

1 **Ordinance to Amend and Reenact the Zoning Ordinance of the City of Hampton, Virginia**  
2 **by Amending Chapter 2 Entitled, “Definitions.” And Chapter 9, Article II Entitled, “O-CBP**  
3 **District – Chesapeake Bay Preservation Overlay.” to improve clarity and align language**  
4 **with current regulatory practices and state guidance, as well as to bring the City’s**  
5 **ordinance into compliance with Virginia Code and State Water Control Board regulations**  
6 **regarding trees and coastal resilience.**

7  
8 **WHEREAS**, the public necessity, convenience, general welfare, and good zoning practice so  
9 require;

10  
11 **BE IT ORDAINED** by the City Council of the City of Hampton, Virginia, that Chapter 2 and Chapter  
12 9, Article II of the Zoning Ordinance of the City of Hampton, Virginia be amended to read as  
13 follows:

14  
15 **CHAPTER 2 – DEFINITIONS**

16 . . .

17 **Sec. 2-2. – Definitions.**

18 . . .

19 *Active recreation area.* That portion of the green area provided in developments that is intended  
20 to, and can support physical recreation activities or facilities.

21 *Adaptation measure.* A project, practice, or approach to mitigate or address an impact of climate  
22 change including sea-level rise, storm surge, and flooding including increased or recurrent  
23 flooding.

24 *Adjacent.* Sharing a common boundary or separated by a right-of-way or water body.

25 . . .

26 *Business park/shopping center outparcel, independent.* A separate parcel or land area  
27 constituting a portion of the outer perimeter of a business park/shopping center that contains its  
28 own establishment, meets the minimum required parking and green area for the outparcel  
29 independently without utilization of parking or green area of the business park/shopping center,  
30 and provides at least one (1) separate access to the outparcel from a public right-of-way.

31 *Caliper.* The diameter of a tree measured six (6) inches above existing grade.

32 *Canopy tree.* A tree that typically reaches 35 feet in height or taller when mature.

33 *Carnival.* An itinerant group of persons and equipment primarily in the business of furnishing  
34 entertainment, in the combined form of gaming devices, side shows, and riding devices,  
35 operated independent of any local facility, commercial establishment, or non-profit organization.  
36 Chesapeake Bay Review Committee. The decision making body responsible for hearing  
37 requests for relief to the O-CBP regulations and deciding O-CBP boundary disputes; composed  
38 of the director of the department of community development, the zoning administrator, the  
39 director of public works, the building official, and the chair of the wetlands board or his  
40 designee.

41 . . .

42 *Development.* Any man-made change to improved or unimproved real estate including, but not  
43 limited to, structures, utilities, mining, dredging, filling, grading, paving, excavation or drilling  
44 operation, or any land disturbance and the resulting landform associated with the construction of  
45 residential, commercial, industrial, institutional, recreation, transportation, or utility facilities or  
46 structures or the clearing of land for non-agricultural or non-silvicultural purposes.

47 *Diameter at breast height (DBH).* The diameter of a tree measured at a point four and one-half  
48 (4-1/2) feet above the existing grade, or the natural surface or contour of a site.

49 *Dormitory.* A structure devoted to housing of regularly enrolled students of a college or  
50 university that contains lodging units or sleeping rooms and may contain a common kitchen and  
51 dining facility for the occupants, operated by an agent of the affiliated college or university.

52 . . .

53 *Encroachment.* Any improvement that intrudes into a required setback, buffer area, or protected  
54 open space.

55 ~~*Environmental site assessment.* A physical survey of the site or parcel that is prepared and  
56 certified as complete and accurate by a licensed professional engineer, land surveyor, architect  
57 or landscape architect licensed to do business in the state of Virginia; drawn at a scale of not  
58 less than one hundred (100) feet to the inch on a print not greater than twenty-four (24) inches  
59 by thirty-six (36) inches to clearly delineate with labels the components of the RPA, RMA, IDA  
60 and buffer area on and adjacent to the development site and the geographic extent and  
61 classification of all wetland areas on and contiguous to the site or parcel; and shall specifically  
62 include the boundaries of the following RPA features: (i) tidal wetlands, verified by field survey;  
63 (ii) non-tidal wetlands connected by surface flow and contiguous to tidal wetlands or water  
64 bodies with perennial flow; (iii) tidal shores; and (iv) a buffer area as set forth in [chapter 9](#), article  
65 II of the city zoning ordinance. The geographic extent and classification of wetland areas shall  
66 be the result of a recent physical survey, and in the case of non-tidal wetlands, a field  
67 delineation that is consistent with the procedures specified in the "Federal Manual for Identifying  
68 and Delineating Jurisdictional Wetlands, 1987, as amended".~~

69 *Establishment.* Any business, institutional, professional or religious entity which provides  
70 products or services, or any apartment, condominium, cluster home, townhouse for sale, or  
71 similar project. Only an entity which occupies a separate business space which is enclosed by  
72 walls and accessed and secured separately will be considered a single establishment. Any  
73 apartment, condominium, cluster home, townhouse for sale or similar project under single  
74 management or association will be considered a single establishment unless located on non-  
75 contiguous lots, in which case each non-contiguous grouping will be considered a separate  
76 establishment.

