

1 **Ordinance to Amend and Reenact the Zoning Ordinance of the City of Hampton, Virginia**
2 **by Amending Chapter 9, Article 2 Entitled, “O-CBP District – Chesapeake Bay**
3 **Preservation Overlay.”**

4
5 **WHEREAS**, the public necessity, convenience, general welfare, and good zoning practice so
6 require;

7
8 **BE IT ORDAINED** by the City Council of the City of Hampton, Virginia, that Article 2 of Chapter
9 of the Zoning Ordinance of the City of Hampton, Virginia be amended to read as follows:

10
11 **CHAPTER 9 – OVERLAY DISTRICTS**

12 . . .

13
14 **ARTICLE II. – O-CBP DISTRICT – CHESAPEAKE BAY PRESERVATION OVERLAY**

15
16 ***Sec. 9-11. – Purpose and Intent.***

17 *The health of the Chesapeake Bay is vital to the economy of the City of Hampton and the State*
18 *of Virginia. Degradation of the bay from both point and non-point source pollution must be*
19 *curtailed if the city and state are to continue to benefit, both socially and economically, from their*
20 *close association with the bay. The purpose of this article is to implement the Chesapeake Bay*
21 *Preservation Act at the local level, and to protect the quality of state waters pursuant to 9 VAC*
22 *10-20-10 et seq. and as authorized under section 10.1-2100 et seq. of the Code of Virginia,*
23 *1950, as amended; specifically:*

- 24
25 (1) *To protect existing high quality state waters;*
26 (2) *To restore all other state waters to a condition or quality that will permit all reasonable*
27 *public uses and will support the propagation and growth of all aquatic life, including*
28 *game fish, which might reasonably be expected to inhabit them;*
29 (3) *To safeguard the clean waters of the Commonwealth from pollution;*
30 (4) *To prevent any increase in pollution;*
31 (5) *To reduce existing pollution; and*
32 (6) *To promote water resource conservation in order to protect the quality of life of the*
33 *present and future citizens of Hampton.*

34
35 *It is not the intent of this article to impair the vested rights of property owners in Hampton. To*
36 *the extent possible, and without violating the intent of the Chesapeake Bay Preservation Act,*
37 *development within the O-CBP should be permitted at the same density, although not*
38 *necessarily in the same manner, as was permitted prior to the adoption of the district.*

39
40 ***Sec. 9-12. – Components and boundaries.***

- 41 (1) *The Chesapeake Bay Preservation Overlay District (O-CBP) shall be composed of three*
42 *(3) subdistricts: the Resource Protection Area (RPA), the Intensely Developed Area*
43 *(IDA), and the Resource Management Area (RMA).*
44 (a) *IDA shall consist of lands designated by the city that are within portions of the*
45 *landward component of the RPA where little of the natural environment remains and*
46 *at least one (1) of the following conditions existed on or before October 1, 1989:*
47 (i) *Impervious surface exceeding fifty (50) percent of the area;*
48 (ii) *Constructed and functioning public sewer and water systems, or a*
49 *constructed stormwater drainage system, or both, serving the area; or*
50 (iii) *Housing density equal to or greater than four (4) dwelling units per*
51 *acre.*

- 52
53 (2) *The general boundaries of such subdistricts are shown on the Chesapeake Bay*
54 *Preservation Overlay District map, which shall act as a supplement to the city's zoning*
55 *map. Site-specific boundaries shall be confirmed by the submittal of a resource*
56 *delineation, subject to the confirmation and approval of such resource delineation by the*
57 *zoning administrator by means including, but not limited to, the following:*
58 (a) *Verification of information by site visit.*
59 (b) *Requests for additional information necessary to verify such boundaries.*
60 (3) *The regulations of this article shall augment those of the underlying zoning districts. In*
61 *cases where the regulations stated herein conflict with those of the underlying zoning*
62 *district, the more stringent regulations shall apply.*
63

64 **Sec. 9-13. – General regulations for development, redevelopment, and land disturbing in**
65 **all subdistricts.**

66 *All development, redevelopment, and land disturbing within all O-CBP subdistricts shall be*
67 *governed by the following general requirements:*

- 68 (1) *No more land shall be disturbed than is necessary. Such land disturbance shall be*
69 *allowed only to provide a building site, necessary parking, necessary access, positive*
70 *site drainage, stormwater best management practices (BMPs), and the installation of*
71 *utilities, as approved by the zoning administrator or the director of public works, as*
72 *appropriate. Any land disturbance exceeding 2,500 square feet:*
73 (a) *Shall comply with the requirements of the land disturbance ordinance as set forth*
74 *in chapter 13.1 of the city code.*
75 (b) *Shall comply with the requirements of the erosion and sediment control*
76 *ordinance as set forth in chapter 13.1 of the city code.*
77 (c) *Shall comply with the requirements of the stormwater ordinance as set forth in*
78 *chapter 33.2 of the city code.*
79 (d) *Shall comply with the requirements of the site plan ordinance as set forth in*
80 *chapter 35.1 of the city code.*
81 (2) *Indigenous vegetation shall be preserved to the maximum extent practicable.*
82 (3) *Impervious cover shall be minimized to the maximum extent practicable.*
83 (4) *The developer shall provide copies of all wetlands permits that are required by local,*
84 *state, and federal law prior to the issuance of a zoning, building or land disturbing permit*
85 *where alteration or filling of wetlands is proposed.*
86 (5) *Onsite sewage treatment systems not requiring a Virginia Pollutant Discharge*
87 *Elimination System (VPDES) permit shall be in accordance with section 30-69 of the city*
88 *code. A reserve sewage disposal site with a capacity equal to or greater than that of the*
89 *primary sewage disposal site shall be provided, in accordance with section 30-69 of the*
90 *city code. Any lot or parcel recorded prior to October 1, 1989 shall not be required to*
91 *provide such reserve disposal site if the size of such lot or parcel, as determined by the*
92 *health department, is not sufficient in capacity to accommodate a reserve sewage*
93 *disposal site. Construction of any impervious surface shall be prohibited on the area of*
94 *all sewage disposal sites or over an on-site sewage treatment system which operates*
95 *under a permit issued by the state water control board, until the property is served by*
96 *public sewer and the site is no longer needed for this purpose.*
97 (6) *Land upon which agricultural activities are being conducted, including but not limited to*
98 *crop production, pasture, and dairy and feedlot operations, or lands otherwise defined as*
99 *agricultural land by the local government, shall have a soil and water quality*
100 *conservation assessment conducted that evaluates the effectiveness of existing*
101 *practices pertaining to soil erosion and sediment control, nutrient management, and*
102 *management of pesticides, and, where necessary, results in a plan that outlines*

103 additional practices needed to ensure that water quality protection is being accomplished
104 consistent with the Act and this chapter.
105

106 **Sec. 9-14. – Specific regulations for development, redevelopment, and land disturbing in**
107 **the RPA.**

108 All development, redevelopment, and land disturbing within the RPA shall be governed by the
109 following:

110 (1) **RPA Buffer Requirement.**

111 The 100-foot wide RPA buffer area shall be the landward component of the RPA as
112 defined in Chapter 2 of the Zoning Ordinance and as identified by a site-specific
113 Resource Delineation. Notwithstanding permitted uses, encroachments, and vegetation
114 clearing, as set forth in this section, the 100-foot wide buffer area is not to be reduced in
115 width. The 100-foot wide buffer area shall be deemed to achieve a 75% reduction of
116 sediments and a 40% reduction of nutrients. To minimize the adverse effects of human
117 activities on the other components of the RPA, state waters, and aquatic life, a 100-foot
118 wide buffer area of vegetation that is effective in retarding runoff, preventing erosion, and
119 filtering nonpoint source pollution from runoff shall be retained if present and established
120 where it does not exist. To the greatest extent possible, the 100-foot wide buffer area of
121 vegetation shall be reestablished in the following circumstances in accordance with the
122 Virginia Department of Environmental Quality Riparian Buffers Modification and
123 Mitigation Guidance Manual:

124 (a) New subdivisions or changes of use requiring a site plan in accordance with
125 Chapter 35.1 of the City Code.

126 (b) Where agriculture or silviculture within the area of the buffer cease and the lands
127 are proposed to be converted to other uses, the full 100-foot wide buffer shall be
128 reestablished. In reestablishing the buffer, management measures shall be
129 undertaken to provide woody vegetation that assures the buffer functions as set
130 forth in this chapter.

