

Article X. SPI-CBPD: Chesapeake Bay Preservation District  
(11/14/90; 5/12/04; 5/23/07; 1/9/08)

Division I. In General.

Sec. 17.3-60. Purpose and Intent. (5/12/04)

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

1. to protect existing high quality state waters,
2. to 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. to safeguard the clean waters of the Commonwealth from pollution,
4. to prevent any increase in pollution,
5. to reduce existing pollution, and
6. to promote water resource conservation in order to protect the quality of life of the present and future citizens of Hampton.

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

Sec. 17.3-61. Application of the District. (5/12/04)

1. The Chesapeake Bay Preservation District (SPI-CBPD) shall be composed of two subdistricts, the Resource Protection Area (RPA) and the Resource Management Area (RMA). The boundaries of such sub-districts are shown for administrative and demonstrative purposes on the Chesapeake Bay Preservation District Map, which shall act as a supplement to the City's Zoning Map.
2. The regulations of this Article shall augment those of the underlying zoning districts. In cases where the regulations stated herein conflict with those of the underlying zoning district or with any other provisions of the City Code, the more stringent regulations shall apply.

Sec. 17.3-62. Definitions. (10/1/93; 5/12/04; 5/23/07; 1/9/08)

For the purposes of this Article, the following terms shall have these specific meanings:

1. "Agricultural lands" means those lands used for the planting and harvesting of crops or plant growth of any kind in the open; pasture; horticulture; dairying; floriculture; or raising of poultry and/or livestock; but not to include home gardens or home landscaping.
2. "Buffer area" means an area of natural or established vegetation managed to protect other components of a Resource Protection Area and state waters from significant degradation due to land disturbances and consists of the landward component of the Resource Protection Area (RPA).
3. "Buildable area" means the portion of the lot remaining after required yard setbacks, buffer areas, and BMP areas have been provided but in no event shall the buildable area be less than 1,500 square feet for lots equal to or greater than 6,000 square feet. For lots under 6,000 square feet, the minimum buildable area shall be as determined by the zoning administrator.
4. "Chesapeake Bay Preservation District" (SPI-CBPD) means any land so designated by the Hampton City Council, pursuant to Part III of the Chesapeake Bay Preservation Area Designation and Management Regulations, 9 VAC 10-20-70 et seq., and Section 10.1- 2107 of the Code of Virginia, and pursuant to this Ordinance. A Chesapeake Bay Preservation District shall consist of a Resource Protection Area and a Resource Management Area.
5. "Coastal Barrier Resources System" means an area comprised of undeveloped barrier islands and associated wetlands as designated under the Coastal Barrier Resources Act, 16 U.S.C.A. § 3505.
6. "Development" means the construction or substantial alteration of residential, commercial, industrial, institutional, recreational, transportation, or utility facilities or structures.
7. "Environmental Site Assessment" means a physical survey of the site or parcel that is prepared and certified as complete and accurate by licensed engineer or a certified land surveyor and drawn at a scale of not less than one hundred (100) feet to the inch on a print not greater than twenty four (24) inches by thirty six (36) inches to clearly delineate with labels the physical limits of all components of the SPI-CBPD on and adjacent to the development site and the geographic extent and classification of all wetland areas on and contiguous to the site or parcel. The geographic extent and classification of wetland areas shown shall be the result of a recent physical survey, and in the case of non-tidal wetlands, a field delineation that is consistent with the procedures specified in the Federal Manual for Identifying and Delineating

Jurisdictional Wetlands, 1987 and subsequent amendments or revisions that are adopted.