77 . . .

78 *Fence, natural.* Any natural or dense vegetation, including but not limited to hedges, trees and  
79 shrubs, that acts in the same manner as a fence to create a screen or barrier that operates to  
80 prevent or eliminate vision, viewing, or access to a property.

81 *Fill. Material such as sand, soil, gravel, or crushed stone which is placed in an area, often to  
82 adjust elevation or create land contouring.*

83 *Flag lot.* A lot connected to a public right-of-way by a narrow strip of land (the "flagpole" or  
84 "panhandle") that does not meet the required minimum frontage standards.

85 . . .

86 *Food truck operator.* The individual or entity required to obtain a Food Truck Permit to operate a  
87 food truck per city code Chapter 15.

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

92 *Front yard.* A yard extending across the full width of the lot and lying between the nearest  
93 building line and the front lot line or proposed right-of-way line.

94 . . .

95 *Kennel.* Any establishment in which five (5) or more canines, felines, or hybrids of either, over  
96 the age of four (4) months are kept for the purpose of breeding, hunting, training, renting,  
97 buying, boarding, selling, or showing.

98 *Land disturbance or land disturbing activity. Any man-made change to the land surface that  
99 may result in soil erosion from water or wind and the movement of sediments into state waters  
100 or onto lands in the Commonwealth, including, but not limited to, clearing, grading, excavating,  
101 transporting, and filling of land. [The term shall not include minor activities such as home  
102 gardening, individual home landscaping and home maintenance.]*

103 *Learning/tutoring center.* A commercial establishment offering educational counseling and  
104 tutoring for a fee.

105 *Limit of Moderate Wave Action (LiMWA).* The LiMWA is an informational line that can be found  
106 on flood maps for some coastal areas. On a flood map, it is shown as a black line with black  
107 arrows that point to areas where wave heights are between one and one-half (1.5) and three (3)  
108 feet. It also marks the inland limit of the Coastal Zone A.

109 *Live entertainment.* Any artistic, musical or theatrical performance, including but not limited to,  
110 karaoke, open-microphone, live vocal or instrumental music, recorded music with a disc jockey  
111 (DJ), play, stand-up comedy, dance act, magic, poetry reading, reenactment, cabaret, or any  
112 combination thereof, performed by one (1) or more persons, whether or not they are  
113 compensated for the performance, in a privately owned premises that is open to the public,  
114 whether or not admission is charged.

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

123 *Loading space.* An off-street space or berth on the same lot with a building, or contiguous to a  
124 group of buildings, for the temporary parking of vehicles while loading or unloading merchandise  
125 or material that has access to a street, alley, or other appropriate means of ingress and  
126 egress.

127 . . .

128 *Manufactured home subdivision.* A development where all manufactured mobile home sites are  
129 fee-simple lots, all dwelling units are attached to permanent foundations, and any common area  
130 within the development is under the ownership of a homeowners' association. All  
131 manufactured/mobile homes within the subdivision shall be under the ownership of the person  
132 or entity owning the lot on which the unit is located.

133 *Mature tree.* A canopy tree with a diameter at breast height (DBH) of 12 inches or greater or an  
134 understory tree with a DBH of four (4) inches or greater.

135 *Maximum extent practicable.* A situation where no feasible or practical alternative exists, as  
136 determined by the city official responsible for administering the permit approval, and all possible  
137 efforts to comply with the standards or regulation or minimize potential harmful or adverse  
138 impacts have been undertaken by an applicant; economic considerations may be taken into  
139 account but shall not be the overriding factor.

140 . . .

141 *Nacelle.* The structure which houses all of the generating components, gearbox, drive train and  
142 other mechanical components of a wind energy system.

143 *Nature-based solution.* An approach that reduces the impacts of sea-level rise, flooding, and  
144 storm events through the use of environmental processes and natural systems.

145 *Net density.* The allowable number of dwelling units per buildable acre of land proposed for  
146 development.

147 . . .

148 *Resource delineation.* A site-specific determination of the boundaries of Chesapeake Bay  
149 Preservation District depicted on a physical survey of the site or parcel that is prepared and  
150 certified as complete and accurate by a licensed professional engineer, land surveyor, architect  
151 or landscape architect licensed to do business in the Commonwealth of Virginia; drawn at a  
152 scale of not less than one hundred (100) feet to the inch on a print not greater than twenty-four  
153 (24) inches by thirty-six (36) inches to clearly delineate with labels the following, on and

154 adjacent to the development site, unless such components are waived by the zoning  
155 administrator:

- 156 (a) Topographic information;
- 157 (b) Tidal shores and tidal wetlands as verified by recent physical survey;
- 158 (c) Non-tidal wetlands delineated accordance with the comprehensive onsite  
159 determination method specified in the Federal Manual for Identifying and  
160 Delineating Jurisdictional Wetlands, 1987, as it may be amended from time to  
161 time (provide U.S. Army Corps of Engineers Jurisdictional Determination);
- 162 (d) Waterbodies with perennial flow as determined by a qualified professional using  
163 a state approved, scientifically valid system of in-field indicators of perennial flow;  
164 and
- 165 (e) Site-specific boundaries of the RPA, IDA, and RMA as defined in the ordinance  
166 and adjusted as necessary as a result of the above-referenced information.