131 (2) **Permitted Encroachments in the RPA.**

132 Land development, redevelopment, and land disturbing may be allowed in the RPA only
133 if it is one or more of the following permitted encroachments. If all applicable
134 requirements set forth in this subsection are not satisfied, an exception request in
135 accordance with subsection 9-19(1) shall be required. Such permitted encroachments
136 include:

137 (a) A water-dependent facility that satisfies the following:

138 (i) It does not conflict with the comprehensive plan;

139 (ii) It complies with the general performance criteria set forth in section 9-13;

140 (iii) Any non-water-dependent component is located outside the RPA; and

141 (iv) Access to the water-dependent facility will be provided with the minimum
142 disturbance necessary. Where practicable, a single point of access will be
143 provided.

144 (b) Redevelopment that satisfies the following:

145 (i) There is no increase in the amount of impervious cover in the RPA and
146 there is no further encroachment in the RPA; or

147 (ii) The proposal is an expansion to a structure that was in existence prior to
148 November 14, 1990 that satisfies the provisions of Sec. 9-19(3).

149 (c) A new use on a lot recorded prior to October 1, 1989 that satisfies the following:

150 (i) Encroachments into the buffer area shall be the minimum necessary to
151 achieve a reasonable buildable area for a principal structure and
152 necessary utilities;

- 153 (ii) *Where practicable, a vegetated area that will maximize water quality*
154 *protection, mitigate the effects of the buffer encroachment, and is equal to*
155 *the area of encroachment into the buffer area shall be established*
156 *elsewhere on the lot or parcel; and*
157 (iii) *The encroachment may not extend into the seaward 50 feet of the buffer*
158 *area.*
- 159 (d) *A new use on a lot recorded between October 1, 1989 and March 1, 2002 that*
160 *satisfies the following:*
161 (i) *The requirements of subsections 9-14(2)(c)(i) through 9-14(2)(c)(iii)*
162 *above;*
163 (ii) *The lot or parcel was created as a result of a legal process conducted in*
164 *conformity with the local government's subdivision regulations;*
165 (iii) *Conditions or mitigation measures imposed through a previously*
166 *approved exception shall be met; and*
167 (iv) *If the use of a best management practice (BMP) was previously required,*
168 *the BMP shall be evaluated to determine if it continues to function*
169 *effectively and, if necessary, the BMP shall be reestablished or repaired*
170 *and maintained as required.*
- 171 (e) *A road or driveway crossing that satisfies the following:*
172 (i) *There are no reasonable alternatives to aligning the road or driveway in*
173 *or across the RPA;*
174 (ii) *The alignment and design of the road or driveway are optimized,*
175 *consistent with other applicable requirements, to minimize (i)*
176 *encroachment in the RPA and (ii) adverse effects on water quality;*
- 177 (f) *Flood control or stormwater management facilities that drain or treat water from*
178 *multiple development projects or from a significant portion of a watershed may be*
179 *allowed in RPAs provided such facilities are allowed and constructed in*
180 *accordance with the Virginia Stormwater Management Act and its attendant*
181 *regulations, and that satisfy the following:*
182 (i) *The local government has conclusively established that location of the*
183 *facility within the RPA is the optimum location;*
184 (ii) *The size of the facility is the minimum necessary to provide necessary*
185 *flood control or stormwater treatment, or both;*
186 (iii) *The facility must be consistent with a comprehensive stormwater*
187 *management plan developed and approved in accordance with Chapter*
188 *33.2 of the City Code;*
189 (iv) *All applicable permits for construction in state or federal waters must be*
190 *obtained from the appropriate state and federal agencies, such as the*
191 *U.S. Army Corps of Engineers, the department, and the Virginia Marine*
192 *Resources Commission;*
193 (v) *Approval must be received from the local government prior to*
194 *construction; and*
195 (vi) *Routine maintenance is allowed to be performed on existing facilities to*
196 *assure that they continue to function as designed. It is not the intent of*
197 *this subdivision to allow a BMP that collects and treats runoff from only an*
198 *individual lot or some portion of the lot to be located within an RPA.*

199 (3) **Required Mitigation in the RPA.**

200 *All permitted development, redevelopment, and land disturbing in the RPA that results in*
201 *new impervious area or removal of indigenous vegetation shall provide mitigation*
202 *consistent with the requirements of a Minor Water Quality Impact Assessment unless a*
203 *Major Water Quality Impact Assessment is required by Sec 9-19(1).*

204 (a) A structure encroachment permit as described in chapter 33.1 of the City Code is
205 required for any structure or impervious area in the RPA buffer area.

206 (4) **Subdivisions, Boundary Line Adjustments, and Property Line Vacations in the**
207 **RPA.**

208 *Parcels proposed as part of a new subdivision shall provide for sufficient buildable area*
209 *outside of the RPA and Special Green Area. Vacant parcels proposed to be altered*
210 *through a boundary line adjustment or property line vacation shall provide for sufficient*
211 *buildable area outside of the RPA and Special Green Area or, on existing parcels lacking*
212 *such sufficient area, the proposed parcels shall maintain the same or greater square*
213 *footage of existing area outside of the RPA and Special Green Area.*

214 (5) **Removal of Vegetation in the RPA.**

215 (a) *In order to maintain the functional value of the buffer area, existing vegetation*
216 *may be removed, subject to approval by the Zoning Administrator, only to provide*
217 *for reasonable sight lines, access paths, general woodlot management, and best*
218 *management practices, including those that prevent upland erosion and*
219 *concentrated flows of stormwater, as follows:*

220 (i) *A plan and additional materials as required by the Zoning Administrator*
221 *must be submitted for review prior to removal of existing vegetation.*

222 (ii) *Trees may be pruned or removed as necessary to provide for sight lines*
223 *and vistas, provided that where removed, they shall be replaced with*
224 *other vegetation that is equally effective in retarding runoff, preventing*
225 *erosion, and filtering nonpoint source pollution from runoff.*

226 (iii) *Any path shall be constructed and surfaced so as to effectively control*
227 *erosion.*

228 (iv) *Dead, diseased, or dying trees or shrubbery and noxious weeds (such as*
229 *Johnson grass, kudzu, and multiflora rose) may be removed and thinning*
230 *of trees may be allowed pursuant to sound horticultural practice*
231 *incorporated into locally-adopted standards.*

232 (v) *For shoreline erosion control projects, trees and woody vegetation may*
233 *be removed, necessary control techniques employed, and appropriate*
234 *vegetation established to protect or stabilize the shoreline in accordance*
235 *with the best available technical advice and applicable permit conditions*
236 *or requirements.*

237 (b) *On agricultural lands the agricultural buffer area shall be managed to prevent*
238 *concentrated flows of surface water from breaching the buffer area and*
239 *appropriate measures may be taken to prevent noxious weeds (such as Johnson*
240 *grass, kudzu, and multiflora rose) from invading the buffer area. Agricultural*
241 *activities may encroach into the buffer area as follows:*

242 (i) *Agricultural activities may encroach into the landward 50 feet of the 100-*
243 *foot wide buffer area when at least one agricultural best management*
244 *practice which, in the opinion of the local soil and water conservation*
245 *district board, addresses the more predominant water quality issue on the*
246 *adjacent land—erosion control or nutrient management—is being*
247 *implemented on the adjacent land, provided that the combination of the*
248 *undisturbed buffer area and the best management practice achieves*
249 *water quality protection, pollutant removal, and water resource*
250 *conservation at least the equivalent of the 100-foot wide buffer area. If*
251 *nutrient management is identified as the predominant water quality issue,*
252 *a nutrient management plan, including soil tests, must be developed*
253 *consistent with the Virginia Nutrient Management Training and*

