

**UPDATE TO HANDBOOK FOR DEVELOPMENT IN THE
CHESAPEAKE BAY PRESERVATION AREA IN NEWPORT NEWS, VIRGINIA**

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Department of Engineering

Questions?

Contact the Department of Engineering

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INTRODUCTION

This guide serves to provide the public with an update to the third edition of the *Handbook for Development in the Chesapeake Bay Preservation Area in Newport News, Virginia*, dated April 2005. This version is not intended to be all-inclusive, and residents or developers with questions should contact Department of Engineering staff by calling the 311 Contact Center (757-933-2311) or refer to the City's Code of Ordinances.

In 1987, the Chesapeake Bay Commission signed the Chesapeake Bay Agreement that became the basis for states to create and implement programs to improve water quality in Chesapeake Bay. The Virginia General Assembly responded to the Chesapeake Bay Agreement by enacting the Chesapeake Bay Preservation Act in 1988. In turn, the Newport News City Council passed its first Chesapeake Bay Preservation Area (CBPA) map and associated ordinances in 1990. While multiple ordinances aid in non-point source pollution prevention, the majority of information related to development in the CBPA is contained in the City's Chesapeake Bay Preservation Ordinance. This ordinance has been revised as needed in order for the City to remain in compliance with state requirements, and the CBPA map is updated regularly following site-specific delineations.

Currently, CBPA development criteria are found in Chapter 37.1 Stormwater Management Article V. Chesapeake Bay Preservation of the City's Code of Ordinances, which can be accessed online (https://www.municode.com/library/va/newport_news/codes/code_of_ordinances).

The purpose and intent of the Chesapeake Bay Preservation Ordinance requirements are to:

- 1) Protect existing state and community waters.
- 2) Restore state waters to a condition or quality that will permit all reasonable public uses and will support the propagation and growth of all aquatic life, including game fish, which might reasonably be expected to inhabit them.
- 3) Prevent any further increase in nonpoint source pollution.
- 4) Reduce existing nonpoint source pollution in state and community waters in order to provide for the health, safety, and welfare of the present and future citizens of the City of Newport News.

Key definitions from the Chesapeake Bay Preservation Ordinance:

Resource Protection Area (RPA) is defined as “that component of the Chesapeake Bay Preservation Area comprised of lands adjacent to water bodies with perennial flow that have an intrinsic water quality value due to the ecological and biological processes they perform or are sensitive to impacts which may result in significant degradation to the quality of state and local waters”. The ordinance states that a 100-foot vegetative RPA buffer area is effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff. The 100-foot RPA is divided into two halves: the **seaward fifty (50) feet of RPA buffer**, (“the 50 feet of the RPA 100-foot buffer adjacent to RPA components”), and the **landward fifty (50) feet of RPA buffer** (“the 50 feet of the RPA 100-foot buffer which resides between the seaward 50 feet of RPA and Resource Management Area components”).

Resource Management Area (RMA) is defined as “that component of the Chesapeake Bay Preservation Area that is not classified as the Resource Protection Area. RMAs include land types that, if improperly used or developed, have the potential for causing significant water

quality degradation or for diminishing the functional value of a Resource Protection Area”.

Industrial Waterfront Intensely Developed Area (IWIDA) is defined as “any portion of Chesapeake Bay Preservation Area so designated by the City Council. Industrial waterfront IDAs are industrial areas located along the shoreline that, because of the intensity of their use, are characterized by an absence of natural environmental features and a preponderance of impervious surface and bulkheaded or ripped shoreline”.

The CBPA map, accessible to the public online at <http://gis2.nngov.com/gisviewer/>, overlays these three buffer designations so residents and developers can determine if CBPA buffers impact their properties. A city-wide map of CBPA areas is included in Figure 1. It is important for residents and developers to understand this depiction, and the GIS viewer map available online, serve only as a general guide. Depending on the extent and location of any proposed activity, a site-specific CBPA delineation may be required to update current land conditions. The same is true for wetlands; specific activities may require the delineation of wetlands (depicted as wetlands or shoreline on the map).

This guide focuses on common types of development within in the Resource Protection Area (RPA) and Resource Management Area (RMA). Developers with questions about the Industrial Waterfront Intensely Developed Area (IWIDA or IDA) or projects not listed within this guide can contact the Department of Engineering.

