

POLLUTION: Such alteration of the physical, chemical or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety and welfare, or to the health of animals, fish or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the State Water Control Board, are “pollution” for the terms and purposes of this chapter.

§4.18. CHESAPEAKE BAY PRESERVATION

§4.18.1. Purpose and intent

§4.18 is enacted to implement the requirements of Code of Virginia, §62.1-44.15:67 et seq., the Chesapeake Bay Preservation Act. These regulations establish the criteria that the city shall use to determine the extent of the Chesapeake Bay preservation areas. These regulations also establish criteria for use by the city in approving, disapproving or modifying requests to rezone, subdivide, use, develop and/or redevelop land in Chesapeake Bay preservation areas. The intent of the city council and the purpose of §4.18 is to:

- A. Protect sensitive environmental lands within the city;
- B. Safeguard the quality of state waters;
- C. Prevent further increase in pollution of state waters;
- D. Reduce existing pollution of state waters; and
- E. Promote water resource conservation in order to provide for the health, safety, and welfare of the present and future citizens of the city.

§4.18.2. Applicability

- A. §4.18 shall apply to all lands identified as Chesapeake Bay preservation areas as designated by the city council and as shown on the city Chesapeake Bay preservation area map. The Chesapeake Bay preservation area map, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of §4.18. The map, entitled city of Fairfax Chesapeake Bay preservation area map, shall be identified by the signature of the zoning administrator, attested to by the city clerk, together with the date of adoption by the city council. The map shall show the general location of Chesapeake Bay preservation areas within the city and should be consulted by persons contemplating activities within the city prior to engaging in a regulated activity. The specific delineation of the Chesapeake Bay preservation area boundaries is the responsibility of the applicant in accordance with §4.18.6.

- 1. The resource protection area includes:
 - (a) Tidal wetlands;

§4.18.3 Development review procedures

- (b) Nontidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow;
 - (c) Tidal shores;
 - (d) Intermittent streams that remain largely in a natural condition and that have not been significantly impacted by adjacent development;
 - (e) Water bodies with perennial flow; and
 - (f) A 100-foot vegetated buffer area located adjacent to and landward of the components listed above, and expanded to include noncontiguous wetlands within the floodplain that are partially located within the buffer, along both sides of any water body with perennial flow. The full buffer area shall be designated as the landward component of the resource protection area notwithstanding the presence of permitted uses, encroachments or permitted vegetation clearing in compliance with the performance criteria of §4.18.6.
- 2. Designation of the components listed in §4.18.2.A.1 on the city's Chesapeake Bay preservation area map shall not be subject to modification unless based upon reliable site-specific information, in accordance with §4.18.6 and, if applicable, a water quality impact assessment required pursuant to §4.18.8.
- 3. The resource management area includes all lands in the city that are not designated as resource protection areas.
- B. If the boundaries of a Chesapeake Bay preservation area include a portion of a lot, parcel, or development project, only that portion of the lot, parcel, or development project shall be subject to the requirements of this §4.18 except as provided for in §4.18.4.D. The division of property shall not constitute an exemption from this requirement.

§4.18.3. Development review procedures

Any land disturbance, development, or redevelopment with land-disturbing activity exceeding 2,500 square feet shall comply with the development review procedures outlined in §6.13, where applicable, prior to any clearing, grading or construction on the site.

§4.18.4. Allowed uses

- A. Development, land disturbances and uses authorized by underlying zoning classifications are allowed provided that they are carried out in accordance with the applicable general performance standards set forth in §4.18.7 or otherwise modified by the requirements set forth herein.
- B. Development in resource protection areas (RPAs) shall be subject to review and approval by the city and may be permitted if it:
 - 1. Constitutes redevelopment; or
 - 2. Is a roadway or driveway not exempt under §4.18.11, provided that:
 - (a) There are no reasonable alternatives to aligning the road or driveway in or across the RPA;
 - (b) The alignment and design of the road or driveway are optimized, consistent with other applicable requirements, to minimize encroachment in the RPA and adverse effects on water quality; and