- 254 Certification Regulations (4VAC5-15) administered by the Virginia
255 Department of Conservation and Recreation.
- 256 (ii) Agricultural activities may encroach within the landward 75 feet of the
257 100-foot wide buffer area when agricultural best management practices
258 which address erosion control, nutrient management, and pest chemical
259 control, are being implemented on the adjacent land. The erosion control
260 practices must prevent erosion from exceeding the soil loss tolerance
261 level, referred to as "T," as defined in the "National Soil Survey
262 Handbook" of November 1996 in the "Field Office Technical Guide" of the
263 U.S. Department of Agriculture Natural Resource Conservation Service. A
264 nutrient management plan, including soil tests, must be developed,
265 consistent with the Virginia Nutrient Management Training and
266 Certification Regulations (4VAC5-15) administered by the Virginia
267 Department of Conservation and Recreation. In conjunction with the
268 remaining buffer area, this collection of best management practices shall
269 be presumed to achieve water quality protection at least the equivalent of
270 that provided by the 100-foot wide buffer area.
- 271 (iii) The buffer area is not required to be designated adjacent to agricultural
272 drainage ditches if at least one best management practice which, in the
273 opinion of the local soil and water conservation district board, addresses
274 the more predominant water quality issue on the adjacent land—either
275 erosion control or nutrient management—is being implemented on the
276 adjacent land.
- 277 (iv) If specific problems are identified pertaining to agricultural activities that
278 are causing pollution of the nearby water body with perennial flow or
279 violate performance standards pertaining to the vegetated buffer area, the
280 local government, in cooperation with soil and water conservation district,
281 shall recommend a compliance schedule to the landowner and require
282 the problems to be corrected consistent with that schedule. This schedule
283 shall expedite environmental protection while taking into account the
284 seasons and other temporal considerations so that the probability for
285 successfully implementing the corrective measures is greatest.
- 286 (v) In cases where the landowner or his agent or operator has refused
287 assistance from the local soil and water conservation district in complying
288 with or documenting compliance with the agricultural requirements of this
289 chapter, the district shall report the noncompliance to the local
290 government. The local government shall require the landowner to correct
291 the problems within a specified period of time not to exceed 18 months
292 from their initial notification of the deficiencies to the landowner. The local
293 government, in cooperation with the district, shall recommend a
294 compliance schedule to the landowner. This schedule shall expedite
295 environmental protection while taking into account the seasons and other
296 temporal considerations so that the probability for successfully
297 implementing the corrective measures is greatest.

298
299 **Sec. 9-15. – Specific regulations for development, redevelopment, and land disturbing in**
300 **the IDA.**
301 *All development, redevelopment, and land disturbing within the IDA shall be governed by the*
302 *following:*

303 (1) *Vegetation in the IDA that is effective in retarding runoff, preventing erosion, and filtering*
304 *nonpoint source pollution from runoff shall be retained if present to the maximum extent*
305 *practicable.*

306 (2) **Development and Redevelopment in the IDA.**

307 *On existing parcels designated as IDA, development and redevelopment shall be sited*
308 *outside of the IDA to the greatest extent possible. The following guidelines shall be used*
309 *to review and permit development and redevelopment within the IDA:*

310 (a) *Main buildings and required impervious pavement surface improvements may*
311 *encroach into the IDA when a reasonable buildable area cannot be provided*
312 *outside of the IDA and encroachment is the minimum relief necessary to enable*
313 *a reasonable buildable area. Required green areas shall be located to maximize*
314 *protection of the IDA and water quality.*

315 (b) *Accessory structures, decks, and discretionary pavement surface improvements*
316 *may encroach into the IDA provided that:*

317 (i) *The encroachment is the minimum necessary to afford relief while*
318 *adhering to required yard setbacks; and*

319 (ii) *Preference shall be given to previously disturbed areas, poor quality*
320 *green areas, or existing impervious area; and*

321 (iii) *The applicant shall demonstrate there is no feasible location outside of*
322 *the IDA while adhering to required yard setbacks.*

323 (c) *Stormwater BMPs may be located in the landward 50 feet of the IDA provided*
324 *that existing vegetation that is effective at preventing runoff, preventing erosion,*
325 *and filtering nonpoint source pollution is not removed from the IDA and that the*
326 *impact to water quality from the proposed development is demonstrated through*
327 *a Major Water Quality Impact Assessment.*

328 (d) *No structure or impervious area, other than those exempt pursuant to subsection*
329 *9-19(2) shall be built within ten (10) feet of an RPA feature.*

330 (3) **Required Mitigation in the IDA.**

331 *All permitted development and redevelopment within the IDA that results in new*
332 *impervious area or removal of indigenous vegetation shall provide mitigation consistent*
333 *with the requirements of a Minor Water Quality Impact Assessment unless a Major*
334 *Water Quality Impact Assessment is required by Sec 9-19(1).*

335 (a) *A structure encroachment permit as described in chapter 33.1 of the city code is*
336 *required for any structure or impervious area in the IDA.*

337 (4) **Subdivisions, Boundary Line Adjustments, and Property Line Vacations in the**
338 **IDA.**

339 *Parcels proposed as part of a new subdivision shall provide for sufficient buildable area*
340 *outside of the IDA and Special Green Area. Vacant parcels proposed to be altered*
341 *through a boundary line adjustment or property line vacation shall provide for sufficient*
342 *buildable area outside of the IDA and Special Green Area or, on existing parcels lacking*
343 *such sufficient area, the proposed parcels shall maintain the same or greater square*
344 *footage of existing area outside of the IDA and Special Green Area.*

345 (5) **Removal of vegetation in the IDA.**

346 (a) *In order to maintain the functional value of the buffer area, existing vegetation*
347 *may be removed, subject to approval by the Zoning Administrator, only to provide*
348 *for reasonable sight lines, access paths, general woodlot management, and best*
349 *management practices, including those that prevent upland erosion and*
350 *concentrated flows of stormwater, as follows:*

351 (i) *A plan and additional materials as required by the Zoning Administrator*
352 *must be submitted for review prior to removal of existing vegetation.*

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- (ii) *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.*
- (iii) *Any path shall be constructed and surfaced so as to effectively control erosion.*
- (iv) *Dead, diseased, or dying trees or shrubbery and noxious weeds (such as Johnson grass, kudzu, and multiflora rose) may be removed and thinning of trees may be allowed pursuant to sound horticultural practice incorporated into locally-adopted standards.*
- (v) *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.*
- (b) *On agricultural lands the agricultural buffer area shall be managed to prevent concentrated flows of surface water from breaching the buffer area and appropriate measures may be taken to prevent noxious weeds (such as Johnson grass, kudzu, and multiflora rose) from invading the buffer area. Agricultural activities may encroach into the buffer area as follows:*

 - (i) *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 tests, must be developed consistent with the Virginia Nutrient Management Training and Certification Regulations (4VAC5-15) administered by the Virginia Department of Conservation and Recreation.*
 - (ii) *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 tests, must be developed, consistent with the Virginia Nutrient Management Training and Certification Regulations (4VAC5-15) 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.*
 - (iii) *The buffer area is not required to be designated adjacent to agricultural drainage ditches if at least one best management practice which, in the*

404 *opinion of the local soil and water conservation district board, addresses*
405 *the more predominant water quality issue on the adjacent land—either*
406 *erosion control or nutrient management—is being implemented on the*
407 *adjacent land.*
408 (iv) *If specific problems are identified pertaining to agricultural activities that*
409 *are causing pollution of the nearby water body with perennial flow or*
410 *violate performance standards pertaining to the vegetated buffer area, the*
411 *local government, in cooperation with soil and water conservation district,*
412 *shall recommend a compliance schedule to the landowner and require*
413 *the problems to be corrected consistent with that schedule. This schedule*
414 *shall expedite environmental protection while taking into account the*
415 *seasons and other temporal considerations so that the probability for*
416 *successfully implementing the corrective measures is greatest.*
417 (v) *In cases where the landowner or his agent or operator has refused*
418 *assistance from the local soil and water conservation district in complying*
419 *with or documenting compliance with the agricultural requirements of this*
420 *chapter, the district shall report the noncompliance to the local*
421 *government. The local government shall require the landowner to correct*
422 *the problems within a specified period of time not to exceed 18 months*
423 *from their initial notification of the deficiencies to the landowner. The local*
424 *government, in cooperation with the district, shall recommend a*
425 *compliance schedule to the landowner. This schedule shall expedite*
426 *environmental protection while taking into account the seasons and other*
427 *temporal considerations so that the probability for successfully*
428 *implementing the corrective measures is greatest.*
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431 **Sec. 9-16. – Specific regulations for development, redevelopment, and land disturbing in**
432 **the RMA.**

433 (1) *The general performance criteria set forth in Section 9-13 shall apply to all development,*
434 *redevelopment, and land disturbing in the RMA.*
435