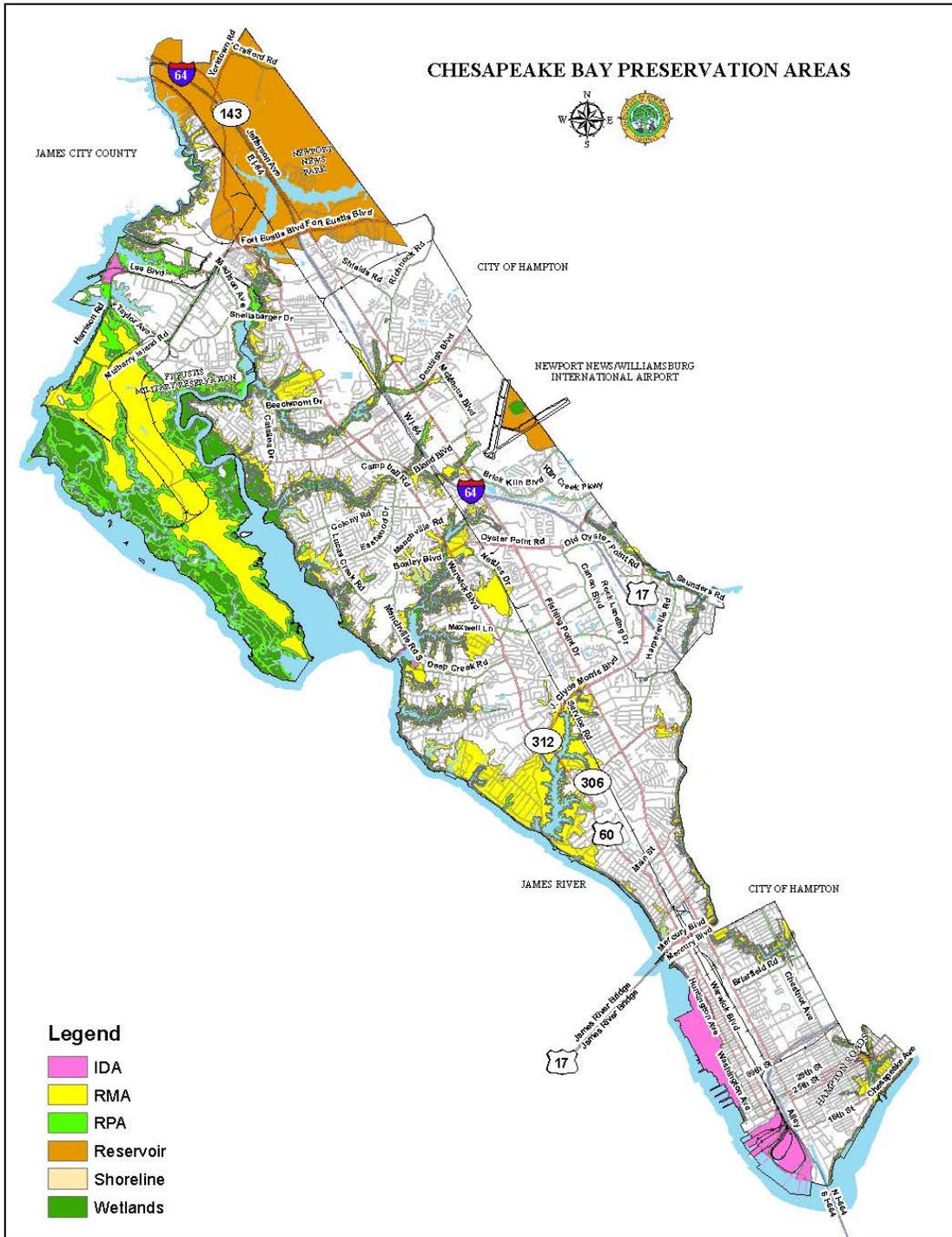


Figure 1. City of Newport News Chesapeake Bay Preservation Area (CBPA) guidance map. Resource Protection Areas (RPA) are displayed in green and Resource Management Areas (RMA) are displayed in yellow. This color scheme is typical of Newport News maps, including the publicly available GIS viewer. The Intensely Developed Areas (IDA) are limited to the coal terminals and shipyard. Note: This figure is provided only as a guide; site-specific delineations may be required.