8. "Improvement" means any physical alteration of real property. Included in the term are clearing vegetation, grading, utility installation, filling, excavation, or construction of any structure.
9. "Intensely Developed Area" (IDA) means a portion of the Chesapeake Bay Preservation District, delineated within the Resource Protection Area and designated on the Chesapeake Bay Preservation District Map.
10. "Non-point source pollution" means pollution consisting of constituents such as sediment, nutrients, and organic and toxic substances from diffuse sources, such as runoff from agricultural and urban land development and uses.
11. "Non-tidal wetlands" means those wetlands other than tidal wetlands that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, as defined by the U.S. Environmental Protection Agency and the Army Corps of Engineers, pursuant to enforcement of Section 404 of the Federal Clean Water Act in 33 CFR 328.3b.
12. "Plan of development" means the process for site plan, subdivision plan, or construction plan review to ensure compliance with this Article prior to any clearing or grading of a site or the issuance of a building or zoning permit.
13. "Public Road" means a publicly owned road designed and constructed in accordance with water quality protection criteria at least as stringent as requirements applicable to the Virginia Department of Transportation, including regulations promulgated pursuant to: (i) the Erosion and Sediment Control Law (§ 10.1-560 et seq. of the Code of Virginia) and (ii) the Virginia Stormwater Management Act (§ 10.1-603.1 et seq. of the Code of Virginia). This definition includes those roads where the Virginia Department of Transportation exercises direct supervision over the design or construction activities, or both, and cases where secondary roads are constructed or maintained, or both, by the City of Hampton in accordance with city standards.
14. "Redevelopment" means the process of developing land that is or has been previously developed.
15. "Resource Management Area" (RMA) means that component of the Chesapeake Bay Preservation District that is not classified as the Resource Protection Area. The RMA is comprised of land that is contiguous to the variable width buffer for a distance of one hundred (100) feet in the landward direction.
16. "Resource Protection Area" (RPA) means that component of the Chesapeake Bay Preservation District comprised of lands adjacent to water bodies with perennial flow that have an intrinsic water quality value due to the ecological and biological processes they perform or that are sensitive to impacts which may result in significant degradation to the quality of state waters. Resource Protection Areas include:

- (i) Tidal wetlands;
  - (ii) Non-tidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow;
  - (iii) Tidal shores; and,
  - (iv) A variable width buffer area not less than one hundred (100) feet in width. The variable width buffer area shall be located adjacent to and landward of the components listed in (i) through (iii) above and along both sides of any water body with perennial flow. The variable width buffer area shall also include lands designated as part of the Coastal Barrier Resources System not otherwise listed as a Resource Protection Area Feature where present. The buffer area shall be designated as the landward component of the RPA notwithstanding the presence of permitted uses, encroachments, and permitted vegetation clearing in compliance with this Article.
17. "Resource Protection Area (RPA) Feature" means that portion of the RPA that is not in the buffer area and includes tidal wetlands, non-tidal wetlands connected by surface flow and contiguous to tidal wetlands or waterbodies with perennial flow, and tidal shores.
18. "Review committee" means that group of persons, established by Section 17.3-67 herein, which convenes to evaluate buffer encroachment applications, hear requests for relief to the Chesapeake Bay Preservation District regulations and to arbitrate SPI-CBPD boundary disputes.
19. "Silvicultural activities" means forest management activities, including but not limited to the harvesting of timber, the construction of roads and trails for forest management purposes, and the preparation of property for reforestation that are conducted in accordance with the silvicultural best management practices developed and enforced by the State Forester pursuant to Section 10.1-1105 of the Code of Virginia and are located on property defined as real estate devoted to forest use under Section 58.1-3230 of the Code of Virginia.
20. "Tidal shore" or "shore" means land contiguous to a tidal body of water between the mean low water level and the mean high water level.
21. "Tidal wetlands" means vegetated land which lies between and contiguous to mean low water and an elevation above mean low water equal to the factor of one and one-half (1- 1/2) times the mean tide range, or non-vegetated land which lies contiguous to mean low water and is between mean low water and mean high water.
22. "Water-dependent facility" means a development of land that cannot exist outside of the Resource Protection Area and must be located on the shoreline by reason of the intrinsic nature of its operation. These facilities include, but are not limited to: (i) ports; (ii) the intake and outfall structures of power plants, water treatment plants,

sewage treatment plants, and storm sewers; (iii) marinas and other boat docking structures; (iv) beaches and other public water-oriented recreation areas; and (v) fisheries and similar marine resources facilities.