436 **Sec. 9-17. – Special Green Area requirements.**

437 (1) *All one- and two-family, duplex, townhouse, and multifamily developments or additions*
438 *thereto, which are located on lots wholly or partially in the RPA buffer or IDA, shall have*
439 *the following required Special Green Areas extending outward from the primary*
440 *structure:*
441 (a) *In the front:*
442 (i) *For all one- and two-family and duplex developments: 30'*
443 (ii) *For all townhouse and multifamily developments: 20'*
444 (b) *In the sides: 5'*
445 (c) *In the rear: 20'*
446 (2) *Special Green Area shall not be required where the natural riparian buffer has been*
447 *cleared in accordance with provisions of this article or was cleared prior to November 14,*
448 *1990, per city records.*
449 (3) *Special Green Area shall not be located in the 100-foot RPA buffer or IDA.*
450 (4) *Accessory structures are permitted in required Special Green Area in accordance with*
451 *regulations in underlying zoning districts.*
452 (5) *Relief from special green area requirements shall be provided, in the case that a lot,*
453 *existing or newly created, has less than the standard minimum buildable area provided*

454 under the applicable zoning district due to the existence of RPA buffer or IDA, by
455 reducing the required setbacks to:

- 456 (a) Front yard setback: minimum of 15'
- 457 (b) Side yard setback: minimum of 5'
- 458 (c) Rear yard setback: minimum of 20'

459

460 **Sec. 9-18. – Plan requirements.**

461 (1) Required submittals for development and redevelopment in all O-CBP subdistricts:

462 (a) A plan of development consistent with Ch. 1, Sec. 1-7 or Sec. 1-8 of the zoning
463 ordinance, supplemented with a Resource Delineation. The Resource
464 Delineation shall be submitted to the city for review, which may include physical
465 verification of such findings on the site.

466 (b) Other plans as may be required by Ch. 13.1, Ch. 33.2, or other applicable
467 sections of the city code.

468 (2) Additional required submittals for development and redevelopment in the RPA.

469 (a) A Minor Water Quality Impact Assessment for permitted encroachments as
470 defined in Sec. 9-14(2) unless such development or redevelopment requires a
471 site plan in accordance with Ch. 35.1 of the city code, which shall require a Major
472 Water Quality Impact Assessment.

473 (b) A Major Water Quality Impact Assessment for exceptions as defined in Sec. 9-
474 19(1).

475 (3) Additional required submittals for development and redevelopment in the IDA.

476 (a) A Minor Water Quality Impact Assessment for development and redevelopment
477 as defined in Sec. 9-15 unless such development or redevelopment requires a
478 site plan in accordance with Ch. 35.1 of the City Code, which shall require a
479 Major Water Quality Impact Assessment.

480 (b) A Major Water Quality Impact Assessment for exceptions as defined in Sec. 9-
481 19(1).

482

483 **Sec. 9-19. – Exceptions, exemptions, and nonconformities.**

484 (1) **Exceptions.**

485 (a) Exceptions to the requirements of Sec. 9-13, Sec. 9-14, Sec. 9-15, and Sec. 9-16
486 may be granted, provided that all of the following findings are made:

487 (i) The requested exception to the criteria is the minimum necessary to
488 afford relief;

489 (ii) Granting the exception will not confer upon the applicant any special
490 privileges that are denied by this part to other property owners who are
491 subject to its provisions and who are similarly situated;

492 (iii) The exception is in harmony with the purpose and intent of the district and
493 is not of substantial detriment to water quality;

494 (iv) The exception request is not based upon conditions or circumstances that
495 are self-created or self-imposed;

496 (v) Reasonable and appropriate conditions are imposed, as warranted, that
497 will prevent the allowed activity from causing a degradation of water
498 quality; and

499 (vi) A Major Water Quality Impact Assessment has been reviewed and
500 approved by city staff.

501 (b) Exceptions from the requirements of Sec. 9-13 and Sec 9-16 shall be reviewed
502 under the criteria of Sec. 9-19(1)(a) and may be granted by the Zoning
503 Administrator.

- 504 (c) *Exceptions from the requirements of Sec. 9-14, and Sec. 9-15 shall be heard by*
505 *the Chesapeake Bay Preservation District Review Committee (the review*
506 *committee).*
- 507 (d) *The review committee shall be composed of the following persons or their*
508 *designee:*
- 509 (i) *Chairperson of the wetlands board;*
 - 510 (ii) *Director of planning;*
 - 511 (iii) *Building official;*
 - 512 (iv) *Zoning administrator; and,*
 - 513 (v) *Director of public works.*
- 514 (e) *Exceptions to the requirements of section 9-14 and section 9-15 shall be*
515 *reviewed under the following criteria;*
- 516 (i) *A request for an exception to the district regulations shall specify the*
517 *hardship imposed by the regulations and identify, through a water quality*
518 *impact assessment, the impacts of the proposed exception on water*
519 *quality and lands within the O-CBP. The water quality impact assessment*
520 *shall comply with the provisions of the stormwater management*
521 *ordinance.*
 - 522 (ii) *The review committee shall review the request and the accompanying*
523 *water quality impact assessment and may grant the exception with such*
524 *conditions and safeguards as deemed necessary to further the purpose*
525 *and intent of this article if they find that:*
 - 526 1. *Granting the exception will not confer upon the applicant*
527 *any special privileges that are denied by this article to*
528 *similarly situated property owners in the district;*
 - 529 2. *The request is not based on self-imposed or self-created*
530 *conditions or circumstances, nor does the request arise*
531 *from conditions or circumstances, either permitted or*
532 *nonconforming, that are related to adjacent parcels;*
 - 533 3. *The request is the minimum necessary to afford relief;*
 - 534 4. *The request will be consistent with the purpose and intent*
535 *of the district and is not of substantial detriment to water*
536 *quality;*
 - 537 5. *Reasonable and appropriate conditions are imposed which*
538 *will prevent the request from causing a degradation of*
539 *water quality; and,*
 - 540 6. *Other findings, as appropriate and required by the review*
541 *committee, are met.*
- 542 (c) *Requests for exception from the requirements of Sec. 9-14 and 9-15 shall be*
543 *heard by the review committee through a public hearing in accordance with*
544 *section 15.2-2204 of the Code of Virginia except that;*
- 545 (i) *Only one (1) hearing shall be required; and,*
 - 546 (ii) *The required notice may be given by the zoning administrator by first*
547 *class mail to the owners, their agents or the occupants of abutting*
548 *property and property immediately across the street or road from the*
549 *affected property.*
- 550 (d) *Applications to the review committee requesting exception from the requirements*
551 *of Sec. 9-14 and 9-15 shall be accompanied by the nonrefundable fee from the*
552 *following schedule. The sum shall be payable to the City of Hampton, incidental*
553 *to reviewing, publishing, and reporting the application:*

- 554 (i) Seventy-five dollars (\$75.00) for any application that is associated with a
555 current or proposed single-family residential use of property; and
556 (ii) Two hundred dollars (\$200.00) for any application that is associated with
557 a current or proposed use of property that is not single-family residential.
558 (e) Appeals from the decision of either the zoning administrator or of the review
559 committee shall be filed with the zoning administrator no later than ten (10)
560 working days after written notice of such decision. Appeals shall be heard by the
561 board of zoning appeals in accordance with chapter 22 of this ordinance.
562 Appeals of the decision of the board of zoning appeals shall be in accordance
563 with section 15.2-2314 of the Code of Virginia.

564 (2) **Exemptions.**

565 The following types of development are exempt from the requirements of this Chapter:

- 566 (a) Public roads, railroads, and public facilities provided that:
- 567 (i) Construction, installation, operation and maintenance of public roads,
568 railroads, and public facilities and their appurtenant structures are in
569 accordance with the following:
- 570 (aa) Public roads shall be optimally designed and aligned, consistent
571 with all applicable requirements, to prevent or otherwise minimize
572 the encroachment in the resource protection area and to minimize
573 the adverse effects on water quality.
- 574 (b) City of Hampton or regional service authority or public utility including electric,
575 natural gas, fiber-optic, telephone transmission lines, water, sewer, and
576 underground telecommunications and cable television lines provided that:
- 577 (i) To the degree possible, the location of such utilities and facilities are sited
578 outside of resource protection areas;
- 579 (ii) No more land shall be disturbed than is necessary to provide for
580 installation of the proposed utility;
- 581 (iii) All such construction, installation and maintenance of such utilities and
582 facilities shall be in compliance with all applicable local, state and federal
583 permits and designed and conducted in a manner that protects water
584 quality; and,
- 585 (iv) Any land disturbance exceeding an area of twenty-five hundred (2,500)
586 square feet complies with all erosion and sediment control requirements
587 in accordance with chapter 13.1 of the Hampton City Code.
- 588 (c) Silvicultural activities, provided that such operations adhere to the water quality
589 protection procedures prescribed by the Virginia Department of Forestry in
590 "Virginia's Forestry Best Management Practices for Water Quality."
- 591 (d) Home gardens under 2,500 square feet in areas where the natural riparian buffer
592 has been cleared in accordance with provisions of this article or was cleared prior
593 to November 14, 1990, per city records.

