

## City of Falls Church

Meeting Date:  7-22-13	Title: (TO13-18) ORDINANCE TO CREATE CHAPTER 35 “STORMWATER,” ARTICLE I “STORMWATER MANAGEMENT” OF THE FALLS CHURCH CITY CODE TO CLARIFY AND REORGANIZE EXISTING STORMWATER MANAGEMENT REGULATION; TO ADD NEW LANGUAGE REQUIRED BY THE STATE OF VIRGINIA	Agenda No.:  10 (b) (2)
Proposed Motion: <b>MOVE to adopt (TO13-18) on first reading, refer to Planning Commission, Environmental Services Council and Tree Commission, schedule public hearing and second reading for October 28, 2013, and to advertise the same according to law.</b>		
Originating Dept. Head: Cindy Mester, Interim Director of Public Works 703.248.5042 <a href="#">CLM 7-17-13</a> Jason Widstrom, PE, City Engineer 70.248.5026 <a href="#">JW 7-17-13</a>		Disposition by Council:
<b>City Manager:</b> Wyatt Shields 703.248.5004 <a href="#">FWS 7-18-13</a>	<b>City Attorney:</b> John Foster 703.248.5010 <a href="#">JEF 7-18-13</a>	<b>CFO:</b> Richard La Condre 703.248.5092 <a href="#">RAL 7-18-13</a>

**REQUEST:** The City Council is requested to adopt an ordinance that will establish new, stricter stormwater run-off regulations, as mandated by the Commonwealth of Virginia. The proposed ordinance (TO13-18) is before Council on first reading, for referral to city boards and commissions (Planning Commission, Environmental Services Council, Tree Commission). Second reading, public hearing, and final adoption scheduled for October 28, 2013.

**RECOMMENDATION:** Staff recommends approval of the motion.

**BACKGROUND:** The Virginia General Assembly has mandated that all local governments adopt new stormwater regulations to reduce the amount of “non-point source” pollution and water volume flowing to the Chesapeake Bay. The City must adopt new regulations by April, 2014.

The proposed Stormwater Ordinance (TO13-18) was developed in conjunction with our stormwater policy consultant David Bulova with AMEC and has been reviewed by the City Attorney. The ordinance has also had a precursory review by Virginia Department of Environmental Quality (DEQ) staff. City Council discussed this at work session on July 15, 2013 and concurred with proceeding with first reading and seeking boards and commissions as well as community input. A PowerPoint presentation was also given at the meeting and a copy is available on Granicus here:

<http://www.fallschurchva.gov/content/government/council/meetingwebcastgranicus.aspx>

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26 TO13-18 accomplishes four key tasks, which are provided here in outline format and discussed  
27 in greater detail below:

- 28  
29 1. Reorganization of existing stormwater management regulations  
30 2. Adoption of new, State-mandated stormwater development criteria  
31 a. New water quality standards  
32 b. New water quantity standards  
33 c. Grandfathering  
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35 3. Adoption of new, State-mandated Virginia Stormwater Management Program General  
36 Permit for Discharges of Stormwater from Construction Activities requirements and fee  
37 structure  
38 4. Clarification of existing illicit discharge regulations  
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40 **Reorganization of existing stormwater management regulations**

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42 Staff is seeking to create Chapter 35, Stormwater, Article I, Stormwater Management, to  
43 reorganize existing City Code found in Chapter 14, Environment, Article IV, Erosion and  
44 Sediment Control and in Chapter 48, Zoning, Article IV, Districts, Division 16, CBPA,  
45 Chesapeake Bay Preservation Area Overlay District. This effort will streamline existing City  
46 Code by creating a one-stop-shop for stormwater development criteria. TO13-18 places existing  
47 stormwater regulations under a single umbrella that will be managed by the Department of  
48 Public Works with a singular Stormwater Management Permit instead of several discrete  
49 portions of City Code. These changes will give developers a clear and concise understanding of  
50 the City’s stormwater requirements and a clear path to follow. DEQ has viewed the City’s  
51 proposed “all-in-one” ordinance as a model for other jurisdictions and would like to post on their  
52 website as an example.

53  
54 At this time Staff is seeking broad public input on the changes proposed. The City Arborist  
55 provided an advanced copy to the Tree Commission and they are considering additional  
56 consolidation of landscaping/tree canopy requirements under Chapter 35 with intent to have  
57 additional code efficiency and enhancements prior to 1<sup>st</sup> reading. Staff is currently working with  
58 AMEC to address these potential changes.

59  
60 Given the scope of the Stormwater Management Permit, the Chesapeake Bay Review Team  
61 (CBIRT) will be replaced with the Stormwater Management Review Team (SMRT) since its  
62 mission now encompasses reviewing more than just items under the Chesapeake Bay  
63 Preservation Area Overlay District. SMRT will meet in the same way that the CBIRT meets  
64 currently but with added flexibility to review any application for a Stormwater Management  
65 Permit. Like CBIRT, SMRT meetings will be advertised and open to the public to allow for  
66 public input in stormwater management issues related to development. SMRT also becomes  
67 advisory to the Director of Public Works. Previously, the CBIRT had the authority to approve or  
68 reject plans. Since the CBIRT is comprised of several members, this could create confusion in  
69 the permit approval process. The new language clarifies that the Director of Public Works  
70 makes the final decision on the advice of the SMRT.

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**Adoption of new, State-mandated stormwater development criteria**

In addition to the reorganization of existing code, staff is seeking to update stormwater development criteria with new, state-mandated standards that must be adopted by every jurisdiction in Virginia by April 1, 2014 with a go-live date of July 1, 2014. The City will also need to provide a final draft to the Virginia Department of Environmental Quality (DEQ) for review no later than December 15, 2013. The tougher standards outlined herein stem from Virginia’s efforts to restore water quality to the Chesapeake Bay. A summary of the changes is provided below in tabular form.

New water quality standards

Table 1. Water Quality Standards for Development and Redevelopment in Falls Church

	Existing	State standard	Proposed
New development of single-family home (e.g. vacant lot)	35% cap on impervious coverage (approximates to 1.50 lbs of Phosphorus per acre)	0.41 lbs of Phosphorus per acre; State regulations provide local option to exempt single-family homes that disturb less than one acre	0.41 lbs of Phosphorus per acre <sup>1</sup>
Redevelopment of single-family home (e.g. addition, tear down)	35% cap on impervious coverage (approximates to 1.50 lbs of Phosphorus per acre)	20% reduction if land disturbance is one acre or greater and 10% reduction if land disturbance is less than one acre; reduction cannot exceed 0.41 lbs of Phosphorus per acre; State regulations provide local option to exempt single-family homes that disturb less than one acre	0.41 lbs of Phosphorus per acre <sup>1</sup>
Any development NOT single-family home	If 50% or less impervious coverage, then meet existing pollution load; If greater than 50% impervious coverage, then reduce existing pollution loading by 10%	New Development 0.41 lbs of Phosphorus per acre	New Development 0.41 lbs of Phosphorus per acre
		Redevelopment 20% reduction if land disturbance is one acre or greater and 10% reduction if land disturbance is less than one acre; reduction cannot exceed 0.41 lbs of Phosphorus per acre	Redevelopment 20% reduction if land disturbance is one acre or greater and 10% reduction if land disturbance is less than one acre; reduction cannot exceed 0.41 lbs of Phosphorus per acre

85 <sup>1</sup> Proposed standard eliminates 35% cap on impervious coverage found in Chapter 48, “Zoning.” See below for  
86 further discussion.

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88 The proposed water quality criterion is based on a numerical standard of pounds of Phosphorus  
89 generated by a given site on an annual basis. 20% reduction for redevelopment (10% for  
90 redevelopment less than one acre) and 0.41 pounds per acre for new development standards are  
91 required by Virginia law. The required language is a shift away from the City’s past history of

92 using impervious coverage as a surrogate for Phosphorus. The proposed standards will be  
93 calculated using Virginia’s Runoff Reduction Method.

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95 The major issue for City Council to consider is how best to treat new development and  
96 redevelopment of single-family homes. The state regulations allow the City to exempt single-  
97 family homes under one acre from the water quality criteria. However, any new development  
98 that is not controlled will result in an additional Phosphorus load that will add to the City’s  
99 retrofit obligations under the Chesapeake Bay Total Maximum Daily Load (TMDL). As a result,  
100 Staff is recommending that new single-family homes not be exempt from the water quality  
101 requirements.

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103 In addition, Staff is recommending a more stringent standard for single-family home  
104 redevelopment where the entire house is being demolished and rebuilt relative to the minimum  
105 state requirement. The state law allows teardowns to be treated as a redevelopment (percentage  
106 reduction in Phosphorus required); the proposed ordinance would treat teardowns similarly to  
107 new development on an empty lot, which has more stringent standards (0.41 lbs of Phosphorus  
108 per year). Should the City Council wish to adopt the more stringent standard for single-family  
109 home tear downs and rebuilds, Staff would need to provide defensible justification before the  
110 Virginia Soil and Water Conservation Board using criteria outlined in the Code of Virginia.

111  
112 The impact of tightening water quality standards on development is difficult to predict. Based on  
113 Staff’s discussions with the development community, most single-family development will  
114 spend between \$7,000 - \$10,000 to install a water treatment facility, commonly known as a  
115 “Best Management Practice” (e.g. rain garden, cistern, infiltration trench), in order to meet the  
116 0.41 standard while maintaining the building footprint commonly seen today. There is  
117 variability in cost because the size of a water treatment facility is a function of the amount of  
118 impervious coverage on a project. The more impervious cover, the more Phosphorus generated,  
119 the larger the facility must be to treat stormwater runoff to an acceptable level. This is especially  
120 true for large commercial properties with impervious coverage in the 80-90% range. Since the  
121 standards must be implemented statewide the changes are not anticipated to put development in  
122 the City of Falls Church at a competitive disadvantage with surrounding jurisdictions.

123  
124 Department of Public Works (DPW) staff recognizes the proposed reorganization of City Code  
125 and corresponding update to development criteria eliminates the 35% cap on impervious cover  
126 that is currently part of the Chesapeake Bay Performance Criteria found in the Chapter 48,  
127 Zoning. Department of Development Services staff is aware of this issue and is proposing a  
128 separate modification to the zoning ordinance for City Council to consider concurrently.

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130 It is important to note that the Chesapeake Bay model, which was used to determine the City’s  
131 required pollution removal targets (for the Chesapeake Bay TMDL) is based on a snapshot taken  
132 in 2009. Since development permitted under the current standards allowed for an increase in  
133 pollutants for single-family homes, the City will need to offset those increases from  
134 developments approved after July 1, 2009 until the new, stricter requirements take effect July 1,  
135 2014.

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137 New water quantity standards

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139 The new State regulations for water quantity control are designed to replace Minimum Standard  
140 19 from the Virginia Erosion and Sediment Control Regulations. As a result, the water quantity  
141 control standards previously contained in Chapter 14, Environment, Article IV, Erosion and  
142 Sediment Control have been deleted and replaced with the controls from the Virginia Stormwater  
143 Management Regulations.

144 New water quantity requirements are designed to protect downstream properties and waterways  
145 from damage caused by increased volume and peak flow rate of stormwater as a result of  
146 development. Under the new requirements, stream channel protection criteria and flood  
147 protection criteria are now situational. Stream channel protection requirements will depend on  
148 whether the receiving channel is manmade, modified natural, or natural. Flood protection will  
149 depend on whether or not there is existing localized flooding. The general concept of the new  
150 requirements is to encourage a reduction in stormwater volume through the use of on-site  
151 infiltration techniques, with the peak flow of the stormwater that discharges from the site to be  
152 controlled through on-site detention. The channel protection measures have been established to  
153 prevent channel erosion from increased flow of stormwater. The flood protection measures will  
154 ensure that downstream conveyances will not be flooded. For areas with existing localized  
155 flooding issues, development must decrease flow rates from the existing condition or upgrade the  
156 channel to accommodate the additional flows.

