff and that will retard runoff, prevent erosion, and filter nonpoint source pollution the equivalent of the full undisturbed one hundred (100) foot wide buffer area. A minor assessment shall include a site drawing to scale, which shows the following:

1. Location of the components of the RPA, including the one-hundred (100) foot wide buffer area;
2. Location and nature of the proposed encroachment into the buffer area, including: type of paving material; areas of clearing or grading; location of any structures, drives, or other impervious cover; and sewage disposal systems
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. Re-vegetation plan that supplements the existing buffer vegetation in a manner that provides for pollutant removal, erosion, and runoff control.

D. Major Water Quality Impact Assessment

1. A major water quality impact assessment shall be required for any land disturbance, development, or redevelopment which:
  - a. Exceeds 5,000 square feet of land disturbance within CBPAs and which

- proposes to encroach into the landward fifty (50) feet of the one-hundred (100) foot wide buffer area;
- b. Proposes to disturb any portion of the seaward fifty (50) feet of the one-hundred (100) foot wide buffer area or any other component of an RPA; or
  - c. Located solely in an RMA and is deemed necessary by the Zoning Administrator.
2. 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:
- a. All of the information required in a minor water quality impact assessment as specified in Section 22-10.C
  - b. A hydrogeological element that:
    - i. Describes the existing topography, soils, hydrology and geology of the site and adjacent lands.
    - ii. Describes the impacts of the proposed development on topography, soils, hydrology and geology on the site and adjacent lands.
    - iii. Indicates the following:
      1. Disturbance or removal of wetlands and justification for such action;
      2. Disruptions or reductions in the supply of water to wetland, streams, lakes, rivers or other water bodies;
      3. Disruptions to existing hydrology including wetland and stream circulation patterns;
      4. Source location and description of proposed fill material;
      5. Location of dredge material and location of dumping area for such material;
      6. Estimation of pre- and post-development pollutant loads in runoff;
      7. Estimation of percent increase in impervious surface on site and type(s) of surfacing materials used;
      8. Percent of site to be cleared for project;
      9. Anticipated duration and phasing schedule of construction project;
      10. Listing of all requisite permits from all applicable agencies necessary to develop project.
  - d. Describes the proposed mitigation measures for the potential hydrogeological impacts. Potential mitigation measures include:
    - i. Additional proposed erosion and sediment control concepts beyond those normally required under Section 22-11 of this Article; concepts may 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 stormwater management system;
- iii. Creation of wetlands to replace those lost;
- iv. Minimizing cut and fill.

3. A vegetative element that:

- a. Identifies and delineates the location of all woody plant material on site, including all trees six (6) inches or greater diameter at breast height or, 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. General limits of clearing, based on all anticipated improvements, including buildings, drives, and utilities;
  - ii. Clear delineation of all trees and other woody vegetation that will be removed.
  - iii. Description of plant species to be disturbed or removed.
- c. Describes the proposed measures for mitigation. Possible mitigation measures include:
  - i. Proposed design and replanting schedule for trees and other woody vegetation removed for construction, including a list of possible plants and trees to be used;
  - ii. Demonstration that the re-vegetation plan supplements the existing buffer vegetation in a manner that provides for pollutant removal, erosion, and runoff control;
  - iii. 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.
  - iv. Demonstration that indigenous plants are to be used to the greatest extent possible.

E. Submission and Review Requirements.

- 1. Five 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.
  - i. All information required in this section shall be certified as complete and

accurate by a professional engineer or a IIIB certified land surveyor.

- ii. A minor water quality impact assessment shall be prepared and submitted to and reviewed by the Zoning Administrator in conjunction with Section 22-11, (Plan of Development) of this Article.
- iii. 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, conditional use permit, or in conjunction with Section 22-11 of this Article, as deemed necessary by the Zoning Administrator.
- iv. As part of any major water 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 CBLAD will be incorporated into the final review by the Zoning Administrator, provided that such comments are provided by CBLAD within ninety (90) days of the request.

