

Exmore, VA Bay Act Locality Report

Exmore, Virginia is subject to the [Chesapeake Bay Preservation Act](#) (Bay Act) and must have specific program elements as established under the Bay Act and the accompanying Chesapeake Bay Preservation Area Designation and Management Regulations. The regulations provide the required elements and criteria that local governments must adopt and implement in administering their Bay Act programs. The purpose of the Bay Act program is to protect and improve water quality in local waters and the Chesapeake Bay by requiring the implementation of effective land use and development management practices.

Local Bay Act programs must include:

1. A map generally depicting Chesapeake Bay Preservation Areas (CBPAs).
2. Performance criteria applying in CBPAs that pertain to the use, development, and redevelopment of land.
3. A comprehensive plan that incorporates the protection of CBPAs and quality of state waters in the locality.
4. Zoning or other ordinance that incorporates measures to protect the quality of state waters within CBPAs and requires compliance with the performance criteria.
5. A subdivision ordinance that incorporates measures to protect the quality of state waters in CBPAs and assures that all subdivisions in CBPAs comply with the performance criteria.
6. A plan of development process prior to the issuance of a building permit to assure that the use and development of land in CBPAs is accomplished in a manner that protects the quality of state waters.
7. Publishing on its website the elements and criteria adopted to implement their local plan.

Chesapeake Bay Preservation Areas:

Chesapeake Bay Preservations Areas include Resource Management Areas and Resource Protection Areas. The Resource Protection Area (RPA) includes all tidal wetlands; tidal waters; non-tidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow; shorelines; and a one hundred (100) foot vegetated buffer around such features and around all water bodies with perennial flow. The Resource Management Area (RMA) includes those lands contiguous to the inland boundary of the RPA which have a potential for degrading water quality or diminishing the functional value of the RPA, if not properly managed. The RMA within Exmore, Virginia has been designated as a component of the Chesapeake Bay Preservation Area. The entirety of Northampton County is recognized as either a Resource Protection Area or Resource Management Area (RMA). A resource protection

area (RPA) includes the following: tidal wetlands; water bodies with perennial flow; non-tidal wetlands connected by surface flow and contiguous to tidal wetlands; non-tidal wetlands connected by surface flow and contiguous to water bodies with perennial flow; tidal shores and beaches; coastal primary sand dunes, including beaches; and a 100-foot vegetated buffer area located adjacent to and landward of the components listed above with the exception of perennial flow in which the buffer is located along both sides of any water body with perennial flow.

The lands that make up Chesapeake/Atlantic Preservation Areas are those that have the potential to impact water quality most directly. Generally, there are two types of land features: those that protect and benefit water quality directly (Resource Protection Areas, or RPAs) and those that, without proper management, have the potential to damage water quality (Resource Management Areas, or RMAs). By carefully managing land uses within these areas, Northampton County can help reduce the water quality impacts of nonpoint source pollution and improve the health of the Chesapeake Bay and Seaside marshes.

Per Northampton County Zoning Ordinance 154.2.163, the County will perform a RPA delineations. Encroachments into the RPA must meet the requirements of Northampton County Zoning Ordinance 154.2.163(l).

Additional information with regards to RPA can be found in the following documents.

[Link to Riparian Buffers Modification & Mitigation Guidance Manual](#)

[Link to DEQ Information & Resources on Resource Protection Areas](#)

The Commonwealth of Virginia, Code Section 9VAC 10-20-120.7, and Northampton County's Chesapeake/Atlantic Preservation Areas (CAP), Section 154.2.163, specifies that all on-site sewage disposal systems shall be pumped out at least once every five years. The entirety of Northampton County is recognized as either a Resource Protection Area or Resource Management Area qualifying all properties to comply with this program. For questions regarding the Septic Pump-out Program, please contact our Administrative Clerk.

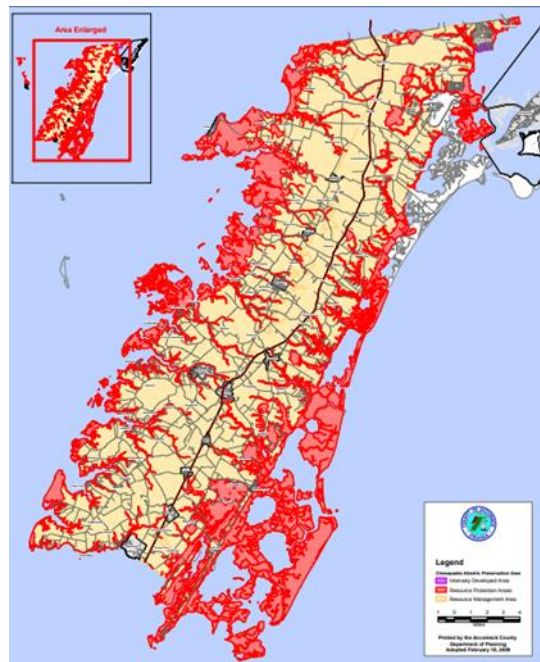
The Virginia General Assembly enacted the Chesapeake Bay Preservation Act in 1988. The Act is a critical element of Virginia's multifaceted response to the Chesapeake Bay Agreement. The Bay Act established a cooperative relationship between the Commonwealth and local governments and is aimed at reducing and preventing nonpoint source pollution. The Bay Act, like many other environmental protection programs, is an extension of the public trust doctrine. The beds of Virginia's streams,