- (c) The design and construction of the road or driveway satisfy all applicable criteria of §4.18, including the submission of a water quality impact assessment.
 - (d) The plan for the road or driveway proposed in or across the RPA meets the criteria for site plan, subdivision and plan of development approvals.
 - 3. Is a flood-control or stormwater-management facility that drains or treats water from multiple development projects or from a significant portion of a watershed, provided that:
 - (a) The location of the facility within the RPA is the optimum location;
 - (b) The size of the facility is the minimum necessary to provide necessary flood control, stormwater treatment, or both;
 - (c) The facility is consistent with a stormwater management program that has been approved by the Chesapeake Bay local assistance board as a phase I modification to this program;
 - (d) All applicable permits for construction in state and federal waters are obtained from the appropriate state and federal agencies, such as the U.S. Army Corps of Engineers, the Virginia Department of Environmental Quality, and the Virginia Marine Resources Commission; and
 - (e) Approval from the city prior to construction.
 - 4. Is a new use established pursuant to §4.18.7.D.2.
- C. Routine maintenance is allowed to be performed on flood control or stormwater management facilities that drain or treat water from multiple development projects or from a significant portion of a watershed in order to assure that they continue to function as designed, but it is not the intent of §4.18 to allow a best management practice that collects and treats runoff from only an individual lot or some portion of the lot to be located within an RPA.
- D. All development or redevelopment within a Chesapeake Bay preservation area exceeding 2,500 square feet of disturbed land area shall be subject to the general performance standards in §4.18.7 as well as the development review procedures of §6.13.
- E. A water quality impact assessment shall be required for any proposed land disturbance, development or redevelopment within a resource protection area or a resource management area. The zoning administrator may waive the requirement for a water quality impact assessment in a resource management area upon determination that the proposed land disturbance, development or redevelopment would not significantly impact water quality. If a water quality impact assessment is required, the assessment shall include the entire lot, parcel or development project as the area of impact and shall be conducted in accordance with §4.18.8.
- F. A climate change and sea level rise assessment and adoption of adaptation measures shall be required for any proposed land disturbance, development or redevelopment within resource protection areas in accordance with §4.18.9.

§4.18.5. Lot size

The creation of new lots shall be subject to the requirements of the subdivision and zoning ordinances provided that any lot shall have sufficient area outside the resource protection area to

§4.18.6 Interpretation of RPA and CBPA boundaries

accommodate an intended development in accordance with the general performance standards in §4.18.7

§4.18.6. Interpretation of RPA and CBPA boundaries**A. Delineation by applicant**

For any property that is depicted on the city's Chesapeake Bay preservation area map as a resource protection area, the applicant shall determine the site-specific boundaries of the RPA components through the performance of a RPA site-specific study. The Chesapeake Bay preservation area map shall be used only as a guide to the general location of resource protection areas within the city.

B. Where conflict arises over delineation

Where the applicant has provided a site-specific delineation of the resource protection area, the zoning administrator shall review and verify the accuracy of the boundary delineation. In determining the site-specific resource protection area boundary, the zoning administrator may render adjustments to the applicant's boundary delineation based on the RPA site-specific study features required in §6.13.2.B.

§4.18.7. General performance standards**A. Purpose and intent**

1. The performance standards establish the means to minimize erosion and sedimentation potential, reduce land application of nutrients and toxics, and maximize rainwater infiltration. Natural ground cover, especially woody vegetation, is most effective in holding soil in place and preventing site erosion. Indigenous vegetation, with its adaptability to local conditions without the use of harmful fertilizers or pesticides, filters stormwater runoff. Minimizing impervious cover enhances rainwater infiltration and effectively reduces stormwater runoff potential.
2. The performance standards are intended to prevent a net increase in nonpoint source pollution from new development and to achieve a 10 percent reduction in nonpoint source pollution from redevelopment.

B. Development and redevelopment in Chesapeake Bay preservation areas

1. Land disturbance shall be minimized and limited to the area necessary to provide for the desired use or development.
 - (a) In accordance with an approved subdivision or site plan, the extent of land-disturbing activity, including clearing or grading, shall be limited to the specified construction footprint. The limits of disturbance shall be clearly shown on submitted plans and physically marked on the development site.
 - (b) Ingress and egress during construction shall be limited to one access point unless otherwise approved by the zoning administrator.
2. Indigenous vegetation shall be preserved to the maximum extent practicable consistent with the use and development proposed and in accordance with §4.5.9.D.3 and other information that the zoning administrator deems essential.
 - (a) Existing trees outside the limits of disturbance shall be preserved and protected from destruction through all phases of construction, however, diseased trees or

trees weakened by age, storm, fire or other injury may be removed, subject to approval of the zoning administrator as required in §6.10.