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158 In addition to the new state minimum standards, the ordinance will continue to implement  
159 specific post-development peak runoff requirements as required for the Four Mile Run Flood  
160 Control Channel per the City's contract with the United States Army Corps of Engineers.

### 161 **Grandfathering**

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164 The proposed ordinance relies on state grandfathering language found in 4VAC50-60-48. It  
165 states projects with "any land-disturbing activity for which a currently valid proffered or  
166 conditional zoning plan, preliminary or final subdivision plat, preliminary or final site plan or  
167 zoning with a plan of development, or any document determined by the locality as being  
168 equivalent thereto" approved by the City before July 1, 2014 are grandfathered under existing  
169 stormwater standards. Grandfathered projects must complete construction by June 30, 2019  
170 otherwise unfinished portions will be subject to the new standards.

### 171 172 **Virginia Stormwater Management Program General Permit**

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174 Starting July 1, 2014 City staff will be required by DEQ to administer, review, and oversee the  
175 issuance of the Virginia Stormwater Management Program (VSMP) General Permit for  
176 Discharges of Stormwater from Construction Activities for development sites with land  
177 disturbance of one acre or more. DEQ is the current permitting authority. This responsibility  
178 includes enforcement of Storm Water Pollution Prevention Plans (SWPPPs) for these same land  
179 disturbing activities. While this is a new duty for DPW many of the elements contained within a  
180 SWPPP are already reviewed as part of the City's site plan process. The change will eliminate  
181 duplicative efforts between the City and DEQ and helps streamline stormwater management  
182 permitting. The language included in TO13-18 outlines SWPPP requirements and the State-  
183 recommended fees associated with issuance and maintenance of permits. DEQ will no longer

184 review local applications, however they will continue to oversee the program at a high level with  
185 the potential for periodic site inspections. It is for this reason that 28% of the fee is remitted to  
186 DEQ for administrating the overall program. If the fee set in the State regulations does not meet  
187 the goals of the City with respect to cost recovery, the City can request an increase from the  
188 Virginia Soil and Water Conservation Board. This will require specific justification and  
189 approval by the Board. DEQ's share will not exceed 28% of the fee in the State regulations.

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191 **Clarification of existing illicit discharge regulations**

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193 Clarification and enhancement of the City's illicit discharge regulations was identified as a top  
194 priority in Chapter 3 of the Watershed Management Plan. The City currently relies on relatively  
195 weak authority under Chapter 34, "Solid Waste." TO13-18 provides clear authority and  
196 definition of what constitutes an illicit discharge. The enhancement of penalties for dumping and  
197 illicit discharges are contained within the most recent fee adjustments (set to \$500 for residential  
198 and \$1,000 for commercial).

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200 **Policy concerns for consideration**

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202 In summary, while many aspects of the proposed stormwater management regulations are  
203 mandatory there are two that City Council has the flexibility to modify. They are as follows:

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- 205 • Staff's proposal to adopt the 0.41 lbs. of Phosphorus per year for all single-family  
206 development. Council has the option to exempt single-family homes under one-acre  
207 from stormwater quality criteria.
- 208 • The proposed ordinance uses the state's grandfathering language, which sets the date for  
209 grandfathering to July 1, 2014. Council has the option to move this date forward. The  
210 earliest date would be the date the new ordinance is adopted.

211

212 Council is seeking boards and commission as well as community input on these two policy  
213 questions.

214

215 **FISCAL IMPACT:** Establishing this ordinance will provide for cost recovery of administering  
216 VSMP General Permit for Discharges of Stormwater from Construction Activities.

217 Approximately \$11,200 in fees annually [assuming 2 large permits (< 5 acres) and 20 small  
218 permits a year (< 1 acre)].

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220 **TIMING:** Immediate. Provides streamlined City Code and clarification to illicit discharges.

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222 **ATTACHMENTS:** 1) Proposed Chapter 35, "Stormwater"  
223 2) Revised Chapter 48, Article IV, Division 16 "CBPA, Chesapeake Bay  
224 Preservation Overlay District" (starts line 2009)  
225 3) Revised Chapter 14, Article IV, "Erosion and Sediment Control"  
226 (starts line 2892)

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229 [ATTACHMENT 1]

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(TO13-018)

ORDINANCE TO CREATE CHAPTER 35 “STORMWATER,” ARTICLE I  
“STORMWATER MANAGEMENT” OF THE FALLS CHURCH CITY CODE TO  
CLARIFY AND REORGANIZE EXISTING STORMWATER DEVELOPMENT  
CRITERIA; TO ADD NEW LANGUAGE REQUIRED BY THE STATE OF  
VIRGINIA.

THE CITY OF FALLS CHURCH, VIRGINIA, HEREBY ORDAINS THAT Chapter 14,  
Article IV “Erosion and Sediment Control” and Chapter 48, Article IV, Division 16 “CBPA,  
Chesapeake Bay Preservation Overlay District” be struck and replaced with the following new  
Chapter 35 below.

Chapter 35  
STORMWATER

Charter reference – Power to make regulations for the preservation of the safety, health, peace,  
good order, comfort, convenience, morals, and welfare of the city and its inhabitants, §2.04.

State Law reference – State Water Control Law, Code of Virginia, §62.1-44.15:67 et seq.;  
Virginia Stormwater Management Act, Code of Virginia, §10.1-603.2 et seq.; Erosion and  
Sediment Control Act, Code of Virginia, §10.1-560 et seq.; Flood Damage Reduction Act,  
§10.1-600 et seq.

**ARTICLE I. STORMWATER MANAGEMENT**

- Sec. 35-88 Purpose and authority.**
- Sec. 35-89 Definitions.**
- Sec. 35-90 Administration; context of zoning and subdivision ordinances.**
- Sec. 35-91 Stormwater management permit required; exemptions.**
- Sec. 35-92 Stormwater management plan.**
- Sec. 35-93 Stormwater management technical standards.**
- Sec. 35-94 Stormwater management plan review.**
- Sec. 35-95 Stormwater pollution prevention plan.**
- Sec. 35-96 Pollution prevention plan.**
- Sec. 35-97 Chesapeake Bay preservation areas established.**
- Sec. 35-98 Chesapeake Bay preservation areas; administrative waivers, nonconformities, exemptions, and exceptions.**
- Sec. 35-99 Water quality impact assessment.**
- Sec. 35-100 Water quality impact assessment review.**

- 271 **Sec. 35-101 Erosion and sediment control plan.**
- 272 **Sec. 35-102 Erosion and sediment control technical standards.**
- 273 **Sec. 35-103 Erosion and sediment control plan review.**
- 274 **Sec. 35-104 Landscape conservation plan.**
- 275 **Sec. 35-105 Bonding requirements; installation and maintenance agreement.**
- 276 **Sec. 35-106 Appeals and hearings.**
- 277 **Sec. 35-107 Monitoring and inspections.**
- 278 **Sec. 35-108 Prohibition against illicit discharges.**
- 279 **Sec. 35-109 Failure to comply; penalties and other legal actions.**
- 280 **Sec. 35-110 Fees**

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282 **Sec. 35-88. Purpose and authority.**

283 The purpose of this article is to ensure that land is used, developed, and redeveloped in a manner  
284 that protects water quality and to prevent the degradation of properties, stream channels, waters,  
285 and other natural resources by prohibiting illicit discharges and providing that adequate  
286 stormwater management and erosion and sediment control measures are taken before, during,  
287 and after the period of land disturbance, development, and construction.

288 This article is adopted pursuant to the authority of the State Water Control Law (§62.1-44.15:67  
289 et seq., Code of Virginia), the Virginia Stormwater Management Act (§10.1-603.2 et seq., Code  
290 of Virginia), the Erosion and Sediment Control Act (§10.1-560 et seq., Code of Virginia), and  
291 their attendant regulations.

292 In any case where the requirements of this article conflict with any other provision of this Code  
293 or existing state or federal regulations, whichever imposes the more stringent restrictions shall  
294 apply.

295

296 **Sec. 35-89. Definitions.**

297 As used in this article, unless the context clearly indicates otherwise, the following words and  
298 phrases shall have the meanings ascribed to them by this section:

299 *Adequate channel* means a watercourse that will convey a chosen frequency storm event without  
300 overtopping its banks or causing erosive damage to the bed, banks, and overbank sections of the  
301 same.

302 *Agreement in lieu of a plan* means a contract between the city and the owner that specifies  
303 erosion and sediment control measures and other conservation measures that must be  
304 implemented in the construction of a single-family residence in lieu of a formal site plan or a  
305 water quality impact assessment.

306 *Applicant* means any person submitting an application for a stormwater management permit,  
307 requesting issuance of a permit, or requesting an exemption or exception from the requirements  
308 under this article.

309 *Best management practice or BMP* means schedules of activities, prohibitions of practices,  
310 maintenance procedures, and other management practices, including both structural and



311 nonstructural practices, to prevent or reduce the pollution of surface waters and groundwater  
312 systems from the impacts of land disturbing activities. BMPs also include treatment  
313 requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge  
314 or waste disposal, or drainage from raw materials storage.

315 *Board or VSWCB* refers to the Virginia Soil and Water Conservation Board.

316 *Buffer area* means an area of natural or established vegetation managed to protect other  
317 components of a resource protection area and state waters from significant degradation due to  
318 land disturbances.

319 *Chesapeake Bay preservation area or CBPA* means any land designated by the city pursuant to  
320 the Chesapeake Bay Preservation Area Designation and Management Regulations, 4VAC50-90-  
321 70 et seq., and the Chesapeake Bay Preservation Act, section 62.1-44.15:74. A Chesapeake Bay  
322 preservation area shall consist of a resource protection area and a resource management area.

323 *Clean Water Act or CWA* means the federal Clean Water Act (33USC §1251 et seq.) formerly  
324 referred to as the Federal Water Pollution Control Act or Federal Water pollution Control Act  
325 Amendments of 1972, Public Law 92-500, as amended by Public Law 95-217, Public Law 95-  
326 576, Public Law 96-483, and Public Law 97-117, or any subsequent revisions thereto.

327 *Common plan of development or sale* means a contiguous area where separate and distinct  
328 construction activities may be taking place at different times on different schedules. Separate  
329 land disturbing activities that take place on a single property that cumulatively exceed 2,500  
330 square feet within a three year period shall be considered a common plan of development for the  
331 purposes of this article.

332 *Control measure* means any best management practice or stormwater facility, or other method  
333 used to prevent or reduce the discharge of pollutants to state waters.

334 *Critical root zone or CRZ* means the area beneath a tree that may extend well beyond the spread  
335 of its branches. The size of the critical root zone is a function of tree type, size, health and it's  
336 response to construction stresses. The size of the critical root zone should be adjusted according  
337 to the specific factors listed in this definition and site conditions, but generally can be calculated  
338 as one foot per inch of diameter at breast height (DBH) of the tree to be preserved. For example,  
339 a ten-inch diameter at breast height tree would have a critical root zone of ten feet from the tree  
340 trunk in all directions.

341 *Dam* means a barrier to confine or raise water for storage or diversion, to create a hydraulic head,  
342 to prevent gully erosion, or to retain soil, rock or other debris.

343 *Denuded* refers to a term applied to land that has been physically disturbed and no longer  
344 supports vegetative cover.

345 *Department* refers to the Virginia Department of Environmental Quality.

346 *Development* means land disturbance and the resulting landform associated with the construction  
347 of residential, commercial, industrial, institutional, recreation, transportation, or utility facilities  
348 or structures, or the clearing of land for non-agricultural or non-silvicultural purposes.

349 *Diameter at breast height or DBH* means the diameter of the tree measured outside the bark at a  
350 point four feet above the ground.

351 *Dike* means an embankment to confine or control water, especially one built along the banks of a  
352 river to prevent overflow of lowlands; a levee.

353 *Director* means the director of public works or his designee and is the representative of the city  
354 who has been appointed to serve as the agent of the city in administering this article.