rivers and estuaries and the waters above them are held and managed by the Commonwealth for the benefit of all Virginians.

Northampton County has adopted zoning overlay district known as the Chesapeake/Atlantic Preservation District (CAP) to incorporate into county zoning water quality protection measures consistent with the state's Bay Act Regulations. Because of Northampton's proximity to the fragile Atlantic Ocean marine marshlands, Bay Act protection regulations have been extended to the County's seaside area as well. The Regulations address non-point source pollution by identifying and protecting certain lands called Chesapeake/Atlantic Preservation Areas.

Additionally, Exmore, Virginia has identified as an Intensely Developed Area (IDA) which overlies portions of the RPA.

These CBPAs are identified in the Exmore, Virginia's adopted CBPA map which can be found here:



Provisions for Activities in Chesapeake Bay Preservation Areas:

Under the Bay Act framework, Exmore, VA is responsible for implementing its Bay Act program. Exmore, Virginia has adopted ordinance provisions that incorporate the performance criteria required by the Bay Act. Those provisions include the use of land, buildings, structures, and other premises for agricultural, commercial, industrial, residential, and other specific uses and the size, height, area, bulk, location, erection,

construction, reconstruction, alteration, repair, maintenance, razing or removal of structures; and the areas and dimensions of land, water, and air space to be occupied by buildings, structures and uses, and of courts, yards, and other open spaces to be left unoccupied by uses and structures, including variations in the sizes of lots based on whether a public or community water supply or sewer system is available and used; and the excavation or mining of soil or other natural resources. Those provisions include ordinances and can be found here: [Link to Exmore, VA Ordinances](#)

As outlined in the ordinance and required by the Bay Act and Regulations, land development and disturbance in a Resource Protection Area is limited and Exmore, Virginia requires waivers and/or exceptions.

Administrative Waiver Process. Development may occur upon the approval of an administrative waiver process when the following conditions exist.

- a) An applicant seeks to expand nonconforming uses and structures. For the purposes of the CAP, this shall be defined as the lawful use of a building or structure which existed on October 1, 1989, or which exists at the time of any amendment to this chapter, and which is not in conformity with the provisions of the CAP.
- b) The application of the buffer area would result in the loss of buildable area on a lot or parcel recorded prior to October 1, 1989.
- c) No waiver shall be granted unless the following conditions and findings are met:
 1. Encroachments into the buffer areas shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities;
 2. The encroachment may not extend into the seaward 50 feet of the buffer area;
 3. There will be no increase in nonpoint source pollution load;
 4. Where practicable, a vegetated area that will maximize water quality protection, mitigate the effects of the buffer encroachment, and is equal to the area of encroachment into the buffer area shall be established elsewhere on the lot or parcel;

5. Any development or land disturbance exceeding an area of 2,500 square feet complies with all erosion and sediment control requirements of this chapter.
- d) A request for an administrative waiver to the requirements of this chapter shall be made in writing to the Zoning Administrator. It shall identify the impacts of the proposed waiver on water quality and on lands within the RPA through the performance of a water quality impact assessment which complies with the provisions of NCC § [154.2.163\(O\)](#).
 - e) The Zoning Administrator shall review the request for an administrative waiver and the water quality impact assessment and may grant the waiver with such conditions and safeguards as deemed necessary to further the purpose and intent of this chapter, but only if the Zoning Administrator finds:
 1. Granting the waiver will not confer upon the applicant any special privileges that are denied by this chapter to other property owners in the CAP;
 2. The waiver request is not based upon conditions or circumstances that are self-created or self-imposed, nor does the request arise from conditions or circumstances either permitted or non-conforming that are related to adjacent parcels;
 3. The waiver request is the minimum necessary to afford relief;
 4. The waiver request will be in harmony with the purpose and intent of this chapter, and not injurious to the neighborhood or otherwise detrimental to the public welfare and is not of substantial detriment to water quality;
 5. Reasonable and appropriate conditions are imposed which will prevent the waiver request from causing a degradation of water quality;
 6. In no case shall this provision apply to accessory structures; and
 7. The waiver is permitted by NCC § [154.2.245](#) et seq.