- (b) Clearing and grading shall be limited outside the defined limits of disturbance. Clearing shall be allowed only to provide public roads, necessary access, positive site drainage, water quality BMPs, and the installation of utilities, as approved by the zoning administrator.
 - (c) Mature trees shall be protected during development and only removed where necessary, including to provide for the proposed use or development, subject to approval of the zoning administrator as required in §6.10.
 - (d) Prior to clearing or grading, suitable protective barriers, such as tree protections shall be installed and maintained as specified on the approved tree conservation plan at all phases of construction in accordance with §4.5.9.D.
- 3. Land development shall minimize impervious cover to promote infiltration of stormwater into the ground consistent with the use or development permitted.
- 4. Notwithstanding any other provisions of §4.18, or any exceptions or exemptions thereto, any land-disturbing activity exceeding 2,500 square feet shall comply with the requirements of §4.16, Erosion and Stormwater Management and Storm Drainage Facilities.
- 5. All on-site sewage disposal systems not requiring a VPDES permit shall be pumped out at least once every five years. However, owners of on-site sewage treatment systems may submit documentation every five years, certified by a sewage handler permitted by the Virginia Department of Health, that the septic system has been inspected, is functioning properly, and the tank does not need to have the effluent pumped out.
- 6. A reserve sewage disposal site with a capacity at least equal to that of the primary sewage disposal site shall be provided. This requirement shall not apply to any lot or parcel recorded prior to October 1, 1989, if such lot or parcel is not sufficient in capacity to accommodate a reserve sewage disposal site, as determined by the local health department. Building or construction of any impervious surface shall be prohibited on the area of all sewage disposal sites or on an on-site sewage treatment system that operates under a permit issued by the state water control board until the structure is served by public sewer.
- 7. For any development or redevelopment, stormwater runoff shall be controlled by the use of best management practices consistent with §4.16, Storm Drainage Facilities and 9VAC25-870-63 of the Virginia Stormwater Management Regulations.
- 8. Prior to initiating grading or other on-site activities on any portion of a lot or parcel, all wetlands permits required by federal, state and local laws and regulations shall be obtained and evidence of such submitted to the zoning administrator in accordance with the development review procedures of §6.13.

C. Performance criteria for resource protection areas

The following criteria shall apply specifically within resource protection areas and supplement the general performance criteria contained in §4.18:

- 1. All redevelopment activities shall conform to the regulations contained in §4.15, Floodplains and §4.16, Erosion and Stormwater Management and Storm Drainage

§4.18.7 General performance standards

Facilities. Redevelopment shall be permitted in the resource protection area only if there is no increase in the amount of impervious cover within the RPA and no further encroachment within the RPA.

2. A water quality impact assessment shall be required for any proposed land disturbance, development or redevelopment within resource protection areas in accordance with §4.18.8 and §4.18.4.D.
3. A climate change and sea level rise assessment and adoption of adaptation measures shall be required for any proposed land disturbance, development or redevelopment within resource protection areas in accordance with §4.18.9.

D. Buffer area requirements

To minimize the adverse effects of human activities on the core components of resource protection areas, state waters, and aquatic life, a 100-foot buffer area of vegetation that is effective in retarding runoff, preventing erosion, preservation of mature trees, and filtering nonpoint source pollution from runoff shall be retained if present and established where it does not exist. The 100-foot buffer area shall be deemed to achieve a 75 percent reduction of sediments and a 40 percent reduction of nutrients. The buffer area shall be maintained to meet the following additional performance standards:

1. In order to maintain the functional value of the buffer area, indigenous vegetation may be removed, subject to approval of the zoning administrator as required in §6.10, 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:
2. When the application of the buffer areas would result in the loss of a buildable area on a lot or parcel recorded prior to October 1, 1989, the zoning administrator may permit encroachments into the required buffer area pursuant to §4.18.12, Administrative waivers and special exceptions, and in accordance with the following provisions:
 - (a) Encroachments into the buffer areas shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities;
 - (b) Where practicable, a vegetated area shall be established elsewhere on the lot or parcel in a manner 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; and
 - (c) In no case shall the encroachment extend into the seaward 50 feet of the buffer area.
3. When the application of the buffer area would result in the loss of a buildable area on a lot or parcel recorded between October 1, 1989 and November 25, 2003, the zoning administrator may permit encroachments into the required buffer area pursuant to §4.18.12, Administrative waivers and special exceptions, and in accordance with the following provisions:
 - (a) The lot or parcel was created as a result of a legal process conducted in conformity with the city's subdivision regulations;
 - (b) Conditions or mitigation measures imposed through a previously-approved exception shall be met;

- (c) If the use of a best management practice was previously required, the BMP shall be evaluated to determine if it continues to function effectively and, if necessary, the BMP shall be re-established or repaired and maintained as required;
- (d) The criteria listed in §4.18.7.D.2 shall be satisfied.

§4.18.8. Water quality impact assessment

A. Purpose and intent

The purpose of the water quality impact assessment is to:

1. Identify the impacts of proposed development on water quality and lands within resource protection areas;
2. Ensure that, where redevelopment does take place within resource protection areas, it is located on those portions of a site and in a manner that is least disruptive to the natural functions of resource protection areas; and
3. Specify mitigation to address water quality protection.

B. Water quality impact assessment

A water quality impact assessment shall be submitted for:

1. Any proposed land disturbance, development or redevelopment within a resource protection area including any buffer area modification or reduction as provided for in §4.18.7; or
2. Any proposed development or redevelopment in the resource management area that may significantly impact water quality due to the unique characteristics of the site or intensity of the proposed use or development, as determined by the zoning administrator in accordance with §4.18 and §4.18.4.D. There shall be two levels of water quality impact assessment: a minor assessment and a major assessment.

C. Minor water quality impact assessment

A minor water quality impact assessment pertains only to development resulting in no more than 5,000 square feet of land disturbance, or development that encroaches onto the landward 50 feet of the 100-foot buffer area. The calculations of a minor assessment will demonstrate that the remaining buffer area and necessary best management practices will result in removal of no less than 75 percent of sediments and 40 percent of nutrients from post development stormwater runoff. A minor assessment shall include a site drawing to scale that shows the following:

1. Location of the components of any RPA, including the 100-foot buffer area;
2. Location and nature of the proposed improvements, including: type of paving material; areas of clearing or grading; location of any structures, drives, or other impervious cover; and sewage disposal systems or reserve drainfield sites;
3. Type and location of proposed best management practices to meet the required general performance standards specified in §4.18.7;
4. Location, size, and condition of all existing trees five inches or greater in diameter measured at standard height to be impacted to meet requirement of §6.10 and in accordance with §4.5.9.D.1. Existing trees to be preserved shall be indicated on the plan, including any necessary tree protection measures. Mature trees shall be

protected during development and may only be removed where necessary, including to provide for the proposed use or development, subject to approval by the zoning administrator as required by §6.10; and

5. Location, type, and number of replacement vegetation to restore the existing buffer in a manner that provides for mitigation of removed mature trees and maximizes buffer function.

D. Major water quality impact assessment

1. A major water quality impact assessment shall be required for any development that exceeds 5,000 square feet land disturbance or that encroaches onto the seaward 50 feet of the 100-foot buffer area; or is located in the resource management area and is deemed necessary by the zoning administrator.
2. The information required in this subsection D shall be considered a minimum, unless the zoning administrator determines that some of the elements are unnecessary due to the scope and nature of the proposed use and development of land.
3. The following elements shall be included in the preparation and submission of a major water quality impact assessment:
 - (a) All of the information required in a minor water quality impact assessment, as specified in subsection C, above;
 - (b) A hydrogeological element that describes existing topography, estimates of soils characteristics and potential for erosion, hydrology of the area, impacts on wetlands and streams, proposed mitigation measures, and a listing of requisite permits with permit or application status.
 - (c) A tree conservation plan that identifies existing trees to be preserved or removed to meet the requirements of §6.10 and in accordance with §4.5.9.D.1; limits of clearing and grading; and tree protection measures for existing trees to remain;
 - (d) A landscape plan that includes canopy trees, understory trees, shrubs, and groundcover plant types, using native species and in accordance with §4.5.9, to restore the existing buffer in a manner that provides for mitigation of removed mature trees and maximizes buffer function; and
 - (e) Such other measures as deemed necessary by the zoning administrator to ensure the impact to water quality can be accurately predicted.