355 *Discharge* means to dispose, deposit, spill, pour, inject, dump, leak, or place by any means, or  
356 that which is disposed, deposited, spilled, poured, injected, dumped, leaked, or placed by any  
357 means.

358 *Disturbed acreage* means that portion of the project that will be disturbed, denuded, graded, cut,  
359 or filled.

360 *Diversion* means a channel with a supporting ridge on the lower side constructed across or at the  
361 bottom of a slope for the purpose of intercepting surface runoff.

362 *Dripline* means a vertical projection to the ground surface from the furthest lateral extent of a  
363 tree or shrub's canopy.

364 *Erosion impact area* means an area of land not associated with current land disturbing activity  
365 but subject to persistent soil erosion resulting in the delivery of sediment onto neighboring  
366 properties or into state waters. This definition shall not apply to any lot or parcel of land of  
367 10,000 square feet or less used for residential purposes or to shorelines where the erosion results  
368 from wave action or other coastal processes.

369 *General permit* means the Virginia Stormwater Management Program General Permit for  
370 Discharges of Stormwater from Construction Activities found at 4VAC50-60-1170 authorizing a  
371 category of discharges under the CWA within a geographical area of the Commonwealth of  
372 Virginia.

373 *Impervious land cover* means a surface composed of any material that significantly impedes or  
374 prevents natural infiltration of water into the soil. Impervious surfaces include, but are not  
375 limited to: nonvegetated roofs; buildings; streets; parking areas; sidewalks; driveways;  
376 swimming pools; recreational surfaces such as tennis courts or basketball courts; and, any  
377 concrete, asphalt, or compacted gravel surface.

378 *Illicit discharge* means any discharge to the stormwater management system that is not  
379 composed entirely of stormwater, except discharges pursuant to a VPDES or VSMP permit,  
380 discharges resulting from firefighting activities, or discharges expressly allowed under this  
381 article. Prohibited substances, whether liquid or solid, include, but are not limited to: waste,  
382 trash, and garbage; food and kitchen waste; leakage from dumpsters or trash containers; gasoline,  
383 waste oil, lubricants, grease, antifreeze, or any other automotive, motor, or equipment fluids;  
384 fertilizers, grass clippings, mulch, and any yard waste; any chemical or solvent; soluble and non-  
385 soluble metals; wash water, detergents, and cleaning agents; paints; plastics; soot, ash, and  
386 sludge; animal waste; eroded soils and sediment; carcasses; chlorinated swimming pool water;  
387 and, any material that impedes or interferes with the free flow of stormwater.

388 *Land disturbing activity* means a manmade change to the land surface that potentially changes its  
389 runoff characteristics including any clearing, grading, or excavation except that the term shall not  
390 include those exemptions specified in section 35-91.

391 *Layout* means a conceptual drawing sufficient to provide for the specified stormwater  
392 management facilities required at the time of approval.

393 *Linear development project* means a land disturbing activity that is linear in nature such as, but  
394 not limited to: the construction of electric and telephone utility lines, and natural gas pipelines;  
395 construction of tracks, rights-of-way, bridges, communication facilities and other related

396 structures of a railroad company; highway construction projects; construction of stormwater  
397 channels and stream restoration activities; and, water and sewer lines. Private subdivision roads  
398 or streets shall not be considered linear development projects.

399 *Minor modification* means an amendment to an existing permit before its expiration not requiring  
400 extensive review and evaluation including but not limited to changes in EPA promulgated test  
401 protocols, increasing monitoring frequency requirements, changes in sampling locations, and  
402 changes to compliance dates within the overall compliance schedules. A minor permit  
403 modification or amendment does not substantially alter permit conditions, substantially increase  
404 or decrease the amount of surface water impacts, increase the size of the operation, or reduce the  
405 capacity of the facility to protect human health or the environment.

406 *Natural channel design concepts* means the utilization of engineering analysis and fluvial  
407 geomorphic processes to create, rehabilitate, restore or stabilize an open conveyance system for  
408 the purpose of creating or recreating a stream that conveys its bankfull storm event within its  
409 banks and allows larger flows to access its bankfull bench and its floodplain.

410 *Natural stream* means nontidal waterways that are part of the natural topography. Natural  
411 streams usually maintain a continuous or seasonal flow during the year and are characterized as  
412 being irregular in cross section with a meandering course. Constructed channels such as drainage  
413 ditches or swales are not to be considered as natural streams.

414 *Nonpoint source pollution* means pollution consisting of constituents such as sediment, nutrients,  
415 and organic and toxic substances from diffuse sources, such as runoff from agriculture and urban  
416 land development and use.

417 *Nontidal wetlands* means those wetlands, other than tidal wetlands, that are inundated or  
418 saturated by surface water or groundwater at a frequency and duration sufficient to support, and  
419 that under normal circumstances do support a prevalence of vegetation typically adapted for life  
420 in saturated soil conditions, as defined by the U.S. Environmental Protection Agency, pursuant to  
421 section 404 of the Federal Clean Water Act, in 33 CFR 328.3b.

422 *Operator* means the owner or operator of any facility or activity subject to regulation under this  
423 article.

424 *Owner* means the owner of the freehold of the premises or lesser estate therein, a mortgagee or  
425 vendee in possession, assignee of rents, receiver, executor, trustee, lessee or other person, firm or  
426 corporation in control of a property.

427 *Peak flow rate* means the maximum instantaneous flow from a given storm condition at a  
428 particular location.

429 *Person* means any individual, partnership, firm, association, joint venture, public or private  
430 corporation, trust, estate, commission, board, public or private institution, utility, cooperative,  
431 county, city, town, or other political subdivision of the commonwealth, any interstate body, or  
432 any legal entity.

433 *Pervious land cover* means a surface composed of any material that allows for natural infiltration  
434 of water into the soil in varying degrees.

435 *Pre-development conditions* refers to conditions at the time an applicant becomes subject to the  
436 provisions of this article. Where phased development or plan approval occurs (preliminary  
437 grading, roads and utilities, etc.), the existing conditions at the time the applicant first becomes  
438 subject to the provisions of this article shall establish pre-development conditions.

439 *Public road* means a publicly owned road designed and constructed in accordance with water  
440 quality protection criteria at least as stringent as requirements applicable to the Virginia  
441 Department of Transportation, including regulations promulgated pursuant to the Chesapeake  
442 Bay Preservation Act (§10.1-2100 et seq., Code of Virginia), the Virginia Stormwater  
443 Management Act (§10.1-603.2 et seq., Code of Virginia), the Virginia Erosion and Sediment  
444 Control Act (§10.1-561 et seq., Code of Virginia), and their attendant regulations. This  
445 definition includes those roads where the Virginia Department of Transportation exercises direct  
446 supervision over the design or construction activities, or both, and cases where secondary roads  
447 are constructed or maintained, or both, by a local government in accordance with the standards  
448 of that local government.

449 *Redevelopment* means the process of developing land that is developed or has been previously  
450 developed.

451 *Responsible land disturber* means an individual from the project or development team, who will  
452 be in charge of an responsible for carrying out a land-disturbing activity covered by an approved  
453 plan or agreement in lieu of a plan who (a) holds a Responsible Land Disturber certificate of  
454 competence (b) holds a current certificate of competence from the Board in the areas of  
455 Combined Administration, Inspection, or Plan Review (c) holds a current Contractor certificate  
456 of competence for erosion and sediment control or (d) is licensed in Virginia as a professional  
457 engineer, architect, certified landscape architect or land surveyor pursuant to Article 1 (§54.1-  
458 400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia.

459 *Resource management area or RMA* means that component of the Chesapeake Bay preservation  
460 area that is not classified as the resource protection area. The term resource management area  
461 includes land types that, if improperly used or developed, have the potential for causing  
462 significant water quality degradation or for diminishing the functional value of the resource  
463 protection area.

464 *Resource protection area or RPA* means that component of the Chesapeake Bay preservation  
465 area as defined in section 35-97(b). Resource protection areas consist of sensitive lands that have  
466 an intrinsic water quality value due to the ecological and biological processes they perform or are  
467 sensitive to impacts which may result in significant degradation to the quality of state waters.

468 *Riparian Buffers Modification and Mitigation Guidance Manual* means the Riparian Buffers  
469 Modification and Mitigation Guidance Manual, published in September 2003, written and  
470 published by the Chesapeake Bay Local Assistance Department, now the Virginia Department of  
471 Environmental Quality. The intent of the manual is to provide guidance and clarification for  
472 tidewater local governments, at their request, regarding the section of the Chesapeake Bay  
473 Preservation Act describing buffer exemptions and modifications.

474 *Runoff volume* means the volume of water that runs off the land development project from a  
475 prescribed storm event.

476 *Sediment basin* means a depression formed from the construction of a barrier or dam built to  
477 retain sediment and debris.

478 *Shrub* means any self-supporting woody plant which usually has multiple trunks. For  
479 preservation and canopy coverage calculation purposes, a shrub shall measure no less than five  
480 feet in height above ground level.

481 *Site* means the land or water area where any facility or activity is physically located or  
482 conducted, a parcel of land being developed, or a designated area of a parcel in which the land  
483 development project is located.

484 *Stabilized* means an area that can be expected to withstand normal exposure to atmospheric  
485 conditions without incurring erosion damage.

486 *State* means the Commonwealth of Virginia.

487 *State Water Control Law* means Chapter 3.1 (§62.1-44.2 et seq.) of Title 62.1 of the Code of  
488 Virginia.

489 *State waters* means all waters on the surface and under the ground wholly or partially within or  
490 bordering the Commonwealth of Virginia or within its jurisdiction, including wetlands.

491 *Stormwater* means precipitation that is discharged across the land surface through conveyances  
492 to one or more waterways and that may include stormwater runoff, snow melt runoff, and surface  
493 runoff and drainage.

494 *Stormwater detention* means the process of temporarily impounding runoff to reduce flood  
495 peaks.

496 *Stormwater management review team or SMRT* means a team composed of city staff, to include  
497 but not be limited to the director, a senior or principal planner from the development services  
498 department, the city engineer, and the city arborist.

499 *Stormwater management system* means the series of structural and nonstructural stormwater  
500 infrastructure established to manage the quantity and/or quality of stormwater runoff. The  
501 stormwater management system includes, but is not limited to, storm drains, catch-basins, inlets,  
502 pipes, open channels and ditches, facilities designed to control stormwater volume and velocity,  
503 and various best management practices designed to reduce stormwater pollution.

504 *Stormwater Pollution Prevention Plan or SWPPP* means a document that is prepared in  
505 accordance with good engineering practices that identifies potential sources of pollution that may  
506 reasonably be expected to affect the quality of stormwater discharges from the construction site  
507 and otherwise meets the requirements of this article. In addition, the document shall identify and  
508 require the implementation of control measures, and shall include, but not be limited to the  
509 inclusion of, or the incorporation by reference of, an approved erosion and sediment control plan,  
510 and approved stormwater management plan, and a pollution prevention plan.

511 *Stormwater retention* means the process by which an impoundment structure stores the total  
512 runoff of a given storm and then releases the flow at a controlled rate over an extended period.

513 *Subdivision* means the same as defined in section 38-1.

514 *Substantial alteration* means the expansion or modification of a building or development that  
515 would result in a disturbance of land exceeding an area of 2,500 square feet in the resource  
516 management area only.

517 *Total Maximum Daily Load, or TMDL*, means the sum of the individual wasteload allocations for  
518 point sources, load allocations for nonpoint sources, natural background loadings and a margin  
519 of safety. TMDLs can be expressed in terms of either mass per time, toxicity, or other  
520 appropriate measure. The TMDL process provides for point versus nonpoint source trade-offs.

521 *Tree* means any self-supporting woody plant which usually provides one main trunk and  
522 produces a more or less distinct and elevated head with many branches. For preservation

523 purposes and canopy coverage calculation purposes, a tree shall measure no less than two inches  
524 in DBH.

525 *Tree canopy* means the branches, leaves, or other foliage from any tree measuring no less than  
526 two inches in DBH and shrubs measuring no less than five feet in height.

