

## OVERLAY DISTRICTS

*Prepared for the Chesapeake Bay Commission meeting, September 9, 2021*

### ***Highlights/Takeaways***

- *Overlay districts can be used to impose stricter building requirements in areas that localities want to target for increased resilience.*
- *They can incentivize development shifts, rather than having to use eminent domain powers or to find funding to purchase vulnerable properties.*
- *Overlay districts can be used in lieu of Transfer of Development Rights (TDR) programs, which establish “sending” and “receiving” areas for development rights and enable a developer to build to a greater density than allowed by the underlying zoning classification in receiving areas. TDR programs can be used to increase resilience by establishing sending areas in low-lying, flood prone areas; but they require a sufficient level of demand for development in a receiving area to drive the purchase of development rights in a sending area. Overlay districts such as the CRO and URO established by Norfolk can be used to drive development to higher ground without the locality having to administer a TDR program and attendant real estate tax abatements.*

Overlay zones impose additional land use regulations beyond existing zoning restrictions. For instance, a locality could implement an overlay zone that requires more stringent building standards for an area beyond those required by the local government generally. They can also help make existing structures become more resilient by requiring that property owners wishing to renovate or rebuild a structure do so in a more resilient way. Localities could implement an overlay zone in areas that flood, and require that new and rebuilt structures there adhere to more resilient building code regulations than surrounding, non-flooding areas. Specifically, overlay zone requirements in these flooding areas could specify that buildings must be elevated, use flood-resistant materials, or include other resilient design features, when they are built, rebuilt or renovated. While local governments typically have the power to create these overlay zones due to their inherent zoning powers, in Dillon Rule states, like Virginia, state legislatures could pass legislation specifically empowering them to impose new overlay zones to require more resilient building standards, and to make their communities more resilient against sea level rise in other ways.

### ***Building a Better Norfolk’s Overlay Districts<sup>1</sup>***

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<sup>1</sup> *Building a Better Norfolk: A Zoning Ordinance for the 21<sup>st</sup> Century*, <https://www.norfolk.gov/DocumentCenter/View/35581/Adopted-Zoning-Ordinance?bidId> (adopted 2018, updated 2021).

Norfolk’s **Building a Better Norfolk** zoning ordinance features two overlay districts: the coastal resilience overlay (CRO) and the upland resilience overlay (URO) district. The CRO includes areas of high flood risk, and developers there must meet a Resilience Quotient<sup>2</sup> by having their projects undergo a site plan review and complying with flood resilience requirements. The Resilience Quotient system applies to all new development and redevelopment, with specific exceptions. It allows developers to earn points for adopting resilient features that reduce flood risk, manage stormwater, and improve energy resilience, among others. Developers must meet different point totals depending on whether the development is residential or non-residential, and depending on the size of the development. New development in the CRO must also meet resilience requirements, such as elevation to at least three feet above base flood elevation (BFE) for structures in the 100-year floodplain, and one and a half feet above BFE in the 500-year floodplain.<sup>3</sup>

The URO is an overlay district that covers areas outside of Norfolk’s flood zones where the City wishes to encourage new development, because they offer both a reduced risk of flooding and “the potential to support transformational redevelopment.”<sup>4</sup> While the URO still has baseline resilience requirements for development, the ordinance incentivizes development in the URO by requiring fewer resilience points to build there than in the CRO. Additionally, the ordinance allows a developer to earn up to four resilience points for each development right extinguished in the CRO district by direct purchase or easement—i.e., for moving a development project from the CRO to the URO and permanently removing the parcel in the CRO from development. While localities already possess the power to create overlay districts, the Norfolk overlay district examples highlight how localities can use such districts to prompt movement away from flooding areas to areas more suitable for new development, using incentives rather than purchases, like buyouts, to permanently remove flood prone properties from the market.

### *Florida’s Adaptation Action Areas<sup>5</sup>*

The Florida Legislature passed a law that empowers localities to create adaptation action areas (AAAs), overlay zones to proactively deal with coastal flooding due to extreme high tides and storm surge, and to provide increased resilience in low-lying areas. The adaptation actions in these AAAs are typically either enhanced regulatory scrutiny, such as stricter building code requirements, or capital improvement projects, like stormwater and resilient infrastructure projects. For example, Satellite Beach, Florida, created an AAA that requires stricter regulations for construction projects in that area. Fort Lauderdale, Florida, developed an AAA that identified capital improvement projects in it, and prioritized funding for the construction there of a sea wall and a drainage project. One strength of Florida’s AAAs is that they are not required to be limited to any specific geographic area, such as a floodplain. However, these overlay zones are still relatively new and have not been utilized by many localities so far.

### *New Jersey’s Flood Overlay Zones<sup>6</sup>*

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<sup>2</sup> *Id.*, Sec. 5.12, RESILIENCE QUOTIENT.

<sup>3</sup> *Id.*, Sec. 3.9.18. CRO: COASTAL RESILIENCE OVERLAY.

<sup>4</sup> *Id.*, Sec. 3.9.19. URO: UPLAND RESILIENCE OVERLAY.

<sup>5</sup> [https://floridadep.gov/sites/default/files/AAA-Planning-Guide\\_1.pdf](https://floridadep.gov/sites/default/files/AAA-Planning-Guide_1.pdf).

<sup>6</sup> <https://cityofjerseycity.civicweb.net/document/15126>.

Jersey City, New Jersey created flood overlay zones, called “F Zones,” in the city’s highest flood risk areas. New development in F zones is required to meet Green Area Ratio (GAR) standards. The GAR is calculated using scores for resilient features that a development utilizes, including bioretention facilities, water features that use recycled water, vegetated walls, green roofs, permeable pavement and other green infrastructure. Development in areas with the highest flood risk, zoned F-VE, must meet a GAR of 0.5, while those zoned F-AE must meet a GAR of 0.25.

***Boston’s Proposed Coastal Flood Resilience Zoning Overlay District<sup>7</sup>***

The Boston Planning and Development Agency recently released a draft overlay zone that would require new development and retrofits in the overlay zone to undergo a resilience review and comply with additional coastal flood resilience design guidelines. The goal of the new requirements are to prevent flood damage and protect health and safety in flooding areas. The new building standards will require additional building height above the sea level rise base flood elevation, building setbacks, open space requirements, and limitations on uses below the sea level rise design flood elevation.

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<sup>7</sup> <http://www.bostonplans.org/news-calendar/news-updates/2021/01/04/bpda-releases-draft-zoning-overlay-to-strengthen-r>.