594 (3) **Nonconformities.**

- 595 (a) The lawful use of buildings or structures which existed in the O-CBP district prior
596 to November 14, 1990, or which exists in an O-CBP district at the time of any
597 amendment to this article, and which is on a legal nonconforming lot and not in
598 conformity with the provisions of the district may be continued; however, any
599 alteration, replacement or expansion of a nonconforming building or structure in
600 the RPA shall require a development waiver. This provision shall not be
601 construed to prevent the reconstruction of pre-existing structures within the O-
602 CBP district occurring as a result of casualty loss.
- 603 (b) Such development waiver may be issued by the zoning administrator provided
604 that:

- 605 (i) *The pre-existing structure is the main building;*
606 (ii) *A minor water quality impact assessment is submitted;*
607 (iii) *Any development or land disturbance exceeding twenty-five hundred*
608 *(2,500) square feet in area shall comply with the provisions of the erosion*
609 *and sediment control ordinance;*
610 (iv) *Relief from the requirements of section 9-13 are the minimum necessary*
611 *to afford relief;*
612 (v) *Granting the waiver does not confer upon the applicant any special*
613 *privileges that are denied by this article to similarly situated property*
614 *owners in the district;*
615 (vi) *The approval is consistent with the purpose and intent of the district and*
616 *is not of substantial detriment to water quality;*
617 (vii) *The request is not based upon conditions or circumstances that are self-*
618 *created or self-imposed;*
619 (viii) *Reasonable and appropriate conditions are imposed, as warranted, that*
620 *will prevent the allowed activity from causing degradation of water quality;*
621 *and,*
622 (ix) *Other findings, as appropriate and required by the zoning administrator,*
623 *are met.*
624 (c) *Such application for a development waiver shall be made to the zoning*
625 *administrator and shall include the following:*
626 (i) *Name and address of applicant and property owner;*
627 (ii) *Legal description of the property;*
628 (iii) *Proposed use;*
629 (iv) *Minor water quality impact assessment;*
630 (v) *Sketch of property, including location of buildings and proposed additions,*
631 *and RPA boundaries; and*
632 (vi) *Location and description of any existing private water supply or sewage*
633 *system.*
634 (d) *Any development waiver shall become null and void twelve (12) months from the*
635 *date of issue if no substantial work has commenced.*
636

637 **Sec. 9-20 – Reserved.**
638

639 **Sec. 9-11. – Purpose and intent.**

640 ~~The health of the Chesapeake Bay is vital to the economy of the City of Hampton and the State~~
641 ~~of Virginia. Degradation of the bay from both point and non-point source pollution must be~~
642 ~~curtailed if the city and state are to continue to benefit, both socially and economically, from their~~
643 ~~close association with the bay. The purpose of this article is to implement the Chesapeake Bay~~
644 ~~Preservation Act at the local level, and to protect the quality of state waters pursuant to 9 VAC~~
645 ~~10-20-10 et seq. and as authorized under section 10.1-2100 et seq. of the Code of Virginia,~~
646 ~~1950, as amended; specifically:~~
647

- 648 (1) ~~To protect existing high quality state waters;~~
649 (2) ~~To restore all other state waters to a condition or quality that will permit all~~
650 ~~reasonable public uses and will support the propagation and growth of all aquatic~~
651 ~~life, including game fish, which might reasonably be expected to inhabit them;~~
652 (3) ~~To safeguard the clean waters of the Commonwealth from pollution;~~
653 (4) ~~To prevent any increase in pollution;~~
654 (5) ~~To reduce existing pollution; and~~

- 655 (6) — ~~To promote water resource conservation in order to protect the quality of life of~~
656 ~~the present and future citizens of Hampton.~~

657
658 It is not the intent of this article to impair the vested rights of property owners in Hampton. To
659 the extent possible, and without violating the intent of the Chesapeake Bay Preservation Act,
660 development within the O-CBP should be permitted at the same density, although not
661 necessarily in the same manner, as was permitted prior to the adoption of the district.
662

663 **Sec. 9-12. — Application of the district.**

- 664
665 (1) — ~~The Chesapeake Bay Preservation District (O-CBP) shall be composed of two~~
666 ~~(2) subdistricts, the resource protection area (RPA) and the resource~~
667 ~~management area (RMA). The boundaries of such subdistricts are shown for~~
668 ~~administrative and demonstrative purposes on the Chesapeake Bay Preservation~~
669 ~~District Map, which shall act as a supplement to the city's zoning map.~~
670 (2) — ~~The regulations of this article shall augment those of the underlying zoning~~
671 ~~districts. In cases where the regulations stated herein conflict with those of the~~
672 ~~underlying zoning district or with any other provisions of the city code, the more~~
673 ~~stringent regulations shall apply.~~

674
675 **Sec. 9-13. — Boundaries.**

- 676 (1) — ~~The Chesapeake Bay Preservation District (O-CBP) regulations shall apply to all~~
677 ~~RPAs and RMAs. The approximate limits of the RPA and RMA boundaries are~~
678 ~~shown for administrative and demonstrative purposes on the Chesapeake Bay~~
679 ~~Preservation District Map. Intensely developed area (IDA) boundaries are~~
680 ~~designated on the Chesapeake Bay Preservation District Map. Components of~~
681 ~~the O-CBP are:~~
682 (a) — ~~Resource protection area;~~
683 (b) — ~~Resource management area;~~
684 (c) — ~~Intensely developed area, which are lands designated by the city that are~~
685 ~~within portions of the landward component of the RPA where little of the~~
686 ~~natural environment remains and at least one (1) of the following~~
687 ~~conditions existed on or before October 1, 1989:~~
688 (i) — ~~Impervious surface exceeding fifty (50) percent of the area;~~
689 (ii) — ~~Constructed and functioning public sewer and water systems, or a~~
690 ~~constructed stormwater drainage system, or both, serving the~~
691 ~~area; or~~
692 (iii) — ~~Housing density equal to or greater than four (4) dwelling units per~~
693 ~~acre.~~
694 (2) — ~~Portions of RPAs designated as intensely developed areas (IDAs) shall serve as~~
695 ~~redevelopment areas. IDAs shall comply with all erosion and sediment control~~
696 ~~requirements and the performance standards for redevelopment in this article.~~
697 (3) — ~~Site-specific boundaries of the RPA, RMA and IDA shall be identified by~~
698 ~~development and redevelopment project applicants through the performance of~~
699 ~~an environmental site assessment, subject to the approval of the director of~~
700 ~~planning, and in conformance with the site plan and subdivision ordinances, if~~
701 ~~applicable. The general location of the RPAs, RMAs, and IDAs are shown on the~~
702 ~~City of Hampton Chesapeake Bay Preservation District Map.~~
703 (4) — ~~Lands within the City of Hampton that meet the definition of a component of the~~
704 ~~O-CBP but not identified on the Chesapeake Bay Preservation District Map are~~

705 hereby designated to be within the O-CBP boundaries and regulated under the
706 provisions of this article.

707 (5) Once submitted by the applicant, the planning director shall verify the accuracy of
708 the boundary delineation and make adjustments as deemed necessary. If such
709 adjustments are contested by the applicant, a decision shall be made by the
710 review committee, as provided in this article.

711

712 **Sec. 9-14. -- Regulations for development and redevelopment.**

713 (1) Permitted uses include all uses permitted in the underlying zone.

714 (2) Restrictions on permitted uses:

715 (a) General performance criteria for development and redevelopment within
716 resource management areas, resource protection areas and intensely
717 developed areas:

718 (i) Land disturbance shall be limited to the area necessary to provide
719 for the proposed use or development. In accordance with an
720 approved site plan, the limits of land disturbance, including
721 clearing or grading, shall be clearly shown on submitted plans and
722 physically marked on the development site.

723 (ii) Indigenous vegetation shall be preserved to the maximum extent
724 practicable, consistent with the proposed use or development, and
725 in accordance with the Virginia Erosion and Sediment Control
726 Handbook.