E. Submission and review requirements

1. Copies of all site drawings and other applicable information as required by subsections C and D, above, shall be submitted to the zoning administrator for review and approval.
2. All information required in this subsection E shall be certified as complete and accurate by a professional engineer, land surveyor, landscape architect, soil scientist, or wetland delineator certified or licensed to practice in the state.
3. RPA boundaries shall include a jurisdictional determination or verification letter from the U.S. Army Corps of Engineers for all Waters of the U.S.

4. Water quality impact assessments shall be prepared and submitted to the zoning administrator in conjunction with the development review procedures outlined in §6.13.
5. As part of any major water quality impact assessment submittal, the zoning administrator may require review and written comments by the department. The zoning administrator should incorporate comments made by the department into the final review of the major water quality impact assessment.

F. Evaluation procedure

1. Upon the completed review of a minor water quality impact assessment, the zoning administrator shall determine if any proposed modification or reduction to the buffer area is consistent with the provisions of §4.18 and make a finding based upon the following criteria:
 - (a) The proposed encroachment is necessary and there is no other location on site to place improvements without disturbing the buffer area;
 - (b) The impervious surface is minimized;
 - (c) The proposed best management practices, where required, achieve the requisite reductions in pollutant loadings;
 - (d) The development, as proposed, meets the purpose and intent of §4.18;
 - (e) The cumulative impact of the proposed development, when considered in relation to other development in the vicinity, both existing and proposed, will not result in a significant degradation of water quality; and
 - (f) Any other information deemed necessary by the zoning administrator.
2. Upon the completed review of a major water quality impact assessment, the zoning administrator shall determine if the proposed development is consistent with the purpose and intent of §4.16 and make a finding based upon the following criteria:
 - (a) The disturbance of any wetlands is minimized;
 - (b) The development will not result in significant disruption of the hydrology of the site;
 - (c) The development will not result in significant degradation to aquatic life;
 - (d) The development minimizes removal of buffer vegetation and prioritizes the protection of mature trees;
 - (e) The design and location of any proposed drainfield will be in accordance with the general performance standards outlined in §4.18.7;
 - (f) The development, as proposed, is consistent with the purpose and intent of §4.16;
 - (g) The cumulative impact of the proposed development, when considered in relation to other development in the vicinity, both existing and proposed, will not result in a significant degradation of water quality.
3. The zoning administrator may require additional mitigation measures where potential impacts have not been adequately addressed. Evaluation of mitigation measures will

§4.18.9 Climate change and sea level rise assessment

be made by the zoning administrator based on the criteria listed above in subsections 1 and 2, above.

4. The zoning administrator shall find the proposal to be inconsistent with the purpose and intent of §4.16 when the impacts created by the proposal cannot be mitigated.

§4.18.9. Climate change and sea level rise assessment**A. Assessment**

Any proposed land development in the Resource Protection Area shall assess the impacts of climate change and sea level rise during the plan of development or project review process. Such assessment shall be based on the Resource Protection Area as delineated at the time of proposed land development. Such assessment shall at a minimum:

1. Be based upon a potential impact range of 30 years or the lifespan of the project if less than 30 years;
2. Utilize a model or forecast developed by or on behalf of the Commonwealth;
3. Identify potential impacts:
 - (a) From projected sea level rise using the 2017 National Oceanic and Atmospheric Administration (NOAA) Intermediate-High scenario projection curve, or any subsequently updated version thereof, on the project site;
 - (b) From storm surge based upon the most updated NOAA hydrodynamic Sea, Lake, and Overland Surges from Hurricanes model on the project site; and
 - (c) From flooding based upon the most updated Special Flood Hazard Area and the Limit of Moderate Wave Action on the project site. Such assessment of flooding should be in conjunction with the requirements and application of floodplain management requirements and programs.
4. Assess the potential impacts in light of the proposed land development on buffer function including loss of riparian buffer vegetation and vegetation migration; water migration; as well as the potential impacts resulting in additional future land disturbance or development in the Resource Protection Area connected to the proposed land development.
5. Identify conditions, alterations, or adaptation measures for the proposed land development to address these potential impacts as necessary and appropriate based upon site conditions; nature, type, and size of proposed land development including whether such proposed land development is in an Intensely Developed Area overlay; extent of potential impacts, and the necessity to minimize future land disturbance.