F. Evaluation Procedure.

1. Upon the completed review of a minor water quality impact assessment, the Zoning Administrator will determine if any proposed encroachment into the buffer area is consistent with the provisions of this Article and make a finding based upon the following criteria:
  - a. The necessity of the proposed encroachment and the ability to place improvements elsewhere on the site to avoid disturbance of the buffer area;
  - b. Impervious surface is minimized;
  - c. Proposed mitigation measures, including the re-vegetation plan and site design, result in minimal disturbance to all components of the RPA, including the one-hundred (100) foot wide buffer area.
  - d. Proposed mitigation measures will work to retain all buffer area functions: pollutant removal, erosion, and runoff control;
  - e. Proposed best management practices, where required, achieve the requisite reductions in pollutant loadings;
  - f. The development, as proposed, meets the purpose and intent of this Article;
  - g. 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:

- a. Within any RPA, the proposed development is water-dependent or redevelopment;
  - 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 sedimentation;
  - g. Proposed stormwater management concepts are adequate to control the stormwater 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 as well as runoff control and pollutant removal equivalent of the full one-hundred (100) foot wide undisturbed buffer area;
  - i. The development, as proposed, is consistent with the purpose and intent of the Overlay District
  - j. 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.
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).

#### **22-11 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 development preparation activities onsite, such as 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 Zoning Ordinance of Colonial Beach or the requirements of the Subdivision Ordinance of Colonial Beach, 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 the Zoning Ordinance of Colonial Beach; or a subdivision plat in accordance with the provisions of the Subdivision Ordinance of Colonial Beach;
2. An environmental site assessment;
3. A landscaping plan;
4. A stormwater management plan;
5. An erosion and sediment control plan in accordance with the provisions of the Erosion and Sediment Control Ordinance of Colonial Beach.

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 body with perennial flow;
  - d. A one-hundred (100) foot wide 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 procedures specified in the *Federal Manual for Identifying and Delineating Jurisdictional Wetlands, 1986*.
3. The environmental site assessment shall delineate the site-specific geographic extent of the RPA as required under Section 22-3.B.
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. The Zoning Administrator may waive this requirement when the proposed use or development would result in less than 5,000 square feet of disturbed area.

## C. Landscaping Plan.

A landscaping 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 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 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 six (6) 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 or trees six (6) inches or greater DBH to be preserved outside of the construction footprint shall be indicated on the plan. Trees and other woody vegetation proposed to be removed to create a desired construction footprint shall be clearly delineated on the landscaping plan.
- b. Any required RPA buffer area shall be clearly delineated and any plant material to be added to establish or supplement the buffer area, as required by this Article, shall be shown on the landscaping plan.
- c. Within the buffer area, trees and other woody vegetation to be removed for sight lines, vistas, access paths, and best management practices, as provided for in this Article, shall be shown on the plan. Vegetation required by this Article to replace any existing trees within the buffer area shall be shown on the landscaping plan.
- d. Trees and other woody vegetation 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 specification for the protection of existing trees and other vegetation during clearing, grading, and all phases of construction.
- g. If the proposed development is a change in use from agriculture or silvicultural to some other use, the plan must demonstrate the re-establishment of vegetation in the buffer area.

### 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.

1. All supplementary or replacement plant material 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 *America Association of Nurserymen*.
2. Where areas to be preserved, as designated on an approved landscaping plan, are encroached, replacement of existing trees and other vegetation will be achieved at a ratio of three (3) planted trees to one (1) removed. Replacement trees shall be a minimum three and one-half (3.5) inches diameter at breast height (DBH) at the time of planting.
3. All plantings shall be native or indigenous species.

3. Maintenance

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

D. Stormwater Management Plan.

A stormwater management plan shall be submitted 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 stormwater 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 stormwater management plan must contain the following:

- a. Location and design of all planned stormwater control devices;
  - b. Procedures for implementing non-structural stormwater control practices and techniques, such as low impact development as specified in the Town Code;
  - c. Pre- and post-development nonpoint 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 Stormwater Management Handbook*.
4. The plan shall establish a long-term schedule for inspection and maintenance of stormwater management facilities that includes all maintenance requirements and persons responsible for performing maintenance. If the designated maintenance responsibility is with a party other than the Town of Colonial Beach then a maintenance agreement shall be executed between the responsible party and the Town of Colonial Beach.