167 *Resource management area (RMA)*. That component of the O-CBP District that is not classified  
168 as the resource protection area. The RMA is comprised of land that is contiguous to the ~~variable~~  
169 ~~width-buffer~~ *RPA or IDA* for a distance of one hundred (100) feet in the landward direction.

170 *Resource protection area (RPA)*. That component of the O-CBP District comprised of lands  
171 adjacent to water bodies with perennial flow that have an intrinsic water quality value due to the  
172 ecological and biological processes they perform or that are sensitive to impacts which may  
173 result in significant degradation to the quality of state waters. Resource protection areas include  
174 tidal wetlands; non-tidal wetlands connected by surface flow and contiguous to tidal wetlands or  
175 water bodies with perennial flow; tidal shores; and, a ~~variable-width-buffer area not less than~~  
176 one hundred (100) feet in width. The ~~variable-width-buffer~~ area shall be located adjacent to and  
177 landward of the components listed above and along both sides of any water body with perennial  
178 flow. The buffer area shall be designated as the landward component of the RPA  
179 notwithstanding the presence of permitted uses, encroachments, and permitted vegetation  
180 clearing in compliance with O-CBP.

181 *Retail alcoholic beverage license*. License issued by the Virginia Alcoholic Beverage Control  
182 Authority (VA ABC) which allows for the serving and sale of wine, beer, and mixed beverages at  
183 restaurants, hotels, convenience stores, grocery stores, gourmet shops, delicatessens and  
184 other establishments.

185 . . .

186 *Storage Facility 3* - Indoor and/or outdoor storage spaces which are leased or rented to the  
187 general public for storage purposes only. This category may include storage for boats and RVs.

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

191 *Stormwater*. Precipitation that is discharged across the land surface or through conveyances to  
192 one (1) or more waterways and that may include stormwater runoff, snow melt runoff, and  
193 surface runoff and drainage.

194 . . .

195 *Two-family dwelling*. A type of multi-family structure on a single lot containing two (2) dwelling  
196 units, each of which is totally separated from the other by an unpierced wall extending from the  
197 ground to roof or an unpierced ceiling and floor extending from exterior wall to exterior wall,  
198 except for a common stairwell to both dwelling units.

199 *Understory tree*. *A tree that typically reaches 12 to 35 feet in height when mature.*

200 *Upper-floor dwelling units*. A type of residential mixed-use development where the residential  
201 dwellings are located above a nonresidential use. The residents of the upper floor(s) need not  
202 be the operators of the nonresidential use or uses below. The residential use shall be limited to  
203 no more than four (4) dwelling units. This would include live/work dwellings. The nonresidential

204 use or uses must also be permitted within the applicable zoning district and comply with all  
205 relevant standards for the use.

206 . . .

## 207 CHAPTER 9 – OVERLAY DISTRICTS

208 . . .

### 209 ARTICLE II. – O-CBP DISTRICT – CHESAPEAKE BAY PRESERVATION OVERLAY

211 . . .

#### 212 Sec. 9-11. - Purpose and intent.

213  
214 The health of the Chesapeake Bay is vital to the economy of the City of Hampton and the  
215 Commonwealth of Virginia. Degradation of the bay from both point and non-point source  
216 pollution must be curtailed if the city and state are to continue to benefit, both socially and  
217 economically, from their close association with the bay. The purpose of this article is to  
218 implement the Chesapeake Bay Preservation Act (*the “Act”*) at the local level; and to protect  
219 the quality of state waters pursuant to 9 VAC 10-20-10 et seq. (*the “Regulations”*) and as  
220 authorized under section 10.1-2100 et seq. of the Code of Virginia, 1950, as amended; *and in*  
221 *accordance with guidance, manuals, and other technical assistance provided by the Virginia*  
222 *Department of Environmental Quality*; specifically:

223

224 (1) To protect existing high quality state waters;

225 . . .

#### 226 Sec. 9-13. – General regulations for development, redevelopment, and land disturbing in 227 all subdistricts.

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

230 (1) No more land shall be disturbed than is necessary. Such land disturbance shall be  
231 allowed only to provide a building site, necessary parking, necessary access, positive  
232 site drainage, stormwater best management practices (BMPs), and the installation of  
233 utilities, as approved by the zoning administrator or the director of public works, as  
234 appropriate. Any land disturbance exceeding *equal to or greater than* two thousand, five  
235 hundred (2,500) square feet:

236 . . .

237 (2) Indigenous vegetation shall be preserved to the maximum extent practicable. *In addition,*  
238 *mature trees shall be protected during development and only removed where necessary,*  
239 *including to provide for the proposed use or development.*

240 . . .