- f) An administrative waiver request shall be made to and upon forms furnished by the Zoning Administrator and shall include, for the purpose of proper enforcement of this chapter, the following information:
1. Name and address of applicant and property owner;
 2. Legal description of the property and type of proposed use and development;
 3. A sketch of the dimensions of the lot or parcel, location of buildings and proposed additions relative to the lot lines, and boundary of the RPA. Location and description of any existing private water supply or sewage system; and
 4. Justification for the waiver request, including how the criteria in NCC § 154.2.163(l)(8)(e) are satisfied by the waiver request;
 5. A waiver shall become null and void 12 months from the date issued if no substantial work has commenced;
 6. If the Zoning Administrator cannot make the required findings or refuses to grant the waiver, the Zoning Administrator shall return the request for a waiver together with the water quality impact assessment and the written findings and rationale for the decision to the applicant, with a copy to the Board of Zoning Appeals. The applicant may then apply to the Board of Zoning Appeals for an exception.

Exceptions by the Board of Zoning Appeals.

- a) Persons aggrieved by the denial of a waiver by the Zoning Administrator may appeal for an exception from the Board of Zoning Appeals ("BZA").
- b) A request for an exception to the requirements of this chapter shall be made in writing to the Board of Zoning Appeals on forms furnished by the Zoning Administrator and shall include the information specified in NCC § 154.2.163(l)(8)(f). The request shall identify the impacts of the proposed exception on water quality and on lands within the RPA through the performance of a water quality impact assessment which complies with the provisions of NCC.

- c) After notice and public hearing, the BZA shall review the request for an exception and the water quality impact assessment and may grant the exception with such conditions and safeguards as deemed necessary to further the purpose and intent of this chapter, if the BZA finds:
1. The exception request is the minimum to afford relief, and any encroachments into the buffer areas shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities;
 2. There will be no increase in nonpoint source pollution load;
 3. Where practicable, a vegetated area that will maximize water quality protection, mitigate the effects of the buffer encroachment, and is equal to the area of encroachment into the buffer area shall be established elsewhere on the lot or parcel;
 4. Any development or land disturbance exceeding an area of 2,500 square feet complies with all erosion and sediment control requirements of this chapter;
 5. Granting the exception will not confer upon the applicant any special privileges that are denied by this chapter to other property owners in the CAP;
 6. The exception request is not based upon conditions or circumstances that are self-created or self-imposed, nor does the request arise from conditions or circumstances either permitted or non-conforming that are related to adjacent parcels;
 7. The exception request will be in harmony with the purpose and intent of the CAP, and not injurious to the neighborhood or otherwise detrimental to the public welfare and is not of substantial detriment to water quality;
 8. Reasonable and appropriate conditions are imposed which will prevent the exception request from causing a degradation of water quality;
 9. In no case shall this provision apply to accessory structures; and

10. The waiver is permitted by NCC § [154.2.245](#) et seq.

- d) An exception shall become null and void 12 months from the date issued if no substantial work has commenced.
- e) An exception may be appealed in the same manner as a variance.

Exemptions in Resource Protection Areas.

The following uses in RPAs may be exempted: water wells; passive recreation facilities such as boardwalks, trails, and pathways; and 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; and
- (4) Any land disturbance exceeding an area of 2,500 square feet shall comply with all Northampton County erosion and sediment control requirements.

For example as part of a site plan review, any proposed development in the RPA is reviewed to ensure it meets applicable requirements, including a site-specific RPA delineation using a DEQ - approved protocol and the submission of a Water Quality Impact Assessment which can be found here: [Link to the Water Quality Impact Assessment Form](#)

The Exmore, Virginia Bay Act program is implemented within the Northampton County Department of Planning and Zoning Office which should be contacted as early in the project decision making process as possible, including application for a building permit, to determine what steps may need to be taken for compliance with the local Bay Act program.

More Information:

Additionally, as required by the Bay Act, water quality and protection provisions have been included in Exmore, Virginia's comprehensive plan which can be found here: [Link to Northampton County, VA Comprehensive Plan](#)

You can learn more about the Bay Act and [The Virginia Department of Environmental Quality](#) which provides general program oversight and technical assistance to Exmore, Virginia. [Link to VDEQ Chesapeake Bay Preservation Act](#)

[Link to Northampton County VA Comprehensive Land Use Policy Review](#)

[Link to Code of VA Chesapeake Bay Preservation Act](#)

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