727 (aa) Existing healthy trees exhibiting a minimum trunk diameter
728 of six (6) inches, measured four and one-half (4½) feet
729 from the ground, shall be preserved outside the limits of
730 clearing.

731 (bb) Clearing shall be allowed only to provide a building site,
732 necessary parking, necessary access, positive site
733 drainage, stormwater BMPs, and the installation of utilities,
734 as approved by the zoning administrator or the director of
735 public works, as appropriate.

736 (cc) Prior to clearing or grading, suitable protection measures
737 for undisturbed areas, as outlined in chapters 13.1 and
738 33.1 of the city code and the "City of Hampton Landscape
739 Guidelines" shall be followed.

740 (iii) Land development shall minimize impervious cover to promote
741 infiltration of stormwater into the ground consistent with the
742 proposed use or development.

743 (aa) Grid and modular pavements which promote infiltration are
744 encouraged for any required parking area, alley, or other
745 low traffic driveway.

746 (bb) For nonresidential uses, the number of parking spaces
747 shall not exceed one hundred and twenty (120) percent of
748 the minimum required by chapter 11 of the zoning
749 ordinance, and their size shall not exceed the minimum
750 required by chapter 11 of the zoning ordinance.

751 (cc) In the IDA, automobile parking lots shall be of pervious
752 surfaces, where feasible, and be designed, constructed,
753 and maintained consistent with the most current version of
754 the Virginia Stormwater BMP Clearinghouse, Virginia DCR
755 design specification no. 7, permeable pavement.

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- ~~(iv) Notwithstanding any other provisions of this article or exceptions or exemptions thereto, any land disturbing activity exceeding two thousand five hundred (2,500) square feet, or less than two thousand five hundred (2,500) square feet and part of a common plan of development, including construction of all single-family houses, septic tanks, drainfields, and accessory structures and improvements shall comply with the requirements of chapters 13.1 and 33.1 of the city code.~~
- ~~(v) All on-site sewage disposal systems not requiring a Virginia Pollution Discharge Elimination System (VPDES) permit shall be pumped out at least every five (5) years, in accordance with section 30-69 of the city code.~~
- ~~(vi) A reserve sewage disposal site with a capacity equal to or greater than that of the primary sewage disposal site shall be provided, in accordance with section 30-69 of the city code. Any lot or parcel recorded prior to October 1, 1989 shall not be required to provide such reserve disposal site if the size of such lot or parcel, as determined by the health department, is not sufficient in capacity to accommodate a reserve sewage disposal site. Construction of any impervious surface shall be prohibited on the area of all sewage disposal sites or over an on-site sewage treatment system which operates under a permit issued by the state water control board, until the property is served by public sewer and the site is no longer needed for this purpose.~~
- ~~(vii) Prior to the issuance of a zoning, building or land disturbing permit for any development or redevelopment located within O-CBP where alteration or filling of wetlands is proposed, the developer shall provide copies of all wetlands permits that are required by local state, and federal law. Issuance of a zoning, building or local VSMP permit shall not absolve the developer from obtaining all necessary federal, state and local permits.~~
- ~~(viii) Land upon which agricultural activities are being conducted, including but not limited to crop production, pasture, dairy and feedlot operations, or lands otherwise defined as agricultural land by the city assessor, shall have a soil and water quality conservation assessment conducted that evaluates 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 section 10.1-2100 et seq. of the Code of Virginia, 1950, as amended and pursuant to the Chesapeake Bay Preservation Area Designation and Management Regulations 9 VAC 10-20-10 et seq.~~
- ~~(ix) On parcels and lots designated as IDA, all proposed land uses, development, and redevelopment shall be sited outside of the IDA to the greatest extent possible. The following guidelines shall be used to review and permit land use, development, and redevelopment within the IDA:
 - ~~(aa) Main buildings and required impervious pavement surface improvements may encroach into the IDA when a~~~~

807 reasonable buildable area cannot be provided outside of
808 the IDA and encroachment is the minimum relief necessary
809 to enable a reasonable buildable area. Required green
810 areas shall be located to maximize protection of the RPA
811 and water quality.

812 (bb) ~~Accessory structures, decks, and discretionary pavement~~
813 ~~surface improvements may encroach into the IDA provided~~
814 ~~that:~~

815 1. ~~The encroachment is the minimum necessary to~~
816 ~~afford relief while adhering to required yard~~
817 ~~setbacks; and~~

818 2. ~~Preference shall be given to previously disturbed~~
819 ~~areas, poor quality green areas, or existing~~
820 ~~impervious area; and~~

821 3. ~~Applicant shall demonstrate there is no feasible~~
822 ~~location outside of the IDA while adhering to~~
823 ~~required yard setbacks.~~

824 (cc) ~~No structure or impervious area, other than those exempt~~
825 ~~pursuant to subsections 9-16(2) and 9-16(3) shall be built~~
826 ~~within ten (10) feet of an RPA feature.~~

827 (x) ~~A structure encroachment permit as described in chapter 33.1 of~~
828 ~~the city code is required for any structure or impervious area in the~~
829 ~~IDA or RPA buffer area.~~

830 (b) ~~Other restrictions applicable to the RPA (RPA Regulations):~~

831 (i) ~~In addition to satisfying the general performance criteria set forth~~
832 ~~in part (2)(a) of this section, development within resource~~
833 ~~protection areas may be allowed if it satisfies one (1) of the~~
834 ~~following:~~

835 (aa) ~~Is a new or expanding water dependent use that satisfies~~
836 ~~the following criteria:~~

837 1. ~~It does not conflict with the comprehensive plan;~~

838 2. ~~Any non-water dependent component is located~~
839 ~~outside of the RPA; and,~~

840 3. ~~Access to the water dependent facility is provided~~
841 ~~with minimum disturbance to the site; and where~~
842 ~~practicable, a single point of access is provided.~~

843 (bb) ~~Constitutes redevelopment;~~

844 (cc) ~~Constitutes development or redevelopment within a~~
845 ~~designated intensely developed area;~~

846 (dd) ~~Is a permitted development activity or improvement~~
847 ~~established pursuant to section 9-16 or part (2)(b)(iv) of~~
848 ~~this section.~~

849 (ii) ~~Redevelopment within RPAs and outside of designated IDAs~~
850 ~~shall:~~

851 (aa) ~~Not increase the amount of impervious cover on the site;~~

852 (bb) ~~Not result in further encroachment within the RPA; and,~~

853 (cc) ~~Comply with all provisions of chapters 13.1 and 33.1 of the~~
854 ~~city code.~~

855 (iii) ~~Buffer area requirements for RPAs:~~

856 (aa) ~~A minimum of a 100-foot buffer area of vegetation that is~~
857 ~~effective in retarding runoff, preventing erosion, and~~

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filtering non-point source pollution from runoff shall be retained if present and established where it does not exist in order to minimize the adverse effects of human activities on the other components of the RPAs, state waters, and aquatic life unless the site/parcel is a designated IDA.

~~(bb) — Development and redevelopment within IDAs shall retain and establish vegetation in the buffer area to the maximum extent practicable.~~

~~(cc) — The buffer shall be located adjacent to, landward of and along both sides of any tidal wetlands, any non-tidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow, any tidal shore, or any water body with perennial flow. The full buffer area shall be designated as the landward component of the RPA. Notwithstanding permitted uses, encroachments and vegetation clearing as set forth in this ordinance, the width of the buffer area remains a minimum of one hundred (100) feet.~~

~~(dd) — A 100-foot buffer shall be deemed to achieve a seventy-five (75) percent reduction of sediments and a forty (40) percent reduction of nutrients.~~

~~(ee) — When agricultural or silvicultural uses within the buffer area cease, and the lands are proposed to be converted to other uses, the entire 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.~~

~~(ff) — On agricultural lands the 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.~~

~~(gg) — In order to maintain the functional value of the buffer area, indigenous vegetation may be removed, subject to approval of 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:~~

~~1. — Trees may be pruned or removed as necessary to provide for sight lines and vistas, provided that if removed, they shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion, and filtering non-point source pollution from runoff.~~

~~2. — Any path shall be constructed and surfaced so as to effectively control erosion.~~

~~3. — 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 as permitted by the zoning~~

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administrator or his designee pursuant to sound horticultural practices.

4. 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.

(hh) Establishing or re-establishing vegetation within the buffer area and/or within an IDA, when required, shall be in general accordance with the most recent version of the Riparian Buffers Modification and Mitigation Guidance Manual issued by the Virginia department of conservation and recreation.