241 (6) Land upon which agricultural activities are being conducted, including but not limited to  
242 crop production, pasture, and dairy and feedlot operations, or lands otherwise defined as  
243 agricultural land by the local government, shall have a soil and water quality  
244 conservation assessment conducted that evaluates the effectiveness of existing  
245 practices pertaining to soil erosion and sediment control, nutrient management, and  
246 management of pesticides, and, where necessary, results in a plan that outlines  
247 additional practices needed to ensure that water quality protection is being accomplished  
248 consistent with the Act and this chapter, *the Regulations, and the Article.*

#### 249 Sec. 9-14. – Specific regulations for development, redevelopment, and land disturbing in 250 the RPA.

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

253 (1) *RPA buffer requirement.* The 100-foot wide buffer area shall be the landward component  
254 of the RPA as defined in Chapter 2 of the Zoning Ordinance and as identifies by a site-

255 specific Resource Delineation. Notwithstanding permitted uses, encroachments, and  
256 vegetation clearing, as set forth in this section, the 100-foot wide buffer area is not to be  
257 reduced in width. The 100-foot wide buffer area shall be deemed to achieve a seventy-  
258 five (75) percent reduction of sediments and a forty (40) percent reduction of nutrients.  
259 To minimize the adverse effects of human activities on the other components of the  
260 RPA, state waters, and aquatic life, a 100-foot wide buffer area of vegetation that is  
261 effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution  
262 from runoff shall be retained if present and established where it does not exist. *The*  
263 *planting of trees shall be incorporated into the reestablishment of the 100-foot buffer, as*  
264 *appropriate to site conditions and in such a manner to maximize the buffer function.*  
265 *Inclusion of native species in tree planting is preferred.* To the greatest extent possible,  
266 the 100-foot wide buffer area of vegetation shall be reestablished in the following  
267 circumstances in accordance with the Virginia Department of Environmental Quality  
268 Riparian Buffers Modification and Mitigation Guidance Manual:

269 . . .  
270 (b) Where agriculture or silviculture within the area of the buffer cease and the lands  
271 are proposed to be converted to other uses, the full 100-foot wide buffer shall be  
272 reestablished. In reestablishing the buffer, management measures shall be  
273 undertaken to provide woody vegetation that assures the buffer functions as set  
274 forth in this chapter. *The planting of trees shall be incorporated into the*  
275 *reestablishment of the 100-foot buffer, as appropriate to site conditions and in*  
276 *such a manner to maximize the buffer function. Inclusion of native species in tree*  
277 *planting is preferred.*

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

283 . . .  
284 (b) Redevelopment that ~~satisfies the following:~~ *results in*  
285 ~~(i) There is no increase in the amount of impervious cover in the RPA and~~  
286 ~~there is no further encroachment in the RPA;~~ *or*  
287 ~~(c)(ii) The proposal is an expansion to a structure that was in existence prior to~~  
288 ~~November 14, 1990 that satisfies the provisions of subsection 9-19(3).~~  
289 ~~(e)~~ A new use on a lot recorded prior to October 1, 1989 that satisfies the following:

290 . . .  
291 (ii) Where practicable, a vegetated area that will maximize water quality  
292 protection, mitigate the effects of the buffer encroachment, and is equal to  
293 the area of encroachment into the buffer area shall be established  
294 elsewhere on the lot or parcel. *Where established, such vegetated area*  
295 *shall include the planting of trees as appropriate to site conditions.*  
296 *Inclusion of native species in tree planting is preferred; and*

297 . . .  
298 ~~(d)~~ A new use on a lot recorded between October 1, 1989 and March 1, 2002 that  
299 satisfies the following:

300 . . .  
301 ~~(e)~~ A road or driveway crossing that satisfies the following:

302 . . .  
303 ~~(f)~~ Flood control or stormwater management facilities that drain or treat water from  
304 multiple development projects or from a significant portion of a watershed may be  
305 allowed in RPAs provided such facilities are allowed and constructed in

306 accordance with the Virginia Stormwater Management Act and its attendant  
307 regulations, and that satisfy the following:

308 . . .  
309 *(h) Adaptation measures, subject to compliance with the performance criteria in*  
310 *subsection 9-14(5)(c).*

311 (3) *Required mitigation in the RPA.* All permitted development, redevelopment, and land  
312 disturbing in the RPA that results in new impervious area or removal of indigenous  
313 vegetation shall provide mitigation consistent with the requirements of a minor water  
314 quality impact assessment unless a major water quality impact analysis is required by  
315 subsection 9-19(1).

316 . . .  
317 *(b) Trees should be used for mitigation and supplementation of the buffer area to the*  
318 *extent practicable and as appropriate to the site conditions and project*  
319 *specifications. Where possible, the use of native species is preferred.*

320 . . .  
321 (5) *Removal of vegetation in the RPA.*

322 (a) *Mature trees shall be preserved and trimmed or pruned in lieu of removal as site*  
323 *conditions permit and removal should be limited to the fewest number of trees*  
324 *feasible.* In order to maintain the functional value of the buffer area, existing  
325 vegetation may be removed, subject to approval by the zoning administrator, only  
326 to provide for reasonable sight lines, access paths, general woodlot  
327 management, and best management practices, including those that prevent  
328 upland erosion and concentrated flows of stormwater, as follows:

329 . . .  
330 (ii) Trees may be pruned or removed as necessary to provide for sight lines  
331 and vistas, provided that where removed, they shall be replaced with  
332 other vegetation that is equally effective in retarding runoff, preventing  
333 erosion, and filtering nonpoint source pollution from runoff. *When trees*  
334 *are proposed for removal to provide for site lines, vistas, and access*  
335 *paths they shall be replaced with trees as appropriate to site conditions*  
336 *and in such a manner as to maximize the buffer function and to protect*  
337 *the quality of state waters. Inclusion of native species in tree planting is*  
338 *preferred.*

339 . . .  
340 (v) For shoreline erosion control projects, trees and woody vegetation may  
341 be removed, necessary control techniques employed, and appropriate  
342 vegetation established to protect or stabilize the shoreline in accordance  
343 with the best available technical advice and applicable permit conditions  
344 or requirements. *The removal of mature trees for the installation and*  
345 *maintenance of proposed shoreline erosion control projects shall only be*  
346 *permitted as necessary and consistent with the best available technical*  
347 *advice, approved project plans, and applicable permit conditions or*  
348 *requirements. Trees shall be incorporated, as appropriate to the site*  
349 *conditions and in such manner to maximize the buffer function. Inclusion*  
350 *of native species in tree planting is preferred.*

351 (vi) *Shoreline erosion control within the RPA shall be consistent with the*  
352 *provision of Chapter 13 Title 28.2, of the Code of Virginia, and the*  
353 *accompanying Virginia Marine Resources Commission (VMRC) Tidal*  
354 *Wetlands Guidelines which provide for "minimum standards for the*  
355 *protection and conservation of wetlands," and "ensure protection of*

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*shorelines and sensitive coastal habitat from sea level rise and coastal hazard.”*

- (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:
  - (vi) *Where land uses such as agriculture or silviculture within the area of the buffer area cease and the property is proposed to be converted to other land uses, then a minimum 100-foot-wide buffer may be reestablished with woody vegetation. The planting of trees shall be incorporated into the reestablishment of the 100-foot buffer, as appropriate to site conditions and in such a manner to maximize the buffer function. Inclusion of native species in tree planting is preferred.*
- (c) *Adaptation measures proposed for location within the RPA, shall meet the following conditions:*
  - (i) *The selected adaptation measure shall be a nature-based solution that uses environmental processes, natural systems, or natural features identified as being appropriate for existing site conditions.*
  - (ii) *An identified adaptation measure shall be selected from one of the following sources: Chesapeake Bay Program approved BMP list, the Virginia Stormwater BMP Clearinghouse, the VMRC Tidal Wetlands Guidelines, or be a project that is eligible for funding by the Virginia Community Flood Preparedness Fund Grant.*
    - (aa) *Adaptation measures should consist of trees, vegetation, stone, or enhance existing natural elements.*
  - (iii) *Adaptation measures approved for use in the RPA shall be designed, installed, and maintained in accordance with the applicable specifications for the selected adaptation measure.*
  - (iv) *Adaptation measures should be placed channelward of the proposed development whenever possible and should maximize the preservation of mature trees and other natural vegetation to minimize adverse impacts to the RPA and to maximize water quality benefits.*
  - (v) *The use of fill as a component of an adaptation measure may be permitted, provided it meets the following conditions:*
    - (aa) *The grading and slope created by the use of fill shall be no greater than necessary based upon the project specifications and implemented in a manner that minimizes the impact of run-off.*
    - (bb) *Fill shall have the necessary biogeochemical characteristics, including sufficient organic content, to support the growth of vegetation and adequate permeability to allow infiltration consistent with project specifications.*
    - (cc) *The use of fill shall not exacerbate stormwater run-off, and lateral flow onto adjacent properties shall be controlled. Any impacts on the management of stormwater upland of the Resource Protection Area created by the use of fill shall be mitigated, as necessary.*
    - (dd) *The use of fill for an adaptation measure shall not negatively impact septic systems and drainfields located within the RPA.*

- 406 (ee) *The use of fill shall be consistent with any applicable local, state,*
- 407 *or federal law, including federal floodplain management*
- 408 *requirements in Title 40 C.F.R. Part 60.*
- 409 (vi) *The preservation of existing natural vegetation shall be maximized,*
- 410 *including mature trees, and land disturbance consistent with design*
- 411 *specifications shall be minimized.*
- 412 (vii) *Adaptation measures shall comply with all federal, state and local*
- 413 *requirements, including any required permits and conditions such as the*
- 414 *need for a Water Quality Impact Assessment.*
- 415 (viii) *Nothing in these provisions shall be construed to authorize approval or*
- 416 *allowance of an adaptation measure in contravention of floodplain*
- 417 *management requirements, including flood zone ordinance as set forth in*
- 418 *article IV of chapter 9 of the zoning ordinance.*

419 **Sec. 9-15. – Specific regulations for development, redevelopment, and land disturbing in**

420 **the IDA.**

421 All development, redevelopment, and land disturbing within the IDA shall be governed by the

422 following:

- 423 (1) Vegetation in the IDA that is effective in retarding runoff, preventing erosion, and
- 424 filtering nonpoint source pollution from runoff shall be retained if present to the maximum
- 425 extent practicable. *The planting of trees shall be incorporated into the reestablishment of*
- 426 *the 100-foot buffer, as appropriate to site conditions and in such a manner to maximize*
- 427 *the buffer function. Inclusion of native species in tree planting is preferred.*
- 428 (2) *Development and redevelopment in the IDA.* On existing parcels designated as IDA,
- 429 development and redevelopment shall be sited outside of the IDA to the greatest extent
- 430 possible. The following guidelines shall be used to review and permit development and
- 431 redevelopment within the IDA:
- 432 . . .
- 433 (e) *Adaptation measures, subject to compliance with the performance criteria in*
- 434 *subsection 9-15(5)(c).*
- 435 (3) *Required mitigation in the IDA.* All permitted development and redevelopment within the
- 436 IDA that results in new impervious area or removal of indigenous vegetation shall
- 437 provide mitigation consistent with the requirements of a minor water quality impact
- 438 assessment unless a major water quality impact analysis is required by subsection
- 439 9-19(1).
- 440 . . .
- 441 (b) *Trees should be used of mitigation and supplementation of the buffer area to the*
- 442 *extent practicable and as appropriate to the site conditions and project*
- 443 *specifications. Where possible, the use of native species is preferred.*
- 444 . . .
- 445 (5) *Removal of vegetation in the IDA.*
- 446 (a) In order to maintain the functional value of the buffer area, existing vegetation
- 447 may be removed, ~~subject to approval by the Zoning Administrator,~~ only to provide
- 448 for reasonable sight lines, access paths, general woodlot management, and best
- 449 management practices, including those that prevent upland erosion and
- 450 concentrated flows of stormwater. *Additionally, mature trees shall be preserved*
- 451 *and trimmed or pruned in lieu of removal as site conditions permit and removal*
- 452 *should be limited to the fewest number of trees feasible. Such vegetation*
- 453 *removal is subject to approval by the Zoning Administrator, as follows:*
- 454 . . .
- 455 (ii) Trees may be pruned or removed as necessary to provide for sight lines
- 456 and vistas, provided that where removed, they shall be replaced with

457 other vegetation that is equally effective in retarding runoff, preventing  
458 erosion, and filtering nonpoint source pollution from runoff. *When trees*  
459 *are proposed for removal to provide for site lines, vistas, and access*  
460 *paths they shall be replaced with trees as appropriate to site conditions*  
461 *and in such a manner as to maximize the buffer function and to protect*  
462 *the quality of state waters. Inclusion of native species in tree planting is*  
463 *preferred.*

464 . . .  
465 (v) For shoreline erosion control projects, trees and woody vegetation may  
466 be removed, necessary control techniques employed, and appropriate  
467 vegetation established to protect or stabilize the shoreline in accordance  
468 with the best available technical advice and applicable permit conditions  
469 or requirements. *The removal of mature trees for the installation and*  
470 *maintenance of proposed shoreline erosion control projects shall only be*  
471 *permitted as necessary and consistent with the best available technical*  
472 *advice, approved project plans, and applicable permit conditions or*  
473 *requirements. Trees shall be incorporated, as appropriate to the site*  
474 *conditions and in such manner to maximize the buffer function. Inclusion*  
475 *of native species in tree planting is preferred.*

476 (vi) *Shoreline erosion control within the IDA shall be consistent with the*  
477 *provision of Wetlands Act (Chapter 13 Title 28.2, of the Code of Virginia),*  
478 *and the accompanying Virginia Marine Resources Commission (VMRC)*  
479 *Tidal Wetlands Guidelines which provide for “minimum standards for the*  
480 *protection and conservation of wetlands,” and “ensure protection of*  
481 *shorelines and sensitive coastal habitat from sea level rise and coastal*  
482 *hazard.”*

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

488 . . .  
489 (vi) *Where land uses such as agriculture or silviculture within the area of the*  
490 *buffer area cease and the property is proposed to be converted to other*  
491 *land uses, then a minimum 100-foot-wide buffer may be reestablished*  
492 *with woody vegetation. The planting of trees shall be incorporated into the*  
493 *reestablishment of the 100-foot buffer, as appropriate to site conditions*  
494 *and in such a manner to maximize the buffer function. Inclusion of native*  
495 *species in tree planting is preferred.*

496 (c) *Adaptation measures proposed for location within the IDA, shall meet the*  
497 *following conditions:*

498 (i) *The selected adaptation measure shall be a nature-based solution that*  
499 *uses environmental processes, natural systems, or natural features*  
500 *identified as being appropriate for existing site conditions.*

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

506 (aa) *Adaptation measures should consist of trees, vegetation, stone, or*  
507 *enhance existing natural elements.*