B. Adaptation measures

Based upon the assessment, as necessary and appropriate, the zoning administrator shall require conditions, alterations, or the installation of adaptation measures as part of the proposed land development consistent with the requirements of this section and may allow adaptation measures within the Resource Protection Area subject to the following criteria and requirements. The adaptation measures shall:

1. Be a nature-based solution adaptation measure that uses environmental processes, natural systems, or natural features, is appropriate for site conditions, and is:

- (a) A Best Management Practice approved by the Chesapeake Bay Program Partnership;
 - (b) An approved Virginia Stormwater Best Management Practice listed in the Virginia Stormwater Best Management Practice Clearinghouse;
 - (c) An approved Shoreline Protection Strategy in accordance with the Tidal Wetlands Guidelines as determined by the Virginia Marine Resources Commission; or
 - (d) A project that is an eligible activity for funding by the Virginia Community Flood Preparedness Fund as determined by the Virginia Department of Conservation and Recreation.
 2. Be designed, installed, and maintained in accordance with the applicable adaptation measure specifications in accordance with the type of adaptation measure identified.
 3. Allow for the use of fill only under the following conditions:
 - (a) 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 runoff;
 - (b) The fill must have the necessary biogeochemical characteristics, including sufficient organic content, to support the growth of vegetation and adequate permeability to allow infiltration consistent with the project specifications;
 - (c) The use of fill shall not enhance stormwater runoff from the Resource Protection Area, and any lateral flow onto adjacent properties shall be controlled;
 - (d) Any impacts on the management of stormwater upland of the Resource Protection Area created by the use of fill shall be mitigated as necessary;
 - (e) The use of fill shall not negatively impact septic systems and drainfields; and
 - (f) The use of fill shall be consistent with any applicable federal or state law, including floodplain management requirements in 44 CFR 60.
 4. Maximize preservation of existing natural vegetation including mature trees and minimize land disturbance consistent with the adaptation measure specifications.
 5. Comply with all federal, state, and local requirements including any required permits and conditions.
 6. Nothing in this article shall be construed to authorize approval or allowance of an adaptation measure in contravention of floodplain management requirements, including the National Flood Insurance Program and established floodplain ordinances, or construed to require an adaptation measure in contravention of participation in the National Flood Insurance Program Community Rating System.
- C. Any activity in the Resource Protection Area impacting wetlands shall be consistent with Chapter 13 Title 28.2, Code of Virginia, and the accompanying Tidal Wetlands Guidelines which provide for “minimum standards for the protection and conservation of wetlands,” and “ensure protection of shorelines and sensitive coastal habitat from sea level rise and coastal hazard.” Shoreline management and alteration projects should be coordinated to address the requirements of the most updated Tidal Wetlands Guidelines in conjunction with the requirements of this section.

§4.18.10 Nonconforming uses and structures

- D. The zoning administrator may exempt a living shoreline activity from additional performance criteria requirements, including a Water Quality Impact Assessment if the project minimizes land disturbance, maintains, or establishes a vegetative buffer inland of the living shoreline, complies with the fill conditions, and receives approval from the Virginia Marine Resources Commission or the local wetlands board.
- E. No exception shall be granted if the assessment of climate change and sea level rise has not occurred or the proposed adaptation measure allows for the use of fill in a Resource Protection Area in contravention of the requirements of §4.18.9.B.3(c).