GENERAL PERFORMANCE STANDARDS FOR CHESAPEAKE BAY PRESERVATION AREAS

The City's Chesapeake Bay Preservation Ordinance identifies general performance standards for development and redevelopment in all CBPA Resource Management Areas (RMA) and Resource Protection Areas (RPA). City staff is required to review proposed development and redevelopment within the RMA and RPA buffers to meet the following performance criteria, in order to protect water quality:

- No more land shall be disturbed than is necessary to provide for the proposed use or development.
- Indigenous (native) vegetation shall be preserved to the maximum extent practicable consistent with the proposed use or development.
- Land development shall minimize impervious cover (hard surfaces) consistent with the proposed use or development.
- All development and redevelopment exceeding 2500 square feet of land disturbance requires a plan of development process, and must comply with the City's Erosion and Sediment Control requirements and Virginia Stormwater Management Program requirements. A Land Disturbance Permit must be obtained through the Department of Engineering to satisfy these requirements. Additional information is found in Chapter 37.1 Stormwater Management and Chapter 33.02 Site Regulations.
- Onsite sewage treatment systems that don't require a Virginia Pollution Discharge Elimination System (VPDES) permit shall be pumped out every five years by the owner, or (for new construction) must have a reserve sewage disposal site with a capacity of at least equal to the primary sewage disposal site. The final plan shall include a note citing to City Code Section 33-91.1 indicating pump-out requirements or reserve drain field requirements. Additional information is found in Chapter 33 Sewers and Sewage Disposal Article VI. Septic Tank Systems.

Most new development exceeds 2500 square feet of land disturbance, which triggers the plan of development process. CBPA compliance is reviewed as a part of that process. Residents of single-family lots who want to construct additions to their houses or add sheds, swimming pools or other accessory structures may not require the full plan of development process if land disturbance will not exceed 2500 square feet. In those cases, City staff still must review the proposed activities within CBPA buffers, and this is accomplished through the Building Permit Application review process. Residents are encouraged to contact the Department of Codes Compliance via the 311 Contact Center to initiate the Building Permit Application process to ensure projects are constructed properly.

For projects that are proposed in the 100-foot RPA buffer, please see "PERMITTED LAND DISTURBANCE IN RESOURCE PROTECTION AREAS".

PERMITTED LAND DISTURBANCE IN RESOURCE PROTECTION AREAS

Criteria for development and redevelopment in the 100-foot Resource Protection Area (RPA) are more stringent than the Resource Management Area (RMA) because of the closer proximity to the protected RPA features, such as a perennial stream or wetlands adjacent to a perennial stream. The vegetated RPA buffer provides protection between human development and the tributaries of the Chesapeake Bay. Removal of RPA vegetation requires mitigation in the form of plantings. Native plants are preferred, and noxious/invasive species should be avoided.

An assessment tool utilized by City staff to determine if the project meets ordinance requirements (and what specific mitigation plantings are required) is the Water Quality Impact Assessment. In most cases, a Minor Water Quality Impact Assessment is satisfactory. Various versions of this form are included in Appendix A of this guide. If greater than 10,000 square feet of land disturbance will occur, or if certain types of development are proposed within the seaward 50 feet of the 100-foot RPA buffer, a Major Water Quality Impact Assessment will be required, as detailed in Section 37.1-51 of the Chesapeake Bay Preservation Ordinance.

The types of development or vegetation removal in the RPA that *may* be administratively allowed, subject to City staff review and approval, are detailed below. For projects not listed below, an exception to the Chesapeake Bay Preservation Ordinance may be required through the Board of Zoning Appeals process (see "EXCEPTIONS").

SIGHT LINES, VISTAS AND ACCESS PATHS

The City's Chesapeake Bay Preservation Ordinance permits the removal or modification of RPA buffer vegetation to provide for reasonable sight lines, vistas and access paths. In all instances of RPA vegetation removal, property owners should contact the Department of Engineering staff to secure written permission prior to land disturbance or vegetation removal. Plans must be submitted for staff review, and those plans should clearly indicate the location of existing trees and shrubs in the RPA buffer, and identify which trees and shrubs are proposed for removal for the proposed sight line, vista or access path. Staff will review the proposed activities to ensure that all three trophic layers of vegetation (trees, shrubs, and groundcover) are retained in the RPA buffer where possible, and to ensure that vegetation removal will be performed responsibly, and replaced where required.

Sight lines from a primary structure to a waterway can be achieved through selective pruning to provide a filtered view through existing RPA vegetation. When pruning alone will not accomplish the desired sight lines, selective removal may be proposed. Dead, dying, diseased trees/shrubbery, and noxious species should be removed as the first step, in order to preserve healthy, functioning buffer vegetation. Groundcover should not be removed to achieve a sight line or vista. Filtered sight lines are preferred over vistas. Vistas may be allowed in certain situations, and trees and shrubs must be retained on either side of the framed view. Vegetation should be retained on slopes to protect the wetlands and perennial waterbodies. Any trees or shrubs that are removed to establish a sight line or vista must be replaced with mitigation plantings.