- 508 (iii) *Adaptation measures approved for use in the IDA shall be designed,*  
509 *installed, and maintained in accordance with the applicable specifications*  
510 *for the selected adaptation measure.*
- 511 (iv) *Adaptation measures should be placed channelward of the proposed*  
512 *development whenever possible and should maximize the preservation of*  
513 *mature trees and other natural vegetation to minimize adverse impacts to*  
514 *the IDA and to maximize water quality benefits.*
- 515 (v) *The use of fill as a component of an adaptation measure may be*  
516 *permitted, provided it meets the following conditions:*
- 517 (aa) *The grading and slope created by the use of fill shall be no greater*  
518 *than necessary based upon the project specifications and*  
519 *implemented in a manner that minimizes the impact of run-off.*
- 520 (bb) *Fill shall have the necessary biogeochemical characteristics,*  
521 *including sufficient organic content, to support the growth of*  
522 *vegetation and adequate permeability to allow infiltration*  
523 *consistent with project specifications.*
- 524 (cc) *The use of fill shall not exacerbate stormwater run-off, and lateral*  
525 *flow onto adjacent properties shall be controlled. Any impacts*  
526 *on the management of stormwater upland of the Intensely*  
527 *Developed Area created by the use of fill shall be mitigated, as*  
528 *necessary.*
- 529 (dd) *The use of fill for an adaptation measure shall not negatively impact*  
530 *septic systems and drainfields located within the IDA. Where*  
531 *present, the proximity of the adaptation measure using fill should*  
532 *be considered such that the fill will not interfere with the proper*  
533 *function or maintenance of either of these features.*
- 534 (ee) *The use of fill shall be consistent with any applicable local, state,*  
535 *or federal law, including federal floodplain management*  
536 *requirements in Title 40 C.F.R. Part 60.*
- 537 (v) *The preservation of existing natural vegetation shall be maximized,*  
538 *including mature trees, and land disturbance consistent with design*  
539 *specifications shall be minimized.*
- 540 (vi) *Adaptation measures shall comply with all federal, state and local*  
541 *requirements, including any required permits and conditions such as the*  
542 *need for a Water Quality Impact Assessment.*
- 543 (vii) *Nothing in these provisions shall be construed to authorize approval or*  
544 *allowance of an adaptation measure in contravention of floodplain*  
545 *management requirements, including flood zone ordinance as set forth in*  
546 *article IV of chapter 9 of the zoning ordinance.*
- 547 (6) *When considering the reestablishment of a buffer within an Intensely Developed Area,*  
548 *the zoning administrator shall encourage the planting of trees, including native species,*  
549 *as a component of such buffer reestablishment measure.*

550 . . .

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

- 552 (1) Required submittals for development and redevelopment in all O-CBP subdistricts:
- 553 (a) A plan of development consistent with ch. 1, section 1-7 or section 1-8 of the  
554 zoning ordinance, supplemented with a resource delineation *and landscape plan*  
555 *as set forth in subsection 9-18(1)(c)*. The delineation shall be submitted to the  
556 city for review, which may include physical verification of such findings on the  
557 site.

558 . . .

559 (c) *The landscape plan shall identify the location, size, and description of existing*  
560 *and proposed plant material. All existing canopy trees and understory trees on*  
561 *the site of six (6) inches of greater diameter at breast height shall be shown.*  
562 *Mature trees shall be protected during development and only removed where*  
563 *necessary, including to provide for the proposed use or development. The*  
564 *landscape plan shall also identify and include:*  
565 (i) *The location and specific number of mature trees, canopy trees, and*  
566 *understory trees to be preserved;*  
567 (ii) *Mature trees, canopy trees, understory trees, and other vegetation to be*  
568 *disturbed or removed;*  
569 (iii) *A description of the proposed measures for mitigation shall include a*  
570 *replanting schedule for trees and other vegetation removed for*  
571 *construction, including a list of plants and trees to be used for mitigation;*  
572 *a demonstration that the design of the plan will preserve mature trees,*  
573 *canopy trees, understory trees and other vegetation and will provide*  
574 *maximum erosion control; a demonstration that existing plants are to be*  
575 *used to the maximum extent possible; and a demonstration that where*  
576 *the planting of new trees or vegetation is required, native species will be*  
577 *used to the maximum extent possible. If no mitigation or planting is*  
578 *required, existing trees may be delineated as required above on the*  
579 *plan of development.*

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

581 . . .

582 (c) *A resiliency assessment as set forth in subsection 9-18(4) of this Ordinance shall*  
583 *be required for any proposed land development during the plan of development*  
584 *or other project review process in the RPA.*

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

586 . . .

587 (c) *A resiliency assessment as set forth in subsection 9-18(4) of this Ordinance shall*  
588 *be required for any proposed land development during the plan of development*  
589 *or other project review process in the IDA.*

590 (4) *Resiliency Assessment shall be required for any proposed development and*  
591 *redevelopment in the RPA or IDA.*

592 (a) *Submittal of a resiliency assessment that considers the potential impacts of sea*  
593 *level rise, storm surge, and flooding on buffer function in light of a proposed RPA*  
594 *or IDA encroachment is required during the review of a plan of development or*  
595 *other review process. Such an assessment is to be based upon the RPA or IDA*  
596 *as delineated at the time of the proposed land development and is required in*  
597 *addition to all other requirements of this and other local ordinances. At a*  
598 *minimum the resiliency assessment should contain the following information:*