Sec. 17.3-63. Boundaries. (10/1/93; 5/12/04; 5/23/07)

1. The Chesapeake Bay Preservation District (SPI-CBPD) regulations shall apply to all RPAs and RMAs. The approximate limits of the RPA and RMA boundaries are shown for administrative and demonstrative purposes on the Chesapeake Bay Preservation District Map. IDA boundaries are designated on the Chesapeake Bay Preservation District Map. Components of the SPI-CBPD are:
  - a. Resource Protection Area
  - b. Resource Management Area
  - c. Intensely Developed Area, which are lands designated by the City that are within portions of the landward component of the RPA where little of the natural environment remains and at least one of the following conditions existed on or before October 1, 1989:
    - (i) Impervious surface exceeding 50% of the area;
    - (ii) Constructed and functioning public sewer and water systems, or a constructed stormwater drainage system, or both, serving the area; or,
    - (iii) Housing density equal to or greater than four dwelling units per acre.
2. Portions of RPAs designated as Intensely Developed Areas (IDAs) shall serve as redevelopment areas. IDAs shall comply with all erosion and sediment control requirements and the performance standards for redevelopment in this Article.
3. Site-specific boundaries of the RPA, RMA and IDA shall be identified by development and redevelopment project applicants through the performance of an environmental site assessment, subject to the approval of the Director of Planning, and in conformance with the Site Plan and Subdivision Ordinances, if applicable. The general location of the RPAs, RMAs, and IDAs are shown on the City of Hampton SPI-Chesapeake Bay Preservation District Map.
4. Lands within the City of Hampton that meet the definition of a component of the SPI-CBPD but not identified on the Chesapeake Bay Preservation District Map are hereby designated to be within the SPI-CBPD boundaries and regulated under the provisions of this Article.
5. Once submitted by the applicant, the Planning Director shall verify the accuracy of the boundary delineation and make adjustments as deemed necessary. If such adjustments are contested by the applicant, a decision shall be made by the Review Committee, as provided in this Article.

Sec. 17.3-64. Regulations for Development and Redevelopment. (10/1/93; 5/12/04; 5/23/07; 1/9/08)

1. Permitted Uses include all uses permitted in the underlying zone.
2. Restrictions on permitted uses:
  - a. General Performance Criteria for Development and Redevelopment within Resource Management Areas, Resource Protection Areas and Intensely Developed Areas:
    - (i) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. In accordance with an approved site plan, the limits of land disturbance, including clearing or grading, shall be clearly shown on submitted plans and physically marked on the development site.
    - (ii) Indigenous vegetation shall be preserved to the maximum extent practicable, consistent with the proposed use or development, and in accordance with the Virginia Erosion and Sediment Control Handbook.
      - (1) Existing healthy trees exhibiting a minimum trunk diameter of six (6) inches, measured four and one-half (4-1/2) feet from the ground, shall be preserved outside the limits of clearing.
      - (2) Clearing shall be allowed only to provide a building site, necessary parking, necessary access, positive site drainage, water quality BMPs, and the installation of utilities, as approved by the Zoning Administrator or the Director of Public Works, as appropriate.
      - (3) Prior to clearing or grading, suitable protection measures for undisturbed areas, as outlined in the Erosion and Sediment Control, Site Plan and Subdivision Ordinances, shall be followed.
    - (iii) Land development shall minimize impervious cover to promote infiltration of stormwater into the ground consistent with the proposed use or development.
      - (1) Grid and modular pavements which promote infiltration are encouraged for any required parking area, alley, or other low traffic driveway.
      - (2) For nonresidential uses, the number of parking spaces shall not exceed one hundred twenty percent (120%) of the minimum required by Chapter 19 of this Ordinance, and their

size shall not exceed the minimum required by Chapter 19 of this Ordinance.