§4.18.10. Nonconforming uses and structures

- A. The lawful use of a building or structure that existed on September 17, 1990, or that exists at the time of any amendment to §4.18, and that is not in conformity with the provisions of §4.18 may be continued in accordance with Article 7, Nonconforming uses.
- B. The zoning administrator may grant an administrative waiver for remodeling or alteration to an existing nonconforming principal or accessory structure provided that:
 - 1. There will be no increase in nonpoint source pollution load; and
 - 2. Any development or land disturbance exceeding an area of 2,500 square feet complies with all erosion and sediment control requirements of §4.16.
- C. The zoning administrator may grant an administrative waiver for expansion, restoration or replacement of an existing nonconforming principal structure provided that:
 - 1. If a nonconforming structure is destroyed or damaged in any manner, it shall be restored only if such use complies with the requirements of §4.18. Any such repair or restoration shall be commenced within 12 months and completed within 18 months from the date of destruction. If the repairs are not completed within 18 months of the date of destruction, the applicant shall file a request for an extension with the zoning administrator. Approval of the request will be subject to demonstration by the applicant that reconstruction by the applicant was pursued in good faith.
 - 2. The cost of land or any factors other than the cost of the structure are excluded in the determination of cost of restoration for any structure determined to be nonconforming.
- D. The zoning administrator may grant an administrative waiver only after making the required written findings outlined in §4.18.12.D.
- E. Administrative waivers shall become null and void 12 months from the date issued if no substantial work has commenced.

§4.18.11. Exemptions

The following uses shall be exempt from the criteria contained in §4.18:

- A. Construction, installation, operation and maintenance of electric, natural gas, fiber-optic, telephone transmission lines, railroads, public roads, and their appurtenant structures; provided that said construction, installation, operation and maintenance is in accordance with the Erosion and Stormwater Management Act (Code of Virginia 9VAC25-830-150) and §4.5 and §6.10 of the zoning ordinance. An erosion and stormwater management plan approved by the department or consistent with department approved standards and

specifications in which local water quality protection criteria are at least as stringent as the state requirements shall be deemed to constitute compliance with this provision. The exemption of public roads is further conditioned on the optimization of the road alignment and design, consistent with other applicable requirements, to prevent or otherwise minimize both encroachment into the RPA and adverse effects on water quality.

- B.** Construction, installation and maintenance of water, sewer, natural gas, and underground telecommunications and cable television lines [owned, permitted, or both, by the city or regional service authority], provided that:
1. Such utilities and facilities shall be located outside the RPA to the degree possible;
 2. No more land shall be disturbed than is necessary to provide for the proposed utility installation;
 3. All construction, installation and maintenance of such utilities and facilities shall be in compliance with all applicable state and federal permits and designed and conducted in a manner that protects water quality; and
 4. Any land disturbance exceeding an area of 2,500 square feet complies with all erosion and sediment control requirements.
- C.** The following land disturbances within the RPA shall be exempted from §4.18: (i) water wells; (ii) passive recreation facilities, such as boardwalks, trails, and pathways; and (iii) historic preservation and archaeological activities, provided that it is demonstrated to the satisfaction of the zoning administrator that:
1. Any required permits, except those to which this exemption specifically applies, shall have been issued;
 2. Sufficient and reasonable proof is submitted that the intended use will not deteriorate water quality;
 3. The intended use does not conflict with nearby planned or approved uses;
 4. §4.5 and §6.10 of the zoning ordinance have been met; and
 5. Any land disturbance exceeding an area of 2,500 square feet shall comply with all city erosion and stormwater management requirements.

§4.18.12. Administrative waivers and special exceptions

A. Administrative waivers

The following administrative waivers may be granted by the zoning administrator:

1. Encroachments into the landward 50 feet of the buffer component of the RPA, provided that the requirements of §4.18.7.D.2 or §4.18.7.D.3 and §4.18.8.F are met;
2. Remodeling and alterations to existing nonconforming principal or accessory structures, provided that the requirements of §4.18.10.B.1 are met;
3. Restoration or replacement of existing nonconforming principal or accessory structures provided that the requirements of §4.18.10.B.2 are met; or
4. Modifications and additions to existing legal principal structures provided the findings of §4.18.12.D are made.

§4.18.12 Administrative waivers and special exceptions**B. Special exceptions**

Special exceptions to the general performance criteria for resource management and resource protection areas detailed in §4.18.7 may be granted by the city council provided the findings of §4.18.12.D are made.

C. Waivers and exceptions

Administrative waivers and special exceptions may not be granted for new accessory structures.