527 *Tree canopy coverage* means the area surrounding a tree or shrub located within the dripline.

528 *Use* means an activity on the land other than development including, but not limited to,  
529 commercial, residential, and industrial.

530 *Virginia Stormwater Management Act* means Article 1.1 (§10.1-603.1 et seq.) of Chapter 6 of  
531 Title 10.1 of the Code of Virginia.

532 *Virginia Stormwater BMP Clearinghouse* means a website of the same name that contains  
533 detailed design standards and specifications for control measures that may be used in the  
534 Commonwealth of Virginia to comply with the requirements of the Virginia Stormwater  
535 Management Act and associated regulations.

536 *Water-dependent facility* means a development of land that cannot exist outside of the resource  
537 protection area and must be located on the shoreline by reason of the intrinsic nature of its  
538 operation. The term water-dependent facilities includes, but is not limited to, the intake and  
539 outfall structures of water and sewer treatment plants and storm sewers, and public water  
540 oriented recreation areas.

541 *Water quality volume* means the volume equal to the first one-half inch of runoff multiplied by  
542 the impervious surface of the land development project.

543 *Woody vegetation* means and includes all trees and shrubs.

544

545 **Sec. 35-90. Administration; context of zoning and subdivision ordinances.**

546 (a) The director is charged with responsibility for the administration of this article unless the  
547 context clearly indicates otherwise. The director, at his or her discretion, may delegate authority  
548 to implement all, or specific parts, of this article.

549 (b) The stormwater management review team shall make a recommendation to approve, approve  
550 subject to conditions, or disapprove any land disturbing activity that is subject to this article and  
551 shall provide their findings to the director. Meetings of the SMRT will be advertised in  
552 compliance with applicable provisions of the Virginia Freedom of Information Act (§2.2-3700 et  
553 seq., Code of Virginia). Public comment will be received at such meetings and outside of these  
554 meetings in writing. Property owners within 150 feet of land disturbing activities that are the  
555 subject to review under this article will be mailed notification of applicable SMRT meetings at  
556 least 10 days prior to the meeting date.

557 (c) Administration of the site plan process shall be in accordance with article V, division 7 of this  
558 chapter, pertaining to site plans, or chapter 38, pertaining to subdivision.

559 (d) Permitted uses, conditional uses, special use permits, accessory uses, and special  
560 requirements shall be as established by the underlying zoning district, unless specifically  
561 modified or superseded by the requirements set forth in this article.

562 (e) Lot size shall be subject to the requirements of the underlying zoning district, provided that  
563 any lot shall have sufficient area outside the resource protection area established under this

564 article to accommodate an intended development, in accordance with the criteria in section 35-  
565 97, when such development is not otherwise prohibited in the RPA.

566

567 **Sec. 35-91. Stormwater management permit required; exemptions.**

568 (a) *Stormwater management permit required.* Except as provided herein, no person may engage  
569 in any land disturbing activity, nor may any grading, building, or other permits for activities  
570 involving land disturbing activities be issued, until a stormwater management permit has been  
571 issued by the director in accordance with the requirements set forth in this article.

572 (b) *Conditions of permit issuance.* No stormwater management permit shall be issued by the  
573 director until the following have been submitted to and approved by the director as prescribed  
574 herein:

575 (1) A site plan in accordance with the provisions of this article and chapter 48 and, if  
576 applicable a subdivision plan in accordance with the provision of this article and chapter 38.

577 (2) A general permit registration statement and evidence of general permit coverage.

578 (3) A stormwater management plan in accordance with section 35-92.

579 (4) An erosion and sediment control plan in accordance with section 35-101.

580 (5) A landscape conservation plan in accordance with section 35-104.

581 (6) For all development, redevelopment, or other land disturbing activity within an RPA, or  
582 within an environmentally sensitive area as determined by the director, or for an exception  
583 under section 35-98, a water quality impact assessment in accordance with section 35-99.

584 (c) *Relationship to floodplains.* Approval of a stormwater management permit shall not be  
585 construed to authorize the construction of any structure within the floodplain or to authorize any  
586 filling, grading or other change of the contour of such floodplain area without such permit,  
587 authorization or approval as may be required by section 48-612 et seq.

588 (d) *Stormwater pollution prevention plan.* The permittee must develop prior to the land  
589 disturbing activity, implement, and keep at the site for inspection a stormwater pollution  
590 prevention plan that meets the requirements set forth in section 35-95 and a pollution prevention  
591 plan that meets the requirements set forth in section 35-96.

592 (e) *Bonds, maintenance agreement, and fees.* No stormwater management permit shall be issued  
593 by the director until the bond and maintenance agreement requirements pursuant to section 35-  
594 105 have been met and the fees required to be paid pursuant to section 35-110 are received.

595 (f) *Exemptions for land disturbance of less than 2,500 square feet.* A land disturbing activity  
596 that results in a land disturbance of less than 2,500 square feet shall be exempt from this article  
597 except that the following shall apply:

598 (1) A land disturbing activity located within a resource protection area shall comply with the  
599 provisions of section 35-97.

600 (2) A land disturbing activity involving a direct connection to the city's stormwater  
601 conveyance system or the installation of a potable water or geothermal well shall obtain a  
602 stormwater management permit and may be subject to, at the discretion of the director, the  
603 provisions of section 35-92 (stormwater management plan) and section 35-101 (erosion and  
604 sediment control plan) or elements thereof.

605 (g) *Exemptions for land disturbance of less than one acre but 2,500 square feet or greater within*

606 *the resource management area.* A land disturbing activity that results in a land disturbance of  
607 less than one acre but greater 2,500 square feet or greater within the resource management area  
608 shall be exempt from section 35-95 (stormwater pollution prevention plan), section 35-96  
609 (pollution prevention plan), and the requirement to obtain a general permit in accordance with  
610 section 35-91(b)(2) unless otherwise required by the City Code or state or federal law.

611 (h) *Additional exemptions.* The following shall be exempt from the requirements of this article  
612 unless otherwise required by the Falls Church Code or state or federal law:

613 (1) Discharges to a sanitary sewer.

614 (2) Routine maintenance that is performed to maintain the original line and grade, hydraulic  
615 capacity, or original construction of a project. The paving of existing road with a compacted  
616 or impervious surface and re-establishment of existing ditches and shoulders is deemed  
617 routine maintenance if performed in accordance with this subsection.

618 (3) Conducting land disturbing activities in response to a public emergency where the related  
619 work requires immediate authorization to avoid imminent endangerment to human health or  
620 the environment. In such situations, the director shall be advised of the disturbance within  
621 seven days of commencing the land disturbing activity and compliance with this article shall  
622 be required within 30 days of commencing the land disturbing activity.

623 (4) Land disturbances associated with permitted or deep mining operations and projects, or  
624 oil and gas operations and projects conducted under the provisions of Title 45.1 of the Code  
625 of Virginia.

626 (5) Land clearing for agricultural or silvicultural purposes, and related activities, in  
627 accordance with section 10.1-603.8.C.2 of the Code of Virginia.

628 (6) Activities under a state or federal reclamation program to return an abandoned property to  
629 an agricultural or open land use.

630

631 **Sec. 35-92. Stormwater management plan.**

632 (a) *Plan contents.* The stormwater management plan must apply the stormwater management  
633 technical standards set forth in section 35-93 to the entire land disturbing activity, consider all  
634 sources of surface runoff and all sources of subsurface and groundwater flows converted to  
635 subsurface runoff, and include the following information:

636 (1) Information on the type and location of stormwater discharges; information on the  
637 features to which stormwater is being discharged including surface waters, and the pre-  
638 development and post-development drainage areas;

639 (2) Contact information including the name, address, and telephone number of the owner and  
640 the tax reference number and parcel number of the property or properties affected;

641 (3) A narrative that includes a description of current site conditions and final site conditions;

642 (4) A general description of the proposed stormwater management facilities and the  
643 mechanism through which the facilities will be operated and maintained after construction is  
644 complete;

645 (5) Information on the proposed stormwater management facilities including:

646 a. The type of facilities;

647 b. Location, including geographic coordinates;



- 648 c. Acres treated; and,  
649 d. The surface waters into which the facility will discharge.
- 650 (6) Hydrologic and hydraulic computations, including runoff characteristics;  
651 (7) Documentation and calculations verifying compliance with the water quality and quantity  
652 requirements of section 35-93;
- 653 (8) A map or maps of the site that depicts the topography of the site and includes:  
654 a. All contributing drainage areas;  
655 b. Existing streams, ponds, culverts, ditches, wetlands, other water bodies, and  
656 floodplains;  
657 c. Soil types, forest cover, and other vegetative areas;  
658 d. Current land use including existing structures, roads, and locations of known utilities  
659 and easements;  
660 e. Sufficient information on adjoining parcels to assess the impacts of stormwater from  
661 the site on these parcels;  
662 f. The limits of clearing and grading, and the proposed drainage patterns on the site;  
663 g. Proposed buildings, roads, parking areas, utilities, and stormwater management  
664 facilities; and,  
665 h. Proposed land use with tabulation of the percentage of surface area to be adapted to  
666 various uses, including but not limited to planned locations of utilities, roads, and  
667 easements.
- 668 (b) *Off-site compliance options.* If an operator intends to meet the water quality requirements set  
669 forth in section 35-93(b) through the use of off-site compliance options in accordance with  
670 section 35-93(c), then a letter of availability from the off-site provider must be included.  
671 Approved off-site options must achieve the necessary nutrient reductions prior to the  
672 commencement of the land disturbing activity except as otherwise allowed by §10.1-603.8:1 of  
673 the Code of Virginia.
- 674 (c) *Requirements for those preparing plans.* Elements of the stormwater management plans that  
675 include activities regulated under Chapter 4 (§54.1-400 et seq.) of Title 54.1 of the Code of  
676 Virginia shall be appropriately sealed and signed by a professional registered in the  
677 Commonwealth of Virginia pursuant to Article 1 (§54.1-400 et seq.) of Chapter 4 of Title 54.1 of  
678 the Code of Virginia.
- 679 (d) *Construction record drawing.* A construction record drawing for permanent stormwater  
680 management facilities shall be submitted to the director. The construction record drawing shall  
681 be appropriately sealed and signed by a professional registered in the Commonwealth of  
682 Virginia, certifying that the stormwater management facilities have been constructed in  
683 accordance with the approved plan.

684

685 **Sec. 35-93. Stormwater management technical standards.**

- 686 (a) *General stormwater management technical standards.* All land disturbing activities  
687 regulated pursuant to this article within the city shall comply with the following general technical  
688 standards.

689 (1) Land disturbance shall be limited to the area necessary to provide for the proposed use or  
690 development. In accordance with an approved grading plan, the limits of land disturbance,  
691 including clearing or grading, shall be strictly defined. These limits shall be clearly shown on  
692 submitted plans and physically marked on the development site.

693 (2) Existing indigenous vegetation and trees shall be preserved to the maximum extent  
694 practicable, consistent with the proposed use or development, in accordance with chapters 14  
695 and 44, pertaining respectively to environment and vegetation, and as follows.

696 a. Existing trees over two inches in DBH and shrubs greater than five feet in height shall  
697 be preserved outside the approved construction footprint consistent with subsection (a)(1)  
698 of this section. Diseased or weakened trees, by age, storm, fire or other injury, may be  
699 required to be removed, by the director.

700 b. The regulation of any historic, specimen, street, park, memorial and other public trees  
701 shall be regulated in accordance with chapter 44, pertaining to vegetation. This may  
702 include the bonding of these types of trees in situations where the critical root zone  
703 (CRZ) or canopies extend onto the site.

704 c. Clearing shall be allowed only to provide necessary access, positive site drainage,  
705 water quality BMPs and the installation of utilities.

706 d. Tree preservation shall be in accordance with the City of Falls Church Tree  
707 Preservation Standards and Specifications. A copy of the approved plan and the  
708 specifications shall be kept on site at all times.