- (3) In the IDA, automobile parking lots shall be of pervious surfaces, where feasible, and be designed, constructed, and maintained consistent with the Virginia Stormwater Management Handbook minimum standard 3.10, Porous Pavement.
- (iv) Notwithstanding any other provisions of this Article or exceptions or exemptions thereto, any land disturbing activity exceeding twenty five hundred (2,500) square feet, including construction of all single-family houses, septic tanks, drainfields, and accessory structures and improvements shall comply with the requirements of Chapter 13.1 of the Hampton City Code (Erosion and Sediment Control).
- (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 Hampton City Code (Maintenance and repair of on-site sewage treatment systems).
- (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 Hampton City Code (Maintenance and repair of on-site sewage treatment systems). 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) For any development or redevelopment, stormwater management criteria consistent with the water quality protection provisions (4 VAC 3-20-71 et seq.) of the Virginia Stormwater Management Regulations (4 VAC 3- 20) shall be satisfied. Stormwater runoff shall be controlled by the use of best management practices that achieve the following:
  - (1) For new development, the post-development non-point source pollution runoff load shall not exceed the predevelopment load. Pre-development load shall be the average phosphorus loading of Hampton's Chesapeake Bay Watershed, 0.85

pounds per acre per year, based on an average impervious land cover of thirty-four percent (34%).

- (2) For sites within IDAs or other redevelopment sites, the predevelopment non-point source pollution load shall be reduced by at least ten percent (10%). The Director of Public Works may waive or modify this requirement for sites that originally incorporated best management practices for stormwater runoff quality control, provided the following provisions are satisfied:
  - (a) In no case may the post-development non-point source pollution runoff load exceed the predevelopment load;
  - (b) Runoff pollution loads must have been calculated and the best management practices selected for the expressed purpose of controlling non-point source pollution; and
  - (c) 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 Director of Public Works 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.
- (3) For redevelopment, both the pre- and post-development loadings shall be calculated by the same procedures. Pre-development loadings shall be calculated using existing land coverage. However, where the design data is available, the original post development non-point source pollution loadings can be substituted for the existing development loadings.
- (viii) Maintenance of best management practices that are implemented to control stormwater runoff pursuant to this section shall be in accordance with the maintenance requirements and procedures outlined in the manual of stormwater management practices described in Section 33.1- 10 of the Hampton City Code.
- (ix) Prior to the issuance of a zoning, building or land disturbing permit for any development or redevelopment located within a Chesapeake Bay Preservation District 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 land disturbing permit shall not absolve the developer from obtaining all necessary federal, state and local permits.

- (x) 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.
  
- (xi) 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:
  - (1) Main buildings and required impervious pavement surface improvements may encroach into the IDA when a reasonable buildable area can not be provided outside of the IDA and encroachment is the minimum relief necessary to enable a reasonable buildable area. Required green areas shall be located to maximize protection of the RPA and water quality.
  - (2) Accessory structures, decks, and discretionary pavement surface improvements may encroach into the IDA provided that:
    - (a) The encroachment is the minimum necessary to afford relief while adhering to required yard setbacks; and
    - (b) Preference shall be given to previously disturbed areas, poor quality green areas, or existing impervious area; and
    - (c) Applicant shall demonstrate there is no feasible location outside of the IDA while adhering to required yard setbacks.
  - (3) No structure or impervious area, other than those exempt pursuant to section 17.3-67 2 and section 17.3-67 3 shall be built within ten feet of an RPA feature.

- (xii) A Structure Encroachment Permit as described in section 33.1-8.1. of the Stormwater Management Ordinance is required for any structure or impervious area in the IDA or RPA buffer area.
- b. Other Restrictions Applicable to the RPA (RPA Regulations):
- (i) In addition to satisfying the General Performance Criteria set forth in part 2 a of this section, Development within Resource Protection Areas may be allowed if it satisfies one of the following:
    - (1) Is a new or expanding water-dependent use that satisfies the following criteria:
      - (a) It does not conflict with the comprehensive plan;
      - (b) Any non-water dependent component is located outside of the RPA; and,
      - (c) Access to the water dependent facility is provided with minimum disturbance to the site; and where practicable, a single point of access is provided.
    - (2) Constitutes redevelopment;
    - (3) Constitutes development or redevelopment within a designated Intensely Developed Area;
    - (4) Is a permitted development, activity or improvement established pursuant to Section 17.3-67 or Part 2b(iv) of this section.
  - (ii) Redevelopment within RPAs and outside of designated IDAs shall:
    - (1) Not increase the amount of impervious cover on the site;
    - (2) Not result in further encroachment within the RPA; and,
    - (3) Comply with all provisions of Chapter 13.1, (Erosion and Sediment Control) and Chapter 33.1 of the Hampton City Code.
  - (iii) Buffer Area Requirements for RPAs:
    - (1) A minimum of a one hundred (100) foot buffer area of vegetation that is effective in retarding runoff, preventing erosion, and 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.