(iv) Permitted encroachments into the buffer.

(aa) Agricultural activities may encroach into the buffer area if one (1) of the two (2) following criteria is met:

1. Agricultural activities may encroach into the landward fifty (50) feet of the 100-foot wide buffer area when at least one (1) agricultural best management practice, which, in the opinion of the Colonial Soil and Water Conservation District, addresses the more predominant water quality issue on the adjacent land—erosion control or nutrient management—is being implemented on the adjacent land, provided that the combination of the undisturbed buffer area and the best management practice achieves water quality protection, pollution 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.

2. Agricultural activities may encroach within the landward seventy-five (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.

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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.

- (bb) ~~Roads and driveways not exempt and which, therefore, must comply with the provisions of this article, may be constructed in or across RPAs if each of the following criteria are met:
 1. ~~The review committee makes a finding that there are no reasonable alternatives to aligning the road or drive in or across the RPA; and,~~
 - 2, ~~The alignment and design of the road or driveway is optimized, consistent with other applicable requirements, to minimize encroachment in the RPA and minimize adverse effects on water quality; and,~~
 - 3, ~~The design and construction of the road or driveway satisfy all applicable criteria of this article; and,~~
 4. ~~The review committee reviews the plan for the road or driveway proposed in or across the RPA in coordination with the plan of development pursuant to section 9-15.~~~~
- (cc) ~~Development on a lot or parcel recorded prior to October 1, 1989 when application of the buffer area results in the loss of a buildable area, the review committee may permit encroachments into the buffer area in accordance with section 9-15 of this article and the following criteria.
 1. ~~Encroachments into the buffer area shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities;~~
 2. ~~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,~~
 3. ~~The encroachment may not extend into the waterward fifty (50) feet of the buffer area.~~~~
- (dd) ~~Development on a lot or parcel recorded between October 1, 1989 and May 12, 2004 when application of the buffer area results in the loss of a buildable area, the review committee may permit encroachments into the buffer area in accordance with section 9-15, the criteria in part (2)(b)(iv)(3) of this section, and the following criteria;~~

1. ~~The lot or parcel was created as a result of a legal process conducted in conformity with chapter 35 of the city code;~~
2. ~~Conditions or mitigation measures imposed through a previously authorized RPA encroachment shall be met; and,~~
3. ~~If the use of a best management practice (BMP) was previously required, the BMP shall be evaluated to determine if it continues to function effectively and, if necessary, the BMP shall be reestablished or repaired and maintained as required.~~

Sec. 9-15. -- Plan of development.

- (1) ~~All development, improvements and redevelopment in the RPA and any development, improvements and redevelopment exceeding two thousand five hundred (2,500) square feet of land disturbance in the RMA shall be subject to a plan of development process prior to any on-site development preparation activities or issuance of any zoning, building or land disturbing permit. This process shall consist of submission and review of the plans and studies identified herein. Such plans and studies may be coordinated or combined as deemed appropriate by the director of the department of community development and public works director, who may also reserve the right to determine that some of the information normally required is unnecessary due to the specific scope and nature of the proposed development.~~
- (2) ~~Unless deemed to be unnecessary by the director of the department of community development and the director of public works, except as may be otherwise regulated or prohibited by any city zoning ordinance or city code provision, developments that are regulated by chapter 35.1, chapter 9, or chapter 35 of the Hampton city code shall submit an environmental site assessment and all plans and studies pursuant to all applicable provisions of the city code, including but not limited to a stormwater management plan as required by chapter 33.1 of the city code and the "City of Hampton Landscape Guidelines".~~
- (3) ~~All proposed use, development or redevelopment projects that are within the RPA and not requiring site plan or subdivision review and any proposed use, development, or redevelopment within the RMA proposing more than two thousand five hundred (2,500) square feet of disturbance shall submit an environmental site assessment and other information as follows:~~
 - (a) ~~A construction plan prepared and stamped by a certified land surveyor or professional engineer, drawn to scale, showing property lines and dimensions. Such plan shall also show in addition to information required pursuant section of the zoning ordinance:~~
 - (i) ~~Boundaries of any RPA, RMA or IDA on or adjacent to the development site;~~
 - (ii) ~~Limits of proposed land disturbance;~~
 - (iii) ~~Existing and proposed impervious surface, such as buildings and driveways;~~
 - (iv) ~~Existing and proposed general drainage patterns on the site;~~
 - (v) ~~Delineation of buildable area on the lot based on all required setbacks and any other relevant easements or limitations~~

- 1060 regarding lot coverage and all other applicable city requirements
1061 to permit development of the site; and
1062 (vi) ~~A method of sewage disposal.~~
1063 (b) ~~An erosion and sediment control plan which conforms to the provisions of~~
1064 ~~the chapter 13.1 of the city code.~~
1065 (c) ~~A stormwater management plan as outlined in chapter 33.1 of the city~~
1066 ~~code.~~
1067 (4) ~~The director of the department of community development shall review the~~
1068 ~~environmental site assessment to ensure or confirm that a reliable, site specific~~
1069 ~~evaluation is the basis for determining whether water bodies on or adjacent to the~~
1070 ~~development site have perennial flow and that RPA, RMA and IDA boundaries~~
1071 ~~are approved based on a site specific evaluation.~~
1072 (5) ~~The public works director and director of the department of community~~
1073 ~~development shall review the construction plan and stormwater management~~
1074 ~~plan to ensure that the impact of the proposed use and development is~~
1075 ~~consistent with the intent of this section and adequately provides for water quality~~
1076 ~~protection. Approval may be unconditional or with conditions, or the plans may be~~
1077 ~~denied based on nonconformance with these regulations.~~
1078 (6) ~~Disturbances for home gardens or home landscaping outside the RPA shall not~~
1079 ~~be required to meet the provisions of this section.~~
1080 (7) ~~Projects that are limited to removal of indigenous RPA buffer vegetation shall~~
1081 ~~submit a copy of a plat or physical survey of the property showing the general~~
1082 ~~location and brief description of the existing indigenous vegetation to be removed~~
1083 ~~including but not limited to the type, size and quantity of plants to be removed.~~
1084 ~~The zoning administrator shall review the information for compliance with the~~
1085 ~~requirements of section 9-14(2)(b)(iii)(gg) of this article and the most recent~~
1086 ~~version of the Riparian Buffers Modification and Mitigation Guidance Manual~~
1087 ~~issued by the Virginia department of conservation and recreation. Approval may~~
1088 ~~be unconditional or with conditions or the plans may be denied based on~~
1089 ~~nonconformance with the requirements of section 9-14(2)(b)(iii)(gg) of this article.~~

1090
1091 **Sec. 9-16. ~~Nonconformities, exemptions, exceptions, and boundary disputes.~~**

- 1092 (1) ~~Nonconforming uses and structures. The lawful use of buildings or structures~~
1093 ~~which existed in an O-CBP prior to November 14, 1990, or which exists in an O-~~
1094 ~~CBP at the time of any amendment to this article, and which is on a legal~~
1095 ~~nonconforming lot and not in conformity with the provisions of the district may be~~
1096 ~~continued; however, any alteration, replacement or expansion of a~~
1097 ~~nonconforming building or structure in the RPA shall require a development~~
1098 ~~waiver. This provision shall not be construed to prevent the reconstruction of pre-~~
1099 ~~existing structures within the O-CBP occurring as a result of casualty loss.~~
1100 (a) ~~Such development waiver may be issued by the zoning administrator~~
1101 ~~provided that:~~
1102 (i) ~~The pre-existing structure is the main building; and~~
1103 (ii) ~~There will be no net increase in non-point source pollutant load;~~
1104 ~~and~~
1105 (iii) ~~Any development or land disturbance exceeding twenty-five~~
1106 ~~hundred (2,500) square feet in area shall comply with the~~
1107 ~~provisions of the erosion and sediment control ordinance; and~~
1108 (iv) ~~Relief from the requirements of section 9-14 are the minimum~~
1109 ~~necessary to afford relief; and~~