709 e. Prior to clearing and grading, tree preservation fencing, consistent with the City of  
710 Falls Church Tree Preservation Standards and Specifications, signs, or other such  
711 material may be required by the director. These preservation measures shall be installed  
712 to protect the CRZ of any woody vegetation to be preserved on the site, as well as to  
713 protect the CRZ of any woody vegetation trees on adjacent properties including rights-of-  
714 way that extend onto the site.

715 f. Tree preservation fencing shall remain in place throughout all phases of construction.  
716 Fencing shall not be removed until all construction equipment has left the site and written  
717 approval is granted by the director.

718 g. Exceptions may be granted to allow access to the site and work area, with specific  
719 conditions established by the director.

720 h. The storage of equipment, materials, debris, or fill shall not be allowed within the  
721 enclosure of the tree preservation fencing.

722 i. The applicant shall submit, in writing to the director, a verification that all required tree  
723 preservation fencing and required preservation measures have been completed. The  
724 director shall inspect and approve this verification, within three business days, prior to  
725 the issuance of any permits.

726 (3) Natural ground cover, especially woody vegetation, shall be used to the extent that is  
727 practicable, as it is most effective in holding soil in place and preventing site erosion.  
728 Adaptability to local conditions without the use of harmful fertilizers or pesticides, and the  
729 ability to filter runoff, make the use of indigenous vegetation preferable to non-indigenous  
730 plantings.

731 (4) Land development shall minimize impervious cover associated with the proposed use or  
732 development. Keeping impervious cover to a minimum enhances rainwater infiltration and  
733 effectively reduces stormwater runoff potential.

734 (b) *Water quality technical standards.* All land disturbing activities regulated pursuant to this  
735 article within the city shall comply with the following technical standards for water quality.

736 (1) New development. The total phosphorus load of a new development project shall not  
737 exceed 0.41 pounds per acre per year as calculated in accordance with this section.

738 (2) Development on prior developed lands.

739 a. Notwithstanding subsections b through f below, a regulated land disturbing activity  
740 involving a single family detached residential dwelling shall meet the applicable standard  
741 for new development.

742 b. For regulated land disturbing activities disturbing greater than or equal to one acre that  
743 result in no net increase in impervious cover from the pre-development condition, the  
744 total phosphorus load shall be reduced at least 20% below the pre-development total  
745 phosphorus load.

746 c. For regulated land disturbing activities disturbing less than one acre that result in no  
747 net increase in impervious cover from the pre-development condition, the total  
748 phosphorus load shall be reduced at least 10% below the pre-development total  
749 phosphorus load.

750 d. For land-disturbing activities that result in a net increase in impervious cover over the  
751 pre-development condition, the design criteria for new development shall be applied to  
752 the increased impervious area. Depending on the area of disturbance, the criteria of  
753 subdivisions b or c above shall be applied to the remainder of the site.

754 e. In lieu of subdivision d, the total phosphorus load of a linear development project  
755 occurring on prior developed lands shall be reduced 20% below the pre-development  
756 total phosphorus load.

757 f. The total phosphorus load shall not be required to be reduced below the applicable  
758 standard for new development.

759 (3) Compliance with subsections (1) and (2) above shall be determined using the Virginia  
760 Runoff Reduction Method and through the use of stormwater BMPs established in 4VAC50-  
761 60-65 or found at the Virginia BMP Clearinghouse website, except as may be limited by the  
762 director in accordance the provisions of 4VAC50-60-65.D.

763 (c) *Off-site water quality compliance options.*

764 (1) The director shall allow operators to utilize off-site compliance options to meet the  
765 requirements of subsection (b) above in accordance with 4VAC50-60-69 under the following  
766 conditions:

767 a. Less than five acres of land will be disturbed;

768 b. The post-construction phosphorus control requirement is less than 10 pounds per year;  
769 or,

770 c. At least 75% of the required phosphorus nutrient reductions are achieved on-site. If at  
771 least 75% of the required phosphorus nutrient reductions cannot be met on-site, and the  
772 operator can demonstrate to the satisfaction of the director that (i) alternative site designs

773 have been considered that may accommodate on-site best management practices, (ii) on-  
774 site best management practices have been considered in alternative site designs to the  
775 maximum extent practicable, (iii) appropriate on-site best management practices will be  
776 implemented, and, (iv) full compliance with post-development nonpoint nutrient runoff  
777 compliance requirements cannot practicably be met on-site, then the required phosphorus  
778 nutrient reductions may be achieved, in whole or in part, through the use of off-site  
779 compliance options.

780 (2) The director may establish criteria in addition to those established in subsection (c)(1) of  
781 this section to allow an operator to use nutrient credits in accordance with §10.1-603.8:1 of  
782 the Code of Virginia to meet required phosphorus reductions.

783 (3) Notwithstanding subsections (c)(1) and (c)(2) this subsection, offsite options shall not be  
784 allowed:

785 a. Unless the selected offsite option achieves the necessary nutrient reductions prior to the  
786 commencement of the land disturbing activity. In the case of a phased project, the  
787 operator may acquire or achieve offsite nutrient reductions prior to the commencement of  
788 each phase of land disturbing activity in an amount sufficient for each phase.

789 b. In contravention of local water quality-based limitations at the point of discharge that  
790 are consistent with the determinations made pursuant to subsection B of §62.1-44.19:7 of  
791 the Code of Virginia, contained in the city's MS4 program plan accepted by the Virginia  
792 Department of Environmental Quality, or as otherwise may be established or approved by  
793 the VSWCB.

794 (d) *Water quantity technical standards.* All land disturbing activities regulated pursuant to this  
795 article within the city shall comply with the following technical standards for water quantity.

796 (1) Channel protection. Concentrated stormwater flow shall be released into a stormwater  
797 conveyance system and shall meet the criteria in this section, where applicable, from the  
798 point of discharge to a point to the limits of analysis in subdivision d of this subsection.

799 a. Manmade stormwater conveyance systems. When stormwater from a development is  
800 discharged to a manmade stormwater conveyance system, following the land disturbing  
801 activity, either:

802 1. The manmade stormwater conveyance system shall convey the post-development  
803 peak flow rate from the two-year 24-hour storm event without causing erosion of the  
804 system. Detention of stormwater or downstream improvements may be incorporated  
805 into the approved land disturbing activity to meet these criteria, at the discretion of  
806 the director.

807 2. The peak discharge requirements for concentrated stormwater flow to natural  
808 stormwater conveyance systems in subdivision c shall be met.

809 b. Restored stormwater conveyance systems. When stormwater from a development is  
810 discharged to a restored stormwater conveyance system that has been restored using  
811 natural design concepts, following the land disturbing activity, either:

812 1. The development shall be consistent, in combination with other stormwater runoff,  
813 with the design parameters of the restored stormwater conveyance system that is  
814 functioning in accordance with the design objectives; or,

815 2. The peak discharge requirements for concentrated stormwater flow to natural  
816 stormwater conveyance systems in subdivision c shall be met.

817 c. Natural stormwater conveyance systems. When stormwater from a development is  
818 discharged to a natural stormwater conveyance system, the maximum peak flow rate  
819 from the one-year 24-hour storm following the land disturbing activity shall be calculated  
820 as follows:

821 
$$Q_{\text{Developed}} \leq I.F. * (Q_{\text{Pre-developed}} * RV_{\text{Pre-developed}}) / RV_{\text{Developed}}$$

822 Under no condition shall  $Q_{\text{Developed}}$  be greater than  $Q_{\text{Pre-developed}}$  nor shall  $Q_{\text{Developed}}$  be  
823 required to be less than that calculated in the equation  $(Q_{\text{Forest}} * RV_{\text{Forest}}) / RV_{\text{Developed}}$ ;  
824 where:

825 I.F. (Improvement Factor) equals 0.8 for sites > 1 acre or 0.9 for sites ≤ 1 acre.

826  $Q_{\text{Developed}}$  = The allowable peak flow rate of runoff from the developed site.

827  $RV_{\text{Developed}}$  = The volume of runoff from the site in the developed condition.

828  $Q_{\text{Pre-developed}}$  = The peak flow rate of runoff from the site in the pre-developed  
829 condition.

830  $Q_{\text{Forest}}$  = The peak flow rate of runoff from the site in a forested condition.

831  $RV_{\text{Forest}}$  = The volume of runoff from the site in a forested condition.

832 d. Limits of analysis. Unless subdivision c of this subsection is utilized to show  
833 compliance with the channel protection criteria, stormwater conveyance systems shall be  
834 analyzed for compliance with channel protection criteria to a point where either:

835 1. Based on land area, the site's contributing drainage area is less than or equal to  
836 1.0% of the total watershed area; or,

837 2. Based on peak flow rate, the site's peak flow rate from the one-year 24-hour storm  
838 is less than or equal to 1.0% of the existing peak flow rate from the one-year 24-hour  
839 storm prior to the implementation of any stormwater quantity control measures.

840 (2) Flood protection. Concentrated stormwater flow shall be released into a stormwater  
841 conveyance system and shall meet one of the following criteria as demonstrated by use of  
842 acceptable hydrologic and hydraulic methodologies:

843 a. Concentrated stormwater flow to stormwater conveyance systems that currently do not  
844 experience localized flooding during the 10-year 24-hour storm event: The point of  
845 discharge releases stormwater into a stormwater conveyance system that, following the  
846 land disturbing activity, confines the post-development peak flow rate from the 10-year  
847 24-hour storm event within the stormwater conveyance system. Detention of stormwater  
848 or downstream improvements may be incorporated into the approved land disturbing  
849 activity to meet this criterion at the discretion of the director.

850 b. Concentrated stormwater flow to stormwater conveyance systems that currently  
851 experience localized flooding during the 10-year 24-hour storm event: The point of  
852 discharge either:

853 1. Confines the post-development peak flow rate from the 10-year 24-hour storm  
854 event within the stormwater conveyance system to avoid the localized flooding.  
855 Detention of stormwater or downstream improvements may be incorporated into the

856 approved land disturbing activity to meet this criterion at the discretion of the  
857 director.

858 2. Releases a post-development peak flow rate for the 10-year 24-hour storm event  
859 that is less than the pre-development peak flow rate from the 10-year 24-hour storm  
860 event. Downstream stormwater conveyance systems do not require any additional  
861 analysis to show compliance with flood protection criteria if this option is utilized.

862 c. Limits of analysis. Unless subsection b of this subsection is used to comply with the  
863 flood protection criteria, stormwater conveyance systems shall be analyzed for  
864 compliance with flood protection criteria to a point where:

865 1. The site's contributing drainage area is less than or equal to 1.0% of the total  
866 watershed area draining to a point of analysis in the downstream stormwater  
867 conveyance system;

868 2. Based on peak flow rate, the site's peak flow rate from the 10-year 24-hour storm  
869 event is less than or equal to 1.0% of the existing peak flow rate from the 10-year 24-  
870 hour storm event prior to the implementation of any stormwater quantity control  
871 measures; or,

872 3. The stormwater conveyance system enters a mapped floodplain or other flood-  
873 prone area, adopted in accordance with section 48-612 et seq.

874 (3) Increased volumes of sheet flow resulting from pervious or disconnected impervious  
875 areas, or from physical spreading of concentrated flow through level spreaders, must be  
876 identified and evaluated for potential impacts on down-gradient properties or resources.  
877 Increased volumes of sheet flow that will cause or contribute to erosion, sedimentation, or  
878 flooding of down gradient properties or resources shall be diverted to a stormwater  
879 management facility or a stormwater conveyance system that conveys the runoff without  
880 causing down gradient erosion, sedimentation, or flooding. If all runoff from the site is sheet  
881 flow and the conditions of this subsection are met, no further water quantity controls are  
882 required.

883 (4) For the purposes of computing pre-development runoff, all pervious lands on the site  
884 shall be assumed to be in good hydrologic condition in accordance with the U.S. Department  
885 of Agriculture's Natural Resources Conservation Service (NRCS) standards, regardless of  
886 conditions existing at the time of computation. Pre-development runoff calculations utilizing  
887 other hydrologic conditions may be utilized provided that it is demonstrated to and approved  
888 by the director that actual site conditions warrant such considerations.

889 (5) Pre-development and post-development runoff characteristics and site hydrology shall be  
890 verified by site inspections, topographic surveys, available soil mapping or studies, and  
891 calculations consistent with good engineering practices. Guidance provided in the Virginia  
892 Stormwater Management Handbook and by the Virginia Stormwater BMP Clearinghouse  
893 shall be considered appropriate practices.

894 (e) *Additional water quantity technical standards in the Four Mile Run watershed.*  
895 Notwithstanding the requirements of subsection (d), within the Four Mile Run watershed post-  
896 development peak runoff during a 100-year frequency storm shall not increase the peak runoff of  
897 the Four Mile Run Flood Control Channel as required by the city's contract with the United  
898 States Army Corps of Engineers.

899 (f) *Design storms and hydrologic methods.*

900 (1) The prescribed design storms are the one-year, two-year, and 10-year 24-hour storms  
901 using the site-specific rainfall precipitation frequency data recommended by the U.S.  
902 National Oceanic and Atmospheric Administration (NOAA) Atlas 14. Partial duration time  
903 series shall be used for the precipitation data.

904 (2) All hydrologic analysis shall be based on the existing watershed characteristics and how  
905 the ultimate development condition of the subject project will be addressed.

906 (3) The NRCS synthetic 24-hour rain distribution and models, including, but not limited to  
907 TR-55 and TR-20; hydrologic and hydraulic methods developed by the U.S. Army Corps of  
908 Engineers; or, other standard hydrologic and hydraulic methods, shall be used to conduct the  
909 analysis described in this section.

910 (4) For drainage areas of 200 acres or less, the Rational Method may be used for evaluating  
911 peak discharges. For drainage areas of 200 acres or less, the Modified Rational Method may  
912 be used for evaluating peak discharges.

913 (g) *Impounding structures.* Stormwater management wet ponds and extended detention dry  
914 ponds that are not covered by the Virginia Impounding Structure Regulations (4VAC50-20 et  
915 seq.) shall, at a minimum, be engineered for structural integrity for the 10-year storm event.

916 (h) *Grandfathering.* The grandfathering provisions established in 4VAC50-60-48 shall apply to  
917 subsections (b) through (d) above as applicable.

918 (i) *Exceptions.* The director may grant exceptions to the technical requirements of this section  
919 provided that the exception is the minimum necessary to afford relief, reasonable and appropriate  
920 conditions are imposed so that the intent of this article are preserved, granting the exception will  
921 not confer any special privileges that are denied in other similar circumstances, and exception  
922 requests are not based upon conditions or circumstances that are self-imposed or self-created.  
923 Economic hardship alone is not sufficient reason to grant an exception from the requirements of  
924 this article.

925 (1) Exceptions to the requirement that the land disturbing activity obtain required general  
926 permit shall not be given by the director, nor shall the director approve the use of a BMP not  
927 found on the Virginia Stormwater BMP Clearinghouse website, or any other control measure  
928 duly approved by the director of the Virginia Department of Environmental Quality.

929 (2) Exceptions to requirements for phosphorus reductions shall not be allowed unless offsite  
930 options otherwise permitted pursuant to subsection (c) and 4VAC50-60-69 have been  
931 considered and found not available.

932

### 933 **Sec. 35-94. Stormwater management plan review.**

934 (a) *Plan review.* The director shall review stormwater management plans and shall approve or  
935 disapprove a stormwater management plan according to the following:

936 (1) The director shall determine the completeness of a plan in accordance with section 26-  
937 326 and shall notify the applicant, in writing, of such determination, within 15 calendar days  
938 of receipt. If the plan is deemed to be incomplete, the above written notification shall contain  
939 the reasons the plan is deemed incomplete.

940 (2) The director shall have an additional 60 calendar days from the date of the  
941 communication of completeness to review the plan, except that if a determination of  
942 completeness is not made within the time prescribed in subdivision (1), then plan shall be

943 deemed complete and the director shall have 60 calendar days from the date of submission to  
944 review the plan.

945 (3) The director shall review any plan that has been previously disapproved, within 45  
946 calendar days of the date of resubmission.

947 (4) During the review period, the plan shall be approved or disapproved and the decision  
948 communicated in writing to the person responsible for the land-disturbing activity or his  
949 designated agent. If the plan is not approved, the reasons for not approving the plan shall be  
950 provided in writing. Approval or denial shall be based on the plan's compliance with the  
951 requirements of this article.

952 (5) If a plan meeting all requirements of this article is submitted and no action is taken within  
953 the time provided above in subdivision (2) for review, the plan shall be deemed approved.

954 (b) *Plan modifications.* Approved stormwater plans may be modified as follows:

955 (1) Modifications to an approved stormwater management plan shall be allowed only after  
956 review and written approval by the director. The director shall have 60 calendar days to  
957 respond in writing either approving or disapproving such request.

958 (2) The director may require that an approved stormwater management plan be amended,  
959 within a time prescribed by the director, to address any deficiencies noted during inspection.

960

961 **Sec. 35-95. Stormwater pollution prevention plan.**

962 (a) *Plan contents.* The SWPPP shall include the content specified by 4VAC50-60-54 and must  
963 also comply with the requirements and general information set forth in 4VAC50-60-1170,  
964 Section II of the general permit.

965 (b) *Plan amendments.* The SWPPP shall be amended by the operator whenever there is a change  
966 in design, construction, operation, or maintenance that has a significant effect on the discharge of  
967 pollutants to state waters which is not addressed by the existing SWPPP.

968 (c) *Location and availability of plan for review.* The SWPPP must be maintained by the operator  
969 at a central location onsite. If an onsite location is unavailable, notice of the SWPPP's location  
970 must be posted near the main entrance at the construction site. Operators shall make the SWPPP  
971 available for public review in accordance with Section II of the general permit, either  
972 electronically or in hard copy.

973

974 **Sec. 35-96. Pollution prevention plan.**

975 (a) *Plan contents, implementation, and amendments.* The pollution prevention plan shall include  
976 the content specified by 4VAC50-60-56, shall be developed, implemented, and updated as  
977 necessary, and must detail the design, installation, implementation, and maintenance of effective  
978 pollution prevention measures to minimize the discharge of pollutants. At a minimum, such  
979 measures must be designed, installed, implemented, and maintained to:

980 (1) Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash  
981 water, and other wash waters. Wash waters must be treated in a sediment basin or alternative  
982 control that provides equivalent or better treatment prior to discharge;



983 (2) Minimize the exposure of building materials, building products, construction wastes,  
984 trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste, and  
985 other materials present on the site to precipitation and to stormwater; and,

986 (3) Minimize the discharge of pollutants from spills and leaks and implement chemical spill  
987 and leak prevention and response procedures.

988 (b) *Prohibited discharges.* The pollution prevention plan shall include effective best  
989 management practices to prohibit the following discharges:

990 (1) Wastewater from washout of concrete, unless managed by an appropriate control;

991 (2) Wastewater from washout and cleanout of stucco, paint, form release oils, curing  
992 compounds, and other construction materials;

993 (3) Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance;  
994 and,

995 (4) Soaps or solvents used in vehicle and equipment washing.

996 (c) *Prohibitions on dewatering activities.* Discharges from dewatering activities, including  
997 discharges from dewatering of trenches and excavations, are prohibited unless managed by  
998 appropriate controls.

999

1000 **Sec. 35-97. Chesapeake Bay preservation areas established.**

1001 (a) *Chesapeake Bay preservation areas.* All land within the city is designated as a Chesapeake  
1002 Bay preservation area, which is divided into resource protection areas and resource management  
1003 areas.

1004 (b) *Resource protection areas.* Resource protection areas shall consist of the following lands  
1005 described herein that have an intrinsic water quality value due to the ecological and biological  
1006 processes they perform or are sensitive to impacts which may cause significant degradation to  
1007 the quality of state waters:

1008 (1) Nontidal wetlands connected by surface flow and contiguous to water bodies with  
1009 perennial flow;

1010 (2) Such other lands considered by the city to meet some or all of the criteria described in  
1011 subsection (b) of this section, and considered to be necessary to protect the quality of state  
1012 waters. Other lands to be included within the RPA are water bodies with perennial flow, all  
1013 natural stream channels, and manmade open stream channels, as generally identified on the  
1014 city's Chesapeake Bay preservation area (CBPA) map; and,

1015 (3) A vegetated buffer area not less than 100 feet in width located adjacent to and landward  
1016 of the components listed in subsections (b)(1) and (2) of this section, and along both sides of  
1017 any water body with perennial flow. This distance shall be measured from the top of the  
1018 stream bank or the edge of stream or wetland if there is no bank. Notwithstanding permitted  
1019 uses, encroachments, vegetation clearing, waivers, nonconformities, exemptions, and  
1020 exceptions as set forth in this section and section 35-98, the 100-foot-wide buffer area is  
1021 never reduced in width.

1022 The 100-foot buffer area shall be deemed to achieve a 75 percent reduction of sediments and a  
1023 40 percent reduction of nutrients.

1024 (c) *Resource management areas.* Resource management areas shall consist of all land within the  
1025 city corporate boundary that is not designated as resource protection areas.

1026 (d) *Interpretation of resource protection area boundaries and delineation by the applicant.* The  
1027 city's adopted CBPA map shows only the general location of the RPA and should be consulted  
1028 by persons contemplating activities, modifications, or encroachments in the RPA. The specific  
1029 boundaries of the RPA for each site or parcel shall be determined by the applicant as part of a  
1030 stormwater management permit, water quality impact assessment, grading plan, demolition  
1031 permit, building permit, site plan, subdivision plat, or any other application for land disturbance,  
1032 and delineated on all submitted plans, subject to approval of the director and in accordance with  
1033 this article. The identification of resource protection area boundaries shall be established by a  
1034 land surveyor authorized to practice in the commonwealth, and be based on reliable,  
1035 scientifically valid, and specific information, as approved by the director, from actual field  
1036 evaluations of the site. The city CBPA map shall be used only as a guide to the general location  
1037 of resource protection areas. The accuracy of the RPA boundary delineation submitted by the  
1038 applicant, when in question, shall be verified by the director.

1039 (e) *Permitted land disturbing activities within RPAs.* A land disturbing activity may be allowed  
1040 in the resource protection area, subject to completion of a water quality impact assessment as  
1041 required in section 35-99 and the approval of the director, only if it falls into one of the following  
1042 use categories and meets all criteria and requirements of this article and those of the underlying  
1043 zoning district and all other applicable city, state, and federal regulations:

1044 (1) A new or expanded water-dependent facility may be allowed within a resource protection  
1045 area provided that:

- 1046 a. It does not conflict with the comprehensive plan;  
1047 b. Any nonwater-dependent component is located outside of resource protection areas;  
1048 and,  
1049 c. Access will be provided with the minimum disturbance necessary, and where possible,  
1050 a single point of access will be provided.

1051 (2) Redevelopment shall be permitted in the resource protection area only if there is no  
1052 increase in the amount of impervious cover and no further encroachment within the resource  
1053 protection area.

1054 (3) Roads and driveways not exempt in section 35-98 are not permitted unless each of the  
1055 following conditions is met:

- 1056 a. The director makes a finding that there are no reasonable alternatives to aligning the  
1057 road or driveway in or across the resource protection area; and,  
1058 b. The alignment and design of the road or driveway are optimized, consistent with other  
1059 applicable requirements, to minimize encroachment in the resource protection area and  
1060 adverse effects on water quality.

1061 (4) Flood control and stormwater management facilities that drain or treat water from  
1062 multiple development projects or from a significant portion of a watershed may be allowed in  
1063 resource protection areas, provided that:

- 1064 a. The director has conclusively established that the location of the facility within the  
1065 resource protection area is the optimum location;

1066 b. The size of the facility is the minimum necessary to provide necessary flood control or  
1067 stormwater treatment, or both;

1068 c. The facility must be consistent with a stormwater management program that has been  
1069 approved in accordance with 4VAC50-60-92 of the Virginia Stormwater Management  
1070 Program permit regulations;

1071 d. All applicable permits for construction in state or federal waters must be obtained from  
1072 the appropriate state and federal agencies;

1073 e. Routine maintenance is allowed to be performed on such facilities to assure that they  
1074 continue to function as designed; and,

1075 f. It is not the intent of this division to allow a best management practice that collects and  
1076 treats runoff from only an individual lot or some portion of the lot to be located within a  
1077 resource protection area.

1078 (f) *Removal of vegetation in the resource protection area buffer area.* Indigenous vegetation may  
1079 be removed from the RPA buffer area only as permitted by the director to provide for reasonable  
1080 sight lines, access paths, general woodlot management, and best management practices,  
1081 including those that prevent upland erosion and concentrated flows of stormwater, as follows.  
1082 All requests for vegetation removal shall be submitted in writing to the director for evaluation.

1083 (1) Trees may be pruned or removed as necessary subject to the written approval of the  
1084 director to provide for sight lines and vistas, provided that, where removed, they shall be  
1085 replaced with other vegetation that is equally effective in retarding runoff, preventing  
1086 erosion, and filtering nonpoint source pollution from runoff.

1087 (2) Any path shall be constructed and surfaced so as to effectively control erosion.

1088 (3) Dead, diseased, or dying trees or shrubbery and noxious weeds (such as Johnson grass,  
1089 kudzu, and multiflora rose) may be removed and thinning of trees may be allowed subject to  
1090 the written approval of the director, pursuant to sound horticultural practice incorporated into  
1091 locally adopted standards.

1092 (4) For shoreline erosion control projects, trees and woody vegetation may be removed,  
1093 necessary control techniques employed, and appropriate vegetation established to protect or  
1094 stabilize the shoreline in accordance with the best available technical advice and applicable  
1095 permit conditions or requirements.

1096 (g) *Permitted encroachments into the buffer area.* Encroachments into the buffer area may be  
1097 allowed only in accordance with this section.

1098 (1) When the application of the buffer area would result in the loss of a buildable area or a lot  
1099 or parcel recorded prior to October 1, 1989, encroachments into the buffer area may be  
1100 allowed by the director, through an administrative process, and in accordance with the  
1101 following criteria:

1102 a. Encroachments into the buffer area shall be the minimum necessary to achieve a  
1103 reasonable buildable area for a principal structure and necessary utilities;

1104 b. Where practicable, a vegetated area that will maximize water quality protection,  
1105 mitigate the effects of buffer encroachment, and is equal to the area of encroachment into  
1106 the buffer area shall be established elsewhere on the lot or parcel; and,

1107 c. The encroachment shall not extend into the seaward 50 feet of the buffer area.

- 1108 (2) When the application of the buffer area would result in the loss of a buildable area on a  
1109 lot or parcel recorded between October 1, 1989, and March 1, 2002, encroachments into the  
1110 buffer area may be allowed by the director in accordance with the following criteria:
- 1111 a. The lot or parcel was created as a result of a legal process conducted in conformity  
1112 with the city's subdivision regulations;
  - 1113 b. Conditions or mitigation measures imposed through a previously approved exception  
1114 shall be met;
  - 1115 c. If the use of a best management practice was previously required, the best management  
1116 practice shall be evaluated to determine if it continues to function effectively, and if  
1117 necessary, the best management practice shall be reestablished or repaired and  
1118 maintained as required; and,
  - 1119 d. The criteria in subsection (g)(1) of this section shall be met.
- 1120 (h) *Re-establishment of buffer areas.* The buffer area required in subsection (b)(2) of this section  
1121 shall consist of vegetation that is effective in retarding runoff, preventing erosion, and filtering  
1122 nonpoint source pollution from runoff. Where such vegetation is not sufficient to meet this  
1123 purpose, it shall be established in accordance with this section.
- 1124 (1) Where buffer areas are to be established, they shall consist of a mixture of shade trees,  
1125 understory trees, shrubs and groundcovers. Density of the buffer shall be as described in the  
1126 Riparian Buffers Modification and Mitigation Guidance Manual restoration and/or establishment  
1127 tables.
- 1128 (2) Vegetation shall be chosen from the city recommended lists of trees and/or native floodplain  
1129 species. Wetland plantings, including herbaceous plantings, and/or wetland seed mix shall be  
1130 used where site conditions warrant. Plant materials and planting techniques shall be in  
1131 accordance with The City of Falls Church Specifications for Planting.
- 1132 (3) Where invasive plant species are present, the director may require their removal as part of the  
1133 re-establishment of the buffer area.
- 1134
- 1135 **Sec. 35-98. Chesapeake Bay preservation areas; administrative waivers, nonconformities,**  
1136 **exemptions, and exceptions.**
- 1137 (a) *Limitations of this section.* The administrative waivers, nonconformities, exemptions, and  
1138 exceptions in this section shall only apply to the requirements of section 35-97. All other  
1139 requirements of this article shall apply unless otherwise exempted or granted an exception by the  
1140 director.
- 1141 (b) *Nonconforming structures.* Any structure or nonagricultural use that was legally established  
1142 in accordance with the provisions of this Code and was in existence on the date of the adoption  
1143 of the ordinance from which this article is derived, and made nonconforming by operation of this  
1144 article, may continue and be maintained, but shall not be enlarged or expanded, with the  
1145 exception that the director may grant a waiver for structures on legal nonconforming lots or  
1146 parcels to provide for remodeling and alterations to such nonconforming structures. A  
1147 nonconforming use development waiver shall become null and void if substantial work on the  
1148 project has not commenced within 12 months of the date of permit issuance.
- 1149 (c) *Reconstruction of preexisting structures.* It is not the intent of this division to prevent the  
1150 reconstruction of preexisting structures within Chesapeake Bay preservation areas from

1151 occurring as a result of casualty loss, unless otherwise restricted by city ordinance. Such  
1152 reconstruction shall occur within two years after the destruction or damage and there shall be no  
1153 increase in the amount of impervious area and no further encroachment into the RPA, to the  
1154 extent possible by sound engineering practices.

1155 (d) *Administrative waivers for the expansion of preexisting structures.* An application for the  
1156 expansion or modification of an existing legal principal structure on legal nonconforming lots or  
1157 parcels may be approved by the director through an administrative process for additions to the  
1158 existing legal principal structures, and additions of attached decks, garages, and other customary  
1159 and incidental structures attached to the principal structure; provided the following findings are  
1160 made:

- 1161 (1) The request for the waiver is the minimum necessary to afford relief;
- 1162 (2) Granting the waiver will not confer upon the applicant any specific privileges that are  
1163 denied by this article to other property owners in similar situations;
- 1164 (3) The waiver is in harmony with the purpose and intent of this article and does not result in  
1165 a net increase in nonpoint source pollution load;
- 1166 (4) The waiver is not based on conditions or circumstances that are self-created or self-  
1167 imposed;
- 1168 (5) Reasonable and appropriate conditions are imposed, as warranted, that will prevent the  
1169 waiver from causing a degradation of water quality;
- 1170 (6) Other findings, as appropriate and required by the city are met; and
- 1171 (7) In no case shall this provision apply to accessory structures. Such requests shall be heard  
1172 by the planning commission through the exceptions process described in subsection (g) of  
1173 this section.

1174 (e) *Exemptions for public utilities, railroads, public roads, and facilities.* The following shall be  
1175 exempt provided that all state and federal requirements have been met.

- 1176 (1) Construction, installation, operation, and maintenance of electric, natural gas, fiber-optic,  
1177 and telephone transmission lines, railroads, and public roads and their appurtenant structures.
- 1178 (2) The exemption of public roads and drives is further conditioned on the optimization of  
1179 the road alignment and design, consistent with other applicable requirements, to prevent or  
1180 otherwise minimize:
  - 1181 a. Encroachment in the resource protection area; and
  - 1182 b. Adverse effects on water quality.
- 1183 (3) Construction, installation and maintenance of water, sewer, natural gas, and underground  
1184 fiber-optic telecommunications and cable television lines owned, permitted, or both, by the  
1185 city or regional service authority shall be exempt; provided that:
  - 1186 a. To the degree possible, the location of such utilities and facilities should be outside  
1187 resource protection areas;
  - 1188 b. No more land shall be disturbed than is necessary to provide for the proposed utility  
1189 installation; and,
  - 1190 c. All such construction, installation and maintenance of such utilities and facilities shall  
1191 be in compliance with all applicable state and federal permits and designed and  
1192 conducted in a manner that protects water quality.

1193 (4) Passive recreation facilities such as boardwalks, trails and pathways; and historic  
1194 preservation and archaeological activities may be exempt, as determined by the director,  
1195 provided that any land disturbing activity exceeding an area of 2,500 square feet shall  
1196 comply with the requirements of section 35-101.

1197 (f) *Exceptions in Chesapeake Bay preservation areas.*

1198 (1) *Requests for planning commission review.* Requests for exceptions to the requirements of  
1199 section 35-97, permitted development or uses, modifications, and encroachments within  
1200 resource protection areas, and requests for exceptions to modify nonconforming, or construct  
1201 new, nonattached accessory structures and uses in the RPA buffer, as noted in subsection (d)  
1202 of this section, shall be made, in writing, to the director within 30 calendar days of the  
1203 director's official decision. This request shall identify the impacts of the proposed exception  
1204 on water quality and on lands within the resource protection area through the performance of  
1205 a water quality impact assessment, which complies with the provisions of section 35-99. The  
1206 director will forward the request and the water quality impact assessment to the planning  
1207 commission for its consideration. The city shall notify the affected public of any such  
1208 exception requests and the planning commission shall consider these requests in a public  
1209 hearing in accordance with Code of Virginia, §15.2-2204, except only one hearing shall be  
1210 required.

1211 (2) *Request for administrative review.* Requests for exceptions to provisions other than  
1212 section 35-97, permitted development or uses, modifications, and encroachments within  
1213 resource protection areas, and subsection (d) of this section. Exceptions to modify  
1214 nonconforming, or construct new nonattached accessory structures and uses in the RPA  
1215 buffer, may be made in writing to the director for administrative review.

1216 (3) *Evaluation criteria for administrative or planning commission review of exceptions as*  
1217 *applied to subsections (f)(1) and (2) of this section.* The director or the planning commission  
1218 shall review the request for an exception and the water quality impact assessment and may  
1219 grant the exception with such conditions and safeguards as deemed necessary to further the  
1220 purpose and intent of this division, and if the director or the planning commission finds that:

1221 a. Granting the exception will not confer upon the applicant any special privileges denied  
1222 by this article to other property owners in the overlay district;

1223 b. The exception request is not based on conditions or circumstances that are self-created  
1224 or self-imposed, nor does the request arise from conditions or circumstances either  
1225 permitted or nonconforming that are related to adjacent parcels;

1226 c. The exception request is the minimum necessary to afford relief;

1227 d. The exception request will be in harmony with the purpose and intent of this article,  
1228 not injurious to the neighborhood or otherwise detrimental to the public welfare, and is  
1229 not of substantial detriment to water quality; and,

1230 e. Reasonable and appropriate conditions are imposed which will prevent the exception  
1231 request from causing a degradation of water quality.

1232 If the director or the planning commission cannot make the required findings or refuses to  
1233 grant the exception, the request for an exception together with the water quality impact  
1234 assessment and the written findings and rationale for the decision shall be returned to the  
1235 applicant.

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**Sec. 35-99. Water quality impact assessment.**

- (a) *When required.* A water quality impact assessment shall be required for any:
- (1) Proposed land disturbance, development or redevelopment activity within the resource protection area;
  - (2) Buffer encroachment, as provided for in section 35-97; and,
  - (3) Other development in resource management areas if regarded as appropriate by the director due to unique site characteristics or the intensity of the proposed use or development and its potential impact on water quality.
- (b) *Agreement in lieu of an assessment.* Where a land disturbing activity subject to this section results in less than 2,500 square feet of disturbance, an agreement in lieu of an assessment may be substituted for a water quality impact assessment if executed by the director.
- (c) *Contents.* The requirements for the water quality impact assessment will vary depending on the magnitude of the proposed development project.
- (1) The purpose of the water quality impact assessment is to identify the impacts of proposed development, redevelopment, or land disturbance on water quality, lands within the resource protection area, and other environmentally sensitive lands, and to determine specific measures for mitigation of these impacts. The water quality impact assessment must be of sufficient specificity to demonstrate compliance with the criteria of this article.
  - (2) A water quality assessment shall include a site drawing to scale which shows the following:
    - a. Location of the components of the RPA and the 100-foot buffer area measured from the top of the stream bank or edge of stream when there is no bank. The location of the RPA line shall be prepared and certified by a land surveyor authorized to practice in the commonwealth;
    - b. Location and nature of the proposed encroachment into the RPA buffer area, including:
      - 1. Type of paving material;
      - 2. Areas of clearing or grading;
      - 3. Location of any structures, drives, or other impervious cover; and
      - 4. Sewage disposal systems or other utilities;
    - c. Estimation of pre-development and post-development impervious surfaces on the site and stormwater calculations;
    - d. Type and location of proposed best management practices to mitigate the proposed encroachment and the location of existing and proposed runoff outfalls or drainage pathways from the property, including the location of erosion and sediment control devices such as silt fencing, stormwater inlet protection, and temporary soil storage; and
    - e. Pollutant load calculations to display that the vegetative buffer and/or best management practice will reduce the sediment load by 75 percent and nutrient load by 40 percent.
  - (3) Certain water quality impact requirements modifications are as follows:

1276 a. Additional hydrogeological and other information may be required by the director if  
1277 the size and scope of the proposed project is large enough to require additional analysis to  
1278 ensure the protection of the CBPA.

1279 b. Applicants for development and redevelopment of land or land disturbance within the  
1280 RPA may apply, in writing, to the city engineer for a modification to the application  
1281 requirements for a water quality impact assessment, described in this section.

1282

1283 **Sec. 35-100. Water quality impact assessment review.**

1284 (a) *Submission and review.* Submission and review requirements for the water quality impact  
1285 assessment are as follows:

1286 (1) Five copies of all site drawings and other applicable information as required by this  
1287 article shall be submitted to the director for review by the SMRT.

1288 (2) All information required in this section shall be certified as complete and accurate by a  
1289 professional engineer, architect, certified landscape architect or land surveyor licensed in  
1290 Virginia pursuant to Article 1 (§54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of  
1291 Virginia.

1292 (3) As part of any water quality impact assessment submittal, the SMRT may require review  
1293 by the Northern Virginia Regional Commission or the Virginia Department of Environmental  
1294 Quality. Any comments will be incorporated into the final review by the SMRT, provided  
1295 that such comments are provided within 30 days of the request.

1296 (b) *Evaluation.* The evaluation procedure for the water quality impact assessment is as follows:

1297 (1) Upon the completed review of a water quality impact assessment and the landscape  
1298 conservation plan, the SMRT will determine if any proposed encroachment into the buffer  
1299 area is consistent with the provisions of this article and make a recommendation to the  
1300 director based on the following criteria:

1301 a. The necessity of the proposed encroachment and the ability to place improvements  
1302 elsewhere on the site to avoid disturbance of the buffer area;

1303 b. Impervious surfaces are minimized;

1304 c. Proposed mitigation measures, including the landscape conservation plan and site  
1305 design, result in minimal disturbance to all components of the RPA, including the 100-  
1306 foot buffer area;

1307 d. Proposed mitigation measures will work to retain all buffer are functions, pollutant  
1308 removal, erosion and runoff control;

1309 e. Proposed best management practices, where required, achieve the requisite reductions  
1310 in pollutant loadings;

1311 f. The development as proposed, meets the purpose and intent of this division;

1312 g. The cumulative impact of the proposed development, when considered in relation to  
1313 other development in the vicinity, both existing and proposed, will not result in a  
1314 significant degradation of water quality;

1315 h. Within any RPA, the proposed development is water-dependent or redevelopment; and

1316 i. The development will not result in significant disruption of the hydrology of the site.



1317 (2) The director shall require additional mitigation where potential impacts have not been  
1318 adequately addressed. Evaluation of mitigation measures will be made based on the criteria  
1319 listed in this subsection.

1320 (3) The director shall find the proposal to be inconsistent with the purpose and intent of this  
1321 article when the impacts created by the proposal cannot be mitigated.

1322

1323 **Sec. 35-101. Erosion and sediment control plan.**

1324 (a) *Plan contents.* The erosion and sediment control plan shall be of sufficient detail to  
1325 demonstrate, to the satisfaction of the director, compliance with the provisions of section 35-102  
1326 and with the Virginia Erosion and Sediment Control Handbook, whichever is more restrictive.  
1327 The plan may be contained on a separate sheet or included with the drainage or grading plan  
1328 submitted as a part of the development plans required in chapter 6, pertaining to buildings,  
1329 chapter 28, pertaining to subdivisions, or chapter 48, pertaining to zoning.

1330 (b) *Requirements for those preparing plans.* The plan must be prepared and certified by a  
1331 professional engineer, architect, certified landscape architect or land surveyor licensed in  
1332 Virginia pursuant to Article 1 (§54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of  
1333 Virginia.

1334 (c) *Agreement in lieu of a plan.* Where a land disturbing activity results from the construction of  
1335 a single-family residence, an agreement in lieu of a plan may be substituted for an erosion and  
1336 sediment control plan if executed by the director.

1337 (d) *Applicability to state agencies.* Any state agency that undertakes a project involving a land  
1338 disturbing activity shall have the erosion and sediment control plan approved by the Virginia Soil  
1339 and Water Conservation Board or Virginia Department of Environmental Quality, as appropriate.

1340 (e) *Applicability to multi-jurisdictional activities.* Any person whose land disturbing activities  
1341 involve lands which extend into the jurisdiction of another local erosion and sediment control  
1342 program shall have either an erosion and sediment plan approved by the Virginia Soil and Water  
1343 Conservation Board, or Fairfax County or Arlington County or the city. Such persons shall  
1344 comply with the requirements of section 35-105 concerning an installation and maintenance  
1345 agreement and bond.

1346 (f) *Responsibility of owner of the land when activity is conducted by contractor.* Whenever a  
1347 land disturbing activity is proposed to be conducted by a contractor performing construction  
1348 work pursuant to a construction contract, the preparation, submission and approval of the  
1349 required erosion and sediment control plan shall be the responsibility of the owner of the land.

1350 (g) *Wetland mitigation banks.* In accordance with the procedure set forth in Code of Virginia,  
1351 §10.1-563.E, any person engaging in the creation and operation of wetland mitigation banks in  
1352 multiple jurisdictions, which have been approved and are operated in accordance with applicable  
1353 federal and state guidance, laws or regulations for the establishment, use and operation of  
1354 mitigation banks pursuant to a permit issued by the state department of environmental quality,  
1355 the marine resources commission or the U.S. Army Corps of Engineers, may at the option of that  
1356 person, file general erosion and sediment control specifications for wetland mitigation banks  
1357 annually with the Virginia Soil and Water Conservation Board for review and approval  
1358 consistent with guidelines established by the Virginia Department of Environmental Quality.

1359 (h) *Responsible land disturber.* The responsible land disturber shall be designated prior to land  
1360 disturbing activity. In addition, as a prerequisite to engaging in the land disturbing activities  
1361 shown on the approved plan, the person responsible for carrying out the plan shall provide the  
1362 name of an individual holding a certificate of competence to the program authority, as provided  
1363 by Code of Virginia, §10.1-561, who will be in charge of and responsible for carrying out the  
1364 land disturbing activity. However, the director may waive the certificate of competence  
1365 requirement for an agreement in lieu of a plan for construction of a single-family residence. If a  
1366 violation occurs during the land disturbing activity, then the person responsible for carrying out  
1367 the agreement in lieu of a plan shall correct the violation and provide the name of an individual  
1368 holding a certificate of competence, as provided by Code of Virginia, §10.1-561. Failure to  
1369 provide the name of an individual holding a certificate of competence prior to engaging in land  
1370 disturbing activities may result in revocation of the approval of the plan and the person  
1371 responsible for carrying out the plan shall be subject to the penalties as provided in this article.

1372

1373 **Sec. 35-102. Erosion and sediment control technical standards.**

1374 (a) *Applicability of Virginia Erosion and Sediment Control Regulations.* The more stringent of the  
1375 erosion and sediment control performance standards contained in this section, or those contained in the  
1376 Virginia Erosion and Sediment Control Regulations, 4VAC 50-30-40, shall apply to all applications for  
1377 development, redevelopment, or land disturbance that will disturb 2,500 square feet of land or more.  
1378 Such standards shall also apply to all applications for development, redevelopment, or land disturbance  
1379 within RPAs, regardless of the amount of land disturbance.

1380 (b) *Stabilization of denuded areas and soil stockpiles.*

1381 (1) Permanent or temporary soil stabilization shall be applied to denuded areas within seven  
1382 days after final grade is reached on any portion of the site. Temporary soil stabilization shall  
1383 also be applied within seven days to denuded areas which may not be at final grade but will  
1384 remain dormant (undisturbed) for longer than 30 days. Permanent soil stabilization shall be  
1385 applied to areas that are to be left dormant for more than one year. Soil stabilization refers to  
1386 measures which protect soil from the erosive forces of raindrop impact and flowing water.  
1387 Applicable practices include vegetative establishment, mulching and the early application of  
1388 gravel base on areas to be paved. Soil stabilization measures should be selected to be  
1389 appropriate for the time of year, site conditions, and estimated duration of use.

1390 (2) During construction of the project soil stockpiles shall be sterilized or protected with  
1391 sediment-trapping measures to prevent soil loss. The applicant is responsible for the  
1392 temporary protection and permanent stabilization of all soil stockpiles on site as well as soil  
1393 transported from the project site.

1394 (c) *Establishment of permanent vegetation.* A permanent and appropriate vegetative cover shall  
1395 be established on denuded areas not otherwise permanently stabilized. Permanent vegetation  
1396 shall not be considered established until a ground cover is achieved that, in the opinion of the  
1397 director, is uniform enough to control soil erosion satisfactorily and to survive severe weather  
1398 conditions.

1399 (d) *Protection of adjacent properties.* Properties adjacent to the site of a land disturbance shall be  
1400 protected from sediment deposition. This may be accomplished by preserving a well-vegetated  
1401 buffer strip around the lower perimeter of the land disturbance, by installing perimeter controls  
1402 such as sediment barriers, filters, dikes, sediment basins or by a combination of such measures.  
1403 Vegetated buffer strips may be used alone only where runoff in sheet flow is expected. Buffer

1404 strips should be at least 20 feet in width. If at any time it is found that a vegetated buffer strip  
1405 alone is ineffective in stopping sediment movement onto adjacent property, additional perimeter  
1406 controls must be provided.

1407 (e) *Timing and stabilization of sediment-trapping measures.* Sediment basins and traps,  
1408 perimeter dikes, sediment barriers and other measures intended to trap sediment on-site must be  
1409 constructed as a first step in grading and be made functional before upslope land disturbance  
1410 takes place. Earthen structures such as dams, dikes and diversions must be seeded and mulched  
1411 immediately after installation.

1412 (f) *Sediment basins.* Stormwater runoff from drainage areas with three acres or greater disturbed  
1413 area must pass through a sediment basin. The sediment basin shall be designed and constructed  
1414 to accommodate the anticipated sediment loading from the land disturbing activity. The outfall  
1415 device or system design shall take into account the total drainage area flowing through the  
1416 disturbed area to be served by the basin. The director may require sediment basins or traps for  
1417 smaller disturbed areas where deemed