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 requirements of the Erosion and Sediment Control Ordinance of Colonial Beach, in conjunction with site plan or subdivision plan approval.

F. Final Plan.

Final plans for property within CBPAs shall be final plats for land to be subdivided or site plans for land not to be subdivided as required by the Zoning Ordinance of Colonial Beach.

1. Final plans for all lands within CBPAs shall include the following additional information:
  - a. The delineation of the Resource Protection Area boundary including the one-hundred (100) foot wide buffer component.
  - b. Plat or plan note stating that no land disturbance is allowed in the buffer area without review and approval by the Zoning Administrator.
  - 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, stormwater management facilities or other specifications of an approved plan are required, no certificate of occupancy shall be issued until the installation of required plant materials or facilities is completed, in accordance with the approved site plan.
  - b. When the occupancy of a structure is desired prior to the completion of the required landscaping, stormwater management facilities, or other specifications of an approved plan, a certificate of occupancy may be issued

only if the applicant provides to Colonial Beach a form of surety satisfactory to the Zoning Administrator in an amount not to exceed one-hundred fifty (150) percent of the value of the remaining plant materials, related materials, and installation costs of the required landscaping or other specifications and/or maintenance costs for any required stormwater management facilities.

- 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 Colonial Beach.
- d. All required stormwater management facilities or other specifications shall be installed and approved within eighteen (18) months of project commencement. Should the applicant fail, after proper notice, to initiate, complete or maintain appropriate actions required by the approved plan, the surety may be forfeited to Colonial Beach. The Town of Colonial Beach may collect from the applicant the amount by which the reasonable cost of required actions exceeds the amount of the surety held.
- e. After all required actions of the approved site plan have been completed; the applicant must submit a written request for a final inspection. If the requirements of the approved plan have been completed to the satisfaction of the Zoning Administrator, such unexpended or unobligated portion of the surety held shall be refunded to the applicant or terminated within sixty (60) days following the receipt of the applicant's request for final inspection. The Zoning Administrator may require a certificate of completion from a Professional Engineer or Class III B Surveyor before making a final inspection.

G. Administrative Responsibility.

Administration of the plan of development process shall be in accordance with the Zoning Ordinance of Colonial Beach. The Zoning Administrator shall approve, approve subject to conditions, or disapprove the plans in accordance with the reviewing authorities' recommendations. The Zoning Administrator shall return notification of plan review results to the applicant, including recommended conditions or modifications. In the event that the results and/or recommended condition or modifications are acceptable to the applicant, the plan shall be so modified, if required, and approved.

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 or recommended conditions or modifications are unacceptable to the applicant, the applicant may appeal such administrative decision to the Planning Commission. In granting or denying 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 plans meets the purpose 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.

## **22-12 Nonconforming Use and Development Waivers**

The lawful use of a building or structure which existed on November 8, 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 with the Zoning Ordinance of Colonial Beach. No change or expansion of use shall be allowed with the exception that:

- A. The Zoning Administrator may grant a nonconforming use and development waiver for structures on legal nonconforming lots or parcels to provide for remodeling and alterations to such nonconforming structures provided that:
  1. There will be no increase in nonpoint source pollution load;
  2. Any development or land disturbance exceeding an area of 2,500 square feet complies with all erosion and sediment control requirement of this Article.
- B. An application for a nonconforming 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:
  1. Name and address of applicant and property owner;
  2. Legal description of the property and type of proposed use and development;
  3. A sketch of the dimensions of the lot or parcel, location of buildings and proposed additions relative to the lot lines, and boundary of the Resource Protection Area;
  4. Location and description of any existing private water supply or sewage system.
- C. A nonconforming use and development waiver shall become null and void twelve months from the date issued if no substantial work has commenced.
- D. An application for the expansion of a nonconforming principal structure may be approved by the Zoning Administrator through an administrative review process provided that the following findings are made:
  1. The request for the waiver is the minimum necessary to afford relief;
  2. Granting the waiver will not confer upon the applicant any specific privileges that are denied by this Article to other property owners in similar situations;
  3. The waiver is in harmony with the purpose and intent of this Article and does not result in water quality degradation;
  4. The waiver is not based on conditions or circumstances that are self-created or self-imposed;
  5. Reasonable and appropriate conditions are imposed, as warranted, that will prevent the waiver from causing a degradation of water quality;