- 1110 (v) — Granting the waiver does not confer upon the applicant any
1111 special privileges that are denied by this article to similarly
1112 situated property owners in the district; and
1113 (vi) — The approval is consistent with the purpose and intent of the
1114 district and is not of substantial detriment to water quality; and
1115 (vii) — The request is not based upon conditions or circumstances that
1116 are self-created or self-imposed; and
1117 (viii) — Reasonable and appropriate conditions are imposed, as
1118 warranted, that will prevent the allowed activity from causing
1119 degradation of water quality; and,
1120 (ix) — Other findings, as appropriate and required by the zoning
1121 administrator, are met.
- 1122 (b) — Such application for a development waiver shall be made to the zoning
1123 administrator and shall include the following:
1124 (i) — Name and address of applicant and property owner;
1125 (ii) — Legal description of the property;
1126 (iii) — Proposed use;
1127 (iv) — Sketch of property, including location of buildings and proposed
1128 additions, and RPA boundaries; and
1129 (v) — Location and description of any existing private water supply or
1130 sewage system.
- 1131 (c) — Any development waiver shall become null and void twelve (12) months
1132 from the date of issue if no substantial work has commenced.
- 1133 (2) — Exemptions from this article:
- 1134 (a) — Public utilities, railroads, public roads, and public facilities provided that:
1135 (i) — Construction, installation, operation and maintenance of electric,
1136 natural gas, fiber-optic, and telephone transmission lines,
1137 railroads, and public roads and their appurtenant structures are in
1138 accordance with one (1) of the following:
1139 1. — Regulations promulgated pursuant to the Erosion and
1140 Sediment Control Law (section 10.1-560 et seq. of the
1141 Code of Virginia) and the Stormwater Management Act
1142 (section 10.1-603.1 et seq. of the Code of Virginia);
1143 2. — An erosion and sediment control plan and a stormwater
1144 management plan approved by the Virginia Department of
1145 Conservation and Recreation; or
1146 3. — Local water quality protection criteria at least as stringent
1147 as the above stated requirements.
- 1148 (ii) — In addition to satisfying one (1) of the provisions of subsection
1149 (a)(i) above, public roads shall be optimally designed and aligned,
1150 consistent with all applicable requirements, to prevent or
1151 otherwise minimize the encroachment in the resource protection
1152 area and to minimize the adverse effects on water quality.
- 1153 (b) — City of Hampton or regional service authority water, sewer, natural gas
1154 and underground telecommunications and cable television lines provided
1155 that:
1156 (i) — To the degree possible, the location of such utilities and facilities
1157 are sited outside of resource protection areas;
1158 (ii) — No more land shall be disturbed than is necessary to provide for
1159 installation of the proposed utility;

- 1160 (iii) — All such construction, installation and maintenance of such utilities
1161 and facilities shall be in compliance with all applicable local, state
1162 and federal permits and designed and conducted in a manner that
1163 protects water quality; and,
1164 (iv) — Any land disturbance exceeding an area of twenty-five hundred
1165 (2,500) square feet complies with all erosion and sediment control
1166 requirements in accordance with chapter 13.1 of the Hampton City
1167 Code.
1168 (c) — Silvicultural activities, provided that such operations adhere to the water
1169 quality protection procedures prescribed by the Virginia Department of
1170 Forestry in "Virginia's Forestry Best Management Practices for Water
1171 Quality."
1172 (3) — Exemptions from section 9-14, part (2)(b): Land disturbances in the resource
1173 protection area for water wells; passive recreation facilities such as board walks,
1174 trails, and pathways; and historic preservation and archaeological activities may
1175 be exempted from the requirements of section 9-14, part (2)(b) when it has been
1176 demonstrated to the satisfaction of the zoning administrator that:
1177 (a) — Any required permits, except those to which this exemption specifically
1178 applies, shall have been issued;
1179 (b) — Sufficient and reasonable proof is submitted that the intended use will not
1180 deteriorate water quality;
1181 (c) — The intended use does not conflict with nearby planned or approved
1182 uses; and,
1183 (d) — Any land disturbance in excess of twenty-five hundred (2,500) square feet
1184 of area shall comply with all erosion and sediment control requirements.
1185 (4) — Exceptions and boundary disputes:
1186 (a) — Requests for resolution of boundary disputes, or exceptions to
1187 requirements of the O-CBP shall be made in writing to the zoning
1188 administrator. Such requests shall be heard by an administrative review
1189 committee, composed of the following persons or their designee:
1190 (i) — Chairperson of the wetlands board;
1191 (ii) — Director of planning;
1192 (iii) — Building official;
1193 (iv) — Zoning administrator; and,
1194 (v) — Director of public works.
1195 All requests to be heard by the review committee shall be submitted
1196 through the zoning administrator. The review committee shall also have
1197 the authority to determine the location of the RPA, RMA and IDA
1198 boundaries in cases of dispute. Best available mapping and technical
1199 information shall be used to resolve such disputes.
1200 (b) — Exceptions to the requirements of section 9-14 or subsection 9-
1201 16(1)(a)(i) — (iii) may be granted pursuant to the following;
1202 (i) — A request for an exception to the district regulations shall specify
1203 the hardship imposed by the regulations and identify, through a
1204 water quality impact assessment, the impacts of the proposed
1205 exception on water quality and lands within the O-CBP. The water
1206 quality impact assessment shall comply with the provisions of the
1207 stormwater management ordinance.
1208 (ii) — The review committee shall review the request and the
1209 accompanying water quality impact assessment and may grant
1210 the exception with such conditions and safeguards as deemed

- 1211 necessary to further the purpose and intent of this article if they
1212 find that:
- 1213 1. ~~Granting the exception will not confer upon the applicant~~
1214 ~~any special privileges that are denied by this article to~~
1215 ~~similarly situated property owners in the district;~~
 - 1216 2. ~~The request is not based on self-imposed or self-created~~
1217 ~~conditions or circumstances, nor does the request arise~~
1218 ~~from conditions or circumstances, either permitted or~~
1219 ~~nonconforming, that are related to adjacent parcels;~~
 - 1220 3. ~~The request is the minimum necessary to afford relief;~~
 - 1221 4. ~~The request will be consistent with the purpose and intent~~
1222 ~~of the district and is not of substantial detriment to water~~
1223 ~~quality;~~
 - 1224 5. ~~Reasonable and appropriate conditions are imposed which~~
1225 ~~will prevent the request from causing a degradation of~~
1226 ~~water quality; and,~~
 - 1227 6. ~~Other findings, as appropriate and required by the review~~
1228 ~~committee, are met.~~
- 1229 (c) ~~Requests for exception to the provisions of part (2)(b) of section 9-14 or~~
1230 ~~subsection 9-16(1)(a)(i)–(iii) shall be heard by the review committee~~
1231 ~~through a public hearing in accordance with section 15.2-2204 of the~~
1232 ~~Code of Virginia except that:~~
- 1233 (i) ~~Only one (1) hearing shall be required; and,~~
 - 1234 (ii) ~~The required notice may be given by the zoning administrator by~~
1235 ~~first class mail to the owners, their agents or the occupants of~~
1236 ~~abutting property and property immediately across the street or~~
1237 ~~road from the affected property.~~
- 1238 (d) ~~Applications to the review committee requesting exception of the~~
1239 ~~requirements of part (2)(b) of section 9-14 or subsection 9-~~
1240 ~~16(1)(a)(i)–(iii) shall be accompanied by the nonrefundable fee~~
1241 ~~from the following schedule. The sum shall be payable to the City~~
1242 ~~of Hampton, incidental to reviewing, publishing, and reporting the~~
1243 ~~application:~~
- 1244 (i) ~~Seventy-five dollars (\$75.00) for any application that is associated~~
1245 ~~with a current or proposed single-family residential use of~~
1246 ~~property; and~~
 - 1247 (ii) ~~Two hundred dollars (\$200.00) for any application that is~~
1248 ~~associated with a current or proposed use of property that is not~~
1249 ~~single-family residential.~~
- 1250 (5) ~~Appeals from the decision of either the zoning administrator or of the~~
1251 ~~review committee shall be filed with the zoning administrator no later than~~
1252 ~~ten (10) working days after written notice of such decision. Appeals shall~~
1253 ~~be heard by the board of zoning appeals in accordance with chapter 22 of~~
1254 ~~this ordinance. Appeals of the decision of the board of zoning appeals~~
1255 ~~shall be in accordance with section 15.2-2314 of the Code of Virginia.~~

1257 This ordinance shall become effective the latter of July 1, 2007 or upon an unconditional
1258 consistent finding from the Chesapeake Bay Local Assistance Board for Hampton's local
1259 program amendments under the Chesapeake Bay Act and Regulations.

1260 **Secs. 9-17–9-20. – Reserved.**
1261