D. Required findings

In granting an administrative waiver or a special exception, the zoning administrator or the city council shall make a written finding that:

1. The request is the minimum necessary to afford relief;
2. Granting the request will not confer upon the applicant any special privileges that are denied by §4.18 to other property owners who are subject to its provisions and who are similarly situated;
3. The request is in harmony with the purpose and intent of this §4.18 and is not of substantial detriment to water quality;
4. The request is not based upon conditions or circumstances that are self-created or self-imposed; and
5. Reasonable and appropriate conditions shall be imposed, as warranted, that will prevent the allowed activity from causing a degradation of water quality.

E. Administrative waiver process

1. The applicant shall submit an administrative waiver request to the zoning administrator. The request shall identify the potential impacts of the waiver on water quality and on lands within the resource protection area through the performance of a water quality impact assessment that complies with the provisions of §4.18.8.
2. The zoning administrator shall review the administrative waiver request and the water quality impact assessment and may grant the waiver with such conditions and safeguards as deemed necessary to ensure and further the purpose and intent of §4.18.
3. If the zoning administrator cannot make the required findings or denies the administrative waiver request, the zoning administrator shall provide written findings and rationale for the decision to the applicant. Denial by the zoning administrator may be appealed to the board of zoning appeals pursuant to §6.21.

F. Special exception process

1. The applicant shall submit a special exception request to the zoning administrator. The request shall identify the potential impacts of the special exception request on water quality and on lands within the resource protection area through the performance of a water quality impact assessment that complies with the provisions of §4.18.8.
2. Each special exception request shall be reviewed by the zoning administrator and scheduled for public hearing before the city council following notification of the

affected public of any such exception requests in accordance with Code of Virginia, §15.2-2204, except that only one hearing shall be required.

3. Special exceptions shall be granted with such conditions and safeguards as deemed necessary, pursuant to §6.16, to ensure and further the purpose and intent of §4.18, provided the findings of §4.18.12.D are met.

§4.18.13. Violations and penalties

- A. The decisions of all departments, officials and public employees of the city that are vested with the duty or authority to issue permits or licenses shall conform to the provisions of §4.18. They shall issue permits for uses, buildings or purposes only when they are in harmony with the provisions of §4.18. Any such permit, if issued in conflict with the provisions of §4.18, shall be null and void.
- B. The zoning administrator is granted all necessary authority on behalf of the city council to administer and enforce §4.18, including the authority in righting or remedying any condition found in violation of §4.18, and the bringing of legal action to secure compliance with §4.18, including injunctive abatement, the imposition of civil penalties, or other appropriate action or proceeding.

§4.18.14. Appeals

Any order, determinations or decision made by the zoning administrator in administration and enforcement of the provisions of §4.18 may be appealed to the board of zoning appeals where it is alleged that an ER occurred. Such appeal shall be made within 30 days from the date of the order, determination or decision and shall further state with particularity the grounds of such appeal. Appeals shall further be made in accordance with §6.21 and Code of Virginia, §15.1-2311.

§4.18.15. Definitions

In addition to the definitions set forth in 9VAC25-875-20 of the Virginia Erosion and Stormwater Management Regulations, as amended, which are expressly adopted and incorporated herein by reference, the following words and phrases shall have the meanings respectively ascribed to them by §4.18 unless the context clearly indicates otherwise:

ADAPTION MEASURE: A project, practice, or approach to mitigate or address an impact of climate change including sea level rise, storm surge, and flooding including increased or recurrent flooding.

CANOPY TREE: As defined in §4.5.9.B.1.

MATURE TREE: A canopy tree with a diameter at standard height (DSH) of 12 inches or greater or an understory tree with a DSH of four (4) inches or greater.

NATURE-BASED SOLUTION: An approach that reduces the impacts of sea level rise, flooding, and storm events through the use of environmental processes and natural systems.

OWNER: The owner or owners of the freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee or other person, firm or corporation in control of a property.

PERMITTEE: The person to whom the permit authorizing land-disturbing activities is issued or the person who certifies that the approved erosion and sediment control plan will be followed.

§4.18.15 Definitions

RESPONSIBLE LAND DISTURBER: A person from the project team or development team who will be in charge of and responsible for carrying out the land-disturbing activity for the project, and who holds a responsible land disturber certificate as governed by the Virginia Department of Conservation and Recreation.

THE ACT: The Chesapeake Bay Preservation Act (Code of Virginia, §62.1-44.15:67 et seq.)

UNDERSTORY TREE: As defined in §4.5.9.B.2.

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