- (2) Development and redevelopment within IDAs shall retain and establish vegetation in the buffer area to the maximum extent practicable.
- (3) 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, any water ~~body bodies with perennial flow connected to tidal waters,~~ and include any lands designated as part of the Coastal Barrier Resources System, where present. 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.
- (4) A one hundred (100) foot buffer shall be deemed to achieve a seventy five percent (75%) reduction of sediments and a forty percent (40%) reduction of nutrients.
- (5) 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.
- (6) 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.
- (7) 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:
  - (a) 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.
  - (b) Any path shall be constructed and surfaced so as to effectively control erosion.

- (c) Dead, diseased or dying trees or shrubbery and noxious weeds (such as Johnson grass, kudzu and multiflora rose) may be removed and thinning of trees allowed as permitted by the Zoning Administrator or his designee pursuant to 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.
- (8) 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 & Mitigation Guidance Manual issued by the Chesapeake Bay Local Assistance Department.
- (iv) Permitted encroachments into the buffer.
- (1) Agricultural activities may encroach into the buffer area if one of the two following criteria is met:
    - (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 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 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 one hundred (100) foot wide buffer area.

- (2) 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:
  - (a) The Review Committee makes a finding that there are no reasonable alternatives to aligning the road or drive in or across the RPA; and,
  - (b) 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,
  - (c) The design and construction of the road or driveway satisfy all applicable criteria of this Article; and,
  - (d) 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 17.3-65.
- (3) 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 17.3-65 (Plan of Development) of this Article and the following criteria.

- (a) Encroachments into the buffer area shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities;
  - (b) Where practicable, a vegetated area that will maximize water quality protection, mitigate the effects of the buffer encroachment, and is equal to the area of encroachment into the buffer area shall be established elsewhere on the lot or parcel; and,
  - (c) The encroachment may not extend into the waterward fifty (50) feet of the buffer area.
- (4) 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 17.3-65 (Plan of Development), the criteria in Part 2b(iv)(3) of this section, and the following criteria:
- (a) The lot or parcel was created as a result of a legal process conducted in conformity with Chapter 35 of the City Code (subdivision regulations);
  - (b) Conditions or mitigation measures imposed through a previously authorized RPA encroachment shall be met; and,
  - (c) 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. 17.3-65. Plan of Development. (10/1/93; 5/12/04; 5/23/07)

1. All development, improvements and redevelopment in the RPA and any development, improvements and redevelopment exceeding twenty 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 Planning Director 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. Developments that are regulated by Chapter 9 Article IV (Site Plans) or Chapter 35 (Subdivisions) 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 unless ruled unnecessary by the Planning Director and Public Works Director.

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 twenty 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 25-2 or 25-2.01 of this ordinance:
    - (i) boundaries of any RPA 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 regarding lot coverage; and,
    - (vi) notation regarding the inclusion of the property in an RMA.
  - b. An erosion and sediment control plan which conforms to the provisions of the Erosion and Sediment Control Ordinance.
  - c. A water quality impact assessment as outlined in Chapter 33.1 of Hampton City Code, Stormwater Management Ordinance.
4. The Planning Director shall review the Environmental Site Assessment to ensure or confirm that a reliable, site specific evaluation is the basis for determining whether water bodies on or adjacent to the development site have perennial flow and that RPA boundaries are approved based on a site specific evaluation.
5. The Public Works Director and Planning Director shall review the construction plan and water impact information to ensure that the impact of the proposed use and development is consistent with the intent of this section and adequately provides for water quality protection. Approval may be unconditional or with conditions, or the plans may be denied based on nonconformance with these regulations.
6. Disturbances for home gardens or home landscaping outside the RPA shall not be required to meet the provisions of this section.