Access paths should be constructed so as to effectively control erosion; pervious surfaces shall be utilized to the maximum extent practicable. Access paths should be limited to the minimum width necessary for the proposed use in order to preserve as much vegetation as feasible. Vegetation removal should be limited to the pathway area; the location of the path should be selected to impact the existing

RPA vegetation as minimally as possible. The proposed access path, materials to be used, and vegetation to be removed should be identified on a plan submitted for review and approval by the Department of Engineering through 311 Contact Center (757-933-2311). A Land Disturbance Permit is required if the total area of disturbance will exceed 2500 square feet.

WATER-DEPENDENT FACILITIES

“Water-dependent facilities” include docks, piers, boat slips, and their access pathways, which by nature of their operation, must be located within the RPA. New facilities, or expansions to those already existing, require the submission of a Joint Permit Application through the Virginia Marine Resources Commission (757-247-2200). The Joint Permit Application will ensure that all appropriate regulatory agencies with potential jurisdictional authority (including the Virginia Marine Resources Commission, United States Army Corps of Engineers, Department of Environmental Quality, and Newport News Wetlands Board) have an opportunity to review the project. This process must be completed, with written confirmation from these agencies provided, before any City permits can be issued.

Once the required reviews, approvals, or permits are secured by the property owner or their representative from external agencies, applicants should contact the City of Newport News Department of Codes Compliance to determine if a Building Permit is required. At that time, the application will be forwarded to the Department of Engineering for Chesapeake Bay Preservation Ordinance compliance review, and to determine if a Land Disturbance Permit will be required. If any vegetation (including turf grass) within the 100-foot RPA buffer is to be removed for the water-dependent facility and its access pathway, vegetative mitigation will be required. The *Minor Water Quality Impact Assessment For Land Disturbance on a Single Family Property* must be submitted by the applicant for such projects on residential lots. That form, included in Appendix A of this guide, will aid in determining what mitigation is required. A Major Water Quality Impact Assessment, per Chesapeake Bay Preservation Ordinance Section 37.1-51, may be required for commercial or industrial properties.

SHORELINE EROSION CONTROL PROJECTS

Shoreline erosion control projects include new and replacement bulkheads, riprap, geomats, living shorelines, and any associated shoreline slope regrading. These types of projects require the submission of a Joint Permit Application through the Virginia Marine Resources Commission (757-247-2200). The Joint Permit Application will ensure that all appropriate regulatory agencies with potential jurisdictional authority (including the Virginia Marine Resources Commission, United States Army Corps of Engineers, Department of Environmental Quality, and Newport News Wetlands Board) have an opportunity to review the project. This process must be completed, with written confirmation from these agencies provided, before any City permits can be issued.

Once the required reviews, approvals, or permits are secured by the property owner or their representative from external agencies, applicants should contact the City of Newport News Department of Codes Compliance to determine if a Building Permit is required. At that time, the application will be forwarded to the Department of Engineering for Chesapeake Bay Preservation Ordinance compliance review, and to determine if a Land Disturbance Permit will be required. If any vegetation (including turf grass) within the 100-foot RPA buffer is to be removed for the shoreline erosion control project, vegetative mitigation will be required. The *Minor Water Quality Impact Assessment For Shoreline Erosion Control Projects* must be submitted by the applicant. That form, included in Appendix A of this guide, will aid in determining what mitigation is required.

NEW OR EXPANDED PRINCIPAL STRUCTURES

The City's Chesapeake Bay Preservation Ordinance, in accordance with state regulations, separates parcels into two categories: pre-Bay Act and post-Bay Act. It's recognized that parcels and lots were created or recorded before the Chesapeake Bay Preservation Act and its attendant regulations went into effect, and therefore, many structures existed and continue to exist in the 100-foot Resource Protection Area (RPA) buffer. Similarly, many pre-Bay Act parcels are situated and sized so that the placement of a principal structure in the RPA buffer is unavoidable. The ordinance allows for flexibility for property owners on such pre-Bay Act lots, as follows:

Lots or Parcels Recorded Prior to October 1, 1989:

If the application of the CBPA buffers would result in the loss of a buildable area on a lot created and recorded prior to October 1, 1989, City staff may administratively allow encroachment into the landward 50 feet of RPA buffer for a new principal structure and necessary utilities. No encroachment may occur in the seaward 50 feet of RPA buffer.

Lots or Parcels Recorded Between October 1, 1989 and March 1, 2002:

If the application of the CBPA buffers would result in the loss of a buildable area on a lot created as part of a legally-created subdivision between October 1, 1989 and March 1, 2002, City staff may administratively allow encroachment into the RPA buffer for a new principal structure and necessary utilities. No encroachment may occur in the seaward 50 feet of RPA buffer.