599 (i) *A scaled drawing or aerial image of the proposed project that includes the*  
600 *RPA or IDA, and RMA boundaries, required setbacks, existing*  
601 *topography, and a graphic depiction of the anticipated impacts of sea*  
602 *level rise, flooding, and storm surge on the parcel and the proposed*  
603 *project, based upon a review of approved models and forecasts, to*  
604 *include the following:*

605 (aa) *For sea level rise, use the 2017 National Oceanographic and*  
606 *Atmospheric Administration (NOAA) Intermediate-High scenario*  
607 *projection curve or any subsequently updated version thereof on*  
608 *the project site. Sea level rise data can be accessed on the*  
609 *AdaptVA website, maintained by the Virginia Institute of Marine*

610 Science (VIMS). When determining potential sea-level rise  
611 impacts, the applicant should use the model to identify both the  
612 extent of anticipated inland migration, as well as the water depth.  
613 (bb) For storm surge, use the most up to date NOAA hydrodynamic  
614 Sea, Lake, and Overland Surges Hurricanes (SLOSH) model on  
615 the project site. Storm surge data can be accessed on the  
616 AdaptVA website. The default storm surge category to be used for  
617 resiliency assessments is Category 2, unless otherwise specified.  
618 (cc) For flooding, use the most up to date Special Flood Hazard Area  
619 and the Limit of Moderate Wave Action (LiMWA) model on the  
620 project site according to the Virginia Flood Risk Information  
621 System (VFRIS) model in conjunction with the requirements and  
622 application of the floodplain management ordinance. VFRIS  
623 includes the Flood Insurance Rate Maps, flood insurance studies,  
624 and associated models produced by the Federal Emergency  
625 Management Agency, and is available on the Virginia Department  
626 of Conservation and Recreation (DCR) website. When identifying  
627 flooding impacts, the applicant may rely on existing use and  
628 application of the relevant Special Flood Hazard Area. This data is  
629 also accessible on the AdaptVA website.  
630 (dd) The anticipated impacts shall be based upon a thirty (30) year  
631 timeframe; unless the applicant sufficiently demonstrates that the  
632 lifespan of the project proposed for development is less than thirty  
633 (30) years, as approved by the Zoning Administrator. Where a  
634 lifespan of less than thirty (30) years is proposed, the applicant  
635 shall provide documentation of proposed building materials,  
636 anticipated quality of construction, design specifications, and other  
637 materials or information in support of a predicted lifespan of less  
638 than thirty (30) years for the project.  
639 (ii) Assess the potential impacts of the proposed land development on buffer  
640 function, including loss of riparian buffer vegetation and  
641 vegetation migration; water migration; and the potential impacts of  
642 additional future land disturbance or development in the RPA or IDA  
643 connected to the proposed land development.  
644 (iii) Identify conditions, alterations, or adaptation measures for the proposed  
645 land development that address these potential impacts as necessary and  
646 appropriate based upon site conditions; nature, type, and size of  
647 proposed land development, including whether such proposed land  
648 development is in the RPA or IDA; extent of potential impacts; and the  
649 necessity to minimize future land disturbance.  
650 (iv) Based upon the assessment, the Zoning Administrator, or board of zoning  
651 appeals, may, as necessary and appropriate, require conditions,  
652 alterations, or the installation of adaptation measures as part of the  
653 proposed land development consistent with the requirements of this  
654 ordinance.

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

656 (1) Exceptions.

657 . . .

- 658 (e) No application for relief from section 9-14 and section 9-15 shall be considered  
659 complete where a resiliency assessment, as outlined in subsection 9-18(4) has  
660 not occurred or the proposed adaptation measure allows for the use of fill in an

661 *RPA or IDA in contravention of the requirements of subsection 9-14(5)(c) and*  
662 *subsection 9-15(5)(c).*  
663 (2) Exemptions. The following types of development are exempt from the requirements of  
664 this chapter:  
665 . . .  
666 (c) Silvicultural activities *as defined in 9VAC 25-830-40*, provided that such  
667 operations adhere to the water quality protection procedures prescribed by the  
668 Virginia Department of Forestry in "Virginia's Forestry Best Management  
669 Practices for Water Quality."  
670 . . .  
671 (e) *A living shoreline, as defined by Chapter 13 Title 28.2-104.1, of the Code of*  
672 *Virginia, is exempt from additional performance criteria requirements of section*  
673 *9-14 and section 9-15, including a water quality impact assessment in section 9-*  
674 *18, provided the project minimizes land disturbance, maintains or establishes a*  
675 *vegetative buffer inland of the living shoreline, complies with the fill conditions in*  
676 *subsection section 9-14(5)(c) and section 9-15(5)(c) of this Ordinance, and*  
677 *receives approval from the VMRC or the local wetlands board, as applicable.*  
678 (3) Nonconformities.  
679 . . .  
680 (b) Such development waiver may be issued by the zoning administrator provided  
681 that:  
682 . . .  
683 (iii) Any development or land disturbance ~~exceeding~~ *equal to or greater than*  
684 *twenty-five hundred (2,500) square feet in area shall comply with the*  
685 *provisions of the erosion and sediment control ordinance;*  
686 . . .  
687 **Sec. 9-20 – Reserved.**