7. Projects that are limited to removal of indigenous RPA buffer vegetation shall submit a copy of a plat or physical survey of the property showing the general location and brief description of the existing indigenous vegetation to be removed including but not limited to the type, size and quantity of plants to be removed. The Zoning Administrator shall review the information for compliance with the requirements of Section 17.3-64, Part 2b(iii)(7) of this Article and the most recent version of the Riparian Buffers Modification & Mitigation Guidance Manual issued by the Chesapeake Bay Local Assistance Department. Approval may be unconditional or with conditions or the plans may be denied based on nonconformance with the requirements of Section 17.3-64, Part 2b(iii)(7) of this Article.

Sec. 17.3-66. Deleted 5/12/04.

Sec. 17.3-66.1 Deleted 5/12/04.

Sec. 17.3-67. Nonconformities, exemptions, exceptions, and boundary disputes. (10/1/93; 5/12/04; 5/23/07)

1. Nonconforming Uses and Structures.

The lawful use of a buildings or structures which existed in a SPI-CBPD prior to November 14, 1990, or which exists in a SPI-CBPD at the time of any amendment to this article, and which is on a legal nonconforming lot and not in conformity with the provisions of the district may be continued; however, any alteration, replacement or expansion of a nonconforming building or structure in the RPA shall require a development waiver. This provision shall not be construed to prevent the reconstruction of pre-existing structures within the SPI-CBPD occurring as a result of casualty loss.

- a. Such development waiver may be issued by the Zoning Administrator provided that:
  - (i) the pre-existing structure is the main building; and
  - (ii) there will be no net increase in non-point source pollutant load; and
  - (iii) any development or land disturbance exceeding twenty five hundred (2,500) square feet in area shall comply with the provisions of the erosion and sediment control ordinance; and
  - (iv) relief from the requirements of Section 17.3-64 are the minimum necessary to afford relief; and
  - (v) granting the waiver does not confer upon the applicant any special privileges that are denied by this Article to similarly situated property owners in the District; and
  - (vi) the approval is consistent with the purpose and intent of the District and is not of substantial detriment to water quality; and

- (vii) the request is not based upon conditions or circumstances that are self-created or self-imposed; and
  - (viii) reasonable and appropriate conditions are imposed, as warranted, that will prevent the allowed activity from causing degradation of water quality; and,
  - (ix) other findings, as appropriate and required by the Zoning Administrator, are met.
- b. Such application for a development waiver shall be made to the Zoning Administrator and shall include the following:
- (i) name and address of applicant and property owner;
  - (ii) legal description of the property;
  - (iii) proposed use;
  - (iv) sketch of property, including location of buildings and proposed additions, and RPA boundaries; and
  - (v) location and description of any existing private water supply or sewage system.
- c. Any development waiver shall become null and void twelve (12) months from the date of issue if no substantial work has commenced.

2. Exemptions from this Article:

- a. Public Utilities, Railroads, Public Roads, and Public Facilities provided that:
- (i) Construction, installation operation and maintenance of electric, natural gas, fiber-optic, and telephone transmission lines, railroads, and public roads and their appurtenant structures are in accordance with one of the following:
    - (1) 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);
    - (2) an erosion and Sediment Control plan and a stormwater management plan approved by the Virginia Department of Conservation and Recreation; or,
    - (3) local water quality protection criteria at least as stringent as the above stated requirements.

- (ii) In addition to satisfying one of the provisions of subsection a(i) above, public roads shall be optimally designed and aligned, 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. City of Hampton or Regional Service Authority Water, Sewer, Natural Gas and Underground Telecommunications and Cable Television Lines provided that:
    - (i) To the degree possible, the location of such utilities and facilities are sited outside of Resource Protection Areas;
    - (ii) No more land shall be disturbed than is necessary to provide for installation of the proposed utility;
    - (iii) All such construction, installation and maintenance of such utilities and facilities shall be in compliance with all applicable local state and federal permits and designed and conducted in a manner that protects water quality; and,
    - (iv) Any land disturbance exceeding an area of twenty-five hundred (2,500) square feet complies with all erosion and sediment control requirements in accordance with Chapter 13.1 of the Hampton City Code.
  - c. Silvicultural activities, provided that such operations adhere to the water quality protection procedures prescribed by the Virginia Department of Forestry in “Virginia’s Forestry Best Management Practices for Water Quality.”
- 3. Exemptions from Section 17.3-64 Part 2b:

Land disturbances in the Resource Protection Area for water wells; passive recreation facilities such as board walks, trails, and pathways; and historic preservation and archaeological activities may be exempted from the requirements of Section 17.3-64 Part 2b when it has been demonstrated to the satisfaction of the Zoning Administrator that:

- a. any required permits, except those to which this exemption specifically applies, shall have been issued;
- b. sufficient and reasonable proof is submitted that the intended use will not deteriorate water quality;
- c. the intended use does not conflict with nearby planned or approved uses; and,

- d. any land disturbance in excess of twenty five hundred (2,500) square feet of area shall comply with all erosion and sediment control requirements.
4. Exceptions and Boundary Disputes.
- a. Requests for resolution of boundary disputes, or exceptions to requirements of the SPI-CBPD shall be made in writing to the Zoning Administrator. Such requests shall be heard by an administrative Review Committee, composed of the following persons or their designee:
    - (i) Chairperson of the Wetlands Board;
    - (ii) Director of Planning;
    - (iii) Building Official;
    - (iv) Zoning Administrator; and,
    - (v) Director of Public Works.

All requests to be heard by the Review Committee shall be submitted through the Zoning Administrator.

The Review Committee shall also have the authority to determine the location of the RPA, RMA and IDA boundaries in cases of dispute. Best available mapping and technical information shall be used to resolve such disputes.

- b. Exceptions to the requirements of Section 17.3-64 or Section 17.3-67 1.a. (i-iii) may be granted pursuant to the following:
  - (i) A request for an exception to the district regulations shall specify the hardship imposed by the regulations and identify, through a water quality impact assessment, the impacts of the proposed exception on water quality and lands within the SPI-CBPD. The water quality impact assessment shall comply with the provisions of the Stormwater Management Ordinance.
  - (ii) The Review Committee shall review the request and the accompanying water quality impact assessment and may grant the exception with such conditions and safeguards as deemed necessary to further the purpose and intent of this article if they find that:
    - (1) granting the exception will not confer upon the applicant any special privileges that are denied by this article to similarly situated property owners in the district;
    - (2) the request is not based on self-imposed or self-created conditions or circumstances, nor does the request arise from

conditions or circumstances, either permitted or nonconforming, that are related to adjacent parcels;

- (3) the request is the minimum necessary to afford relief;
- (4) the request will be consistent with the purpose and intent of the district and is not of substantial detriment to water quality;
- (5) reasonable and appropriate conditions are imposed which will prevent the request from causing a degradation of water quality; and,
- (6) other findings, as appropriate and required by the Review Committee, are met.

c. Requests for exception to the provisions of Part 2b of Section 17.3-64 or Section 17.3-67 1.a.(i-iii) shall be heard by the Review Committee through a public hearing in accordance with Section 15.2-2204 of the Code of Virginia except that:

- (i) only one hearing shall be required; and,
- (ii) the required notice may be given by the Zoning Administrator by first class mail to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the affected property.

d. Applications to the Review Committee requesting exception to the requirements of Part 2b of Section 17.3-64 or Section 17.3-67 1.a.(i-iii) shall be accompanied by the nonrefundable fee from the following schedule. The sum shall be payable to the City of Hampton, incidental to reviewing, publishing, and reporting the application:

- (i) Seventy five dollars (\$75.00) for any application that is associated with a current or proposed single family residential use of property; and
- (ii) Two hundred dollars (\$200.00) for any application that is associated with a current or proposed use of property that is not single family residential.

5. Appeals from the decision of either the Zoning Administrator or of the Review Committee shall be filed with the Zoning Administrator no later than ten (10) working days after written notice of such decision. Appeals shall be heard by the Board of Zoning Appeals in accordance with Chapter 22 of this Ordinance. Appeals of the decision of the Board of Zoning Appeals shall be in accordance with Section 15.2-2314 of the Code of Virginia.

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

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