RPA encroachment may be allowed for new principal structures and necessary utilities for these parcels, provided that the encroachment is the minimum necessary to afford relief. Applicants should attempt to locate primary structures outside of the RPA where possible. No encroachment may occur in the seaward 50 feet of the 100-foot RPA buffer. An environmental site assessment (including a field-verified wetland and RPA delineation) may be required of the applicant to document exact boundary locations, and the extent of wetlands and CBPA buffers must be depicted on plats and plans.

For any plat or plan with RPA onsite, the following notation is required: *"The Resource Protection Area will be retained as an undisturbed and vegetated 100-foot buffer not subject to development under City Code Section 37.1-51(b)(1), unless the development is a water-dependent facility or redevelopment"*.

Mitigation for the RPA encroachment is also required. Where practicable, a vegetated mitigation area shall be established on the parcel equal to the area of encroachment to maximize water quality protection and mitigate the effects of encroachment. The *Minor Water Quality Impact Assessment For Land Disturbance on a Single Family Property* or the *Minor Water Quality Impact Assessment For Commercial or Industrial Development* must be submitted by the applicant. Those forms, included in Appendix A of this guide, will aid the applicant and City staff in determining what mitigation is required.

If a property owner desires to construct an addition to an existing legal principal structure (referred to as a "nonconforming" principal structure") that encroaches into the RPA, city staff may administratively allow that expansion through a development waiver, provided that specific ordinance criteria (detailed in Section 37.1-53) are met. The appropriate Water Quality Impact Assessment Form must also be submitted by the applicant to include required mitigation. The same plat/plan requirements stated above must also be met.

In all instances, applicants should contact the City of Newport News Department of Codes Compliance

to determine if a Building Permit is required. At that time, the application will be forwarded to the Department of Engineering for Chesapeake Bay Preservation Ordinance compliance review, and to determine if a Land Disturbance Permit will be required.

For parcels that were created/recorded *after* March 1, 2002, or where encroachment is proposed for the seaward 50 feet of the 100-foot RPA buffer, a formal exception to the Chesapeake Bay Preservation Ordinance is required (see "EXCEPTIONS").

EXCEPTIONS

Some construction in the 100-foot RPA cannot be administratively approved, such as that for accessory structures (including detached garages, sheds, gazebos or swimming pools), for certain development proposed in the seaward 50 feet of the RPA, and for RPA encroachment of primary structures on parcels created after March 1, 2002. For any proposed project that cannot be administratively approved by City staff, approval by the Newport News Board of Zoning Appeals is required.

Information on the Board of Zoning Appeals can be found here: <https://www.nnva.gov/1025/Board-of-Zoning-Appeals>. Department of Engineering staff will provide the necessary application form, which includes a schedule for application deadlines. Applications must include a development plan and appropriate water quality impact assessment. The administrative fee is \$250 per application; payment is due with the application. Prior to the public hearing, surrounding property owners will be notified, a notification will be posted on the property, and a newspaper advertisement will be issued. Public hearings are held in City Council Chambers (2400 Washington Ave) on the third Tuesday of each month at 5:00pm.

Engineering staff will provide a case report to the Board members and to interested parties prior to the hearing, in order to aid the Board in its decision-making process. The staff report includes information about the property, proposed development, and the required exception criteria. Section 37.1-55 of the Chesapeake Bay Preservation Ordinance specifies that the Board of Zoning Appeals may grant exceptions to several provisions of the ordinance, including Sections 37.1-51(b)(1)b. and 37.1-51(b)(2), upon the following criteria:

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

If the Board approves an exception to the CBPA ordinance, a vegetative mitigation agreement must be signed by the property owner to insure the installation of required plantings. The applicant may then proceed with obtaining necessary permits for land disturbance, to include a Building Permit and Land Disturbance Permit, if required. If an exception request is denied, an appeal may be filed with the Circuit Court within thirty days of the public hearing date, according to Chesapeake Bay Preservation Ordinance Section 37.1-55.1.

ENFORCEMENT

It is the intention of City staff to address unauthorized land disturbance in the CBPA through education and mitigation requirements. In some instances, further enforcement action is warranted. Chesapeake Bay Preservation Ordinance Section 37.1-57 addresses violation enforcement. Violations can be enforced through either the criminal or civil court process. A successful criminal penalty case could result in a misdemeanor, with fines up to \$1,000 per day of continued offense. A successful civil penalty case could result in fines up to \$5,000 per day of violation. At the request of the violator, the City can order the property owner to pay a one-time civil charge not to exceed \$10,000 for each violation, to be paid into the City Treasury, in lieu of civil penalties.

APPENDIX A. MINOR WATER QUALITY IMPACT ASSESSMENT FORMS