6. Other findings, as appropriate and required by the Town of Colonial Beach are met; and
7. In no case shall this provision apply to accessory structures

## **22-13 Exemptions**

### **A. Exemptions for Public Utilities, Railroads, Public Roads, and Facilities**

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:

1. The road alignment and design has been optimized, consistent with all applicable requirements, to prevent or otherwise minimize the encroachment in the Resource Protection Area and to minimize the adverse effects on water quality.

### **B. Exemptions for Local utilities**

Construction, installation, and maintenance of water, sewer, and natural gas lines, underground telecommunication, cable, and other service lines shall be exempt from the Overlay District provided that:

1. To the degree possible, the location of such utilities and facilities shall be outside RPAs;
2. No more land shall be disturbed than is necessary to provide for the proposed utility installation;
3. 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
4. Any land disturbance exceeding an area of 2,500 square feet complies with all requirements of the Erosion and Sediment Control Ordinance of Colonial Beach.

### **C. Exemptions of 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 its *Virginia's Forestry Best Management Practices Water Quality [technical guide]*, January 1997.

D. Exemptions in Resource Protection Areas.

1. The following land disturbances in Resource Protection Areas may be exempted from the Overlay District provided that it is demonstrated to the satisfaction of the Zoning Administrator that they comply with requirements listed below in Subdivisions 2 through 5:
  - a. water wells;
  - b. passive recreation facilities such as boardwalks, trails, and pathways;
  - c. historic preservation and archaeological activities,
2. Any required permits, except those to which this exemption specifically applies, shall have been issued;
3. Sufficient and reasonable proof is submitted that the intended use will not deteriorate water quality;
4. The intended use does not conflict with nearby planned or approved uses; and
5. Any land disturbance exceeding an area of 2,500 square feet shall comply with all Colonial Beach erosion and sediment control requirements.

**22-14 Exceptions**

- A. An application for an exception to the requirements of Sections 22-6 and 22-9.C of this Article shall be made in writing and submitted to the Planning Commission. A major water quality impact assessment, in accordance with Section 22-10 (Water Quality Impact Assessment), SHALL accompany the application. The application and the assessment shall be processed concurrently.
- B. The Town of Colonial Beach 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 Planning Commission shall review the request for an exception and the water quality impact assessment at a public meeting. The Commission may grant the exception with such conditions and safeguards as deemed necessary to further the purpose and intent of this Article if the Commission finds:
  1. Granting the exception will not confer upon the applicant any other special privileges denied by this Article to other property owners in the Overlay District;
  2. The exception request is not based on conditions or circumstances that are self-created or self-imposed;
  3. The exception request is the minimum necessary to afford relief;

4. The exception request will be in harmony with the purpose and intent of this Article, 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 will prevent the exception request from causing a degradation of water quality.
- D. If the Planning Commission cannot make the required findings, or refuses to grant the request for an exception, the Planning Commission shall return the request for an exception together with a copy of the water quality impact assessment and the written findings and rationale for the decision to the applicant with a copy to the Town Council. This applicant may then apply to the Town Council for a variance as provided in the Zoning Ordinance of Colonial Beach.
- E. The Town Council shall consider the water quality impact assessment and findings and rationale of the Planning Commission in determining harmony with the intended spirit and purpose of this Article.
- F. A request for an Exception to the requirements of provisions of this Article other than Sections 22-6 and 22-9.C shall be made in writing to the Zoning Administrator. The Zoning Administrator may grant these exceptions provided that:
1. Exceptions to the criteria shall be the minimum necessary to afford relief, and
  2. Reasonable and appropriate conditions upon any exception granted shall be imposed as necessary so that the purpose and intent of this Article are preserved.
  3. Exceptions to Section 22-9 may be granted provided that the findings noted in 22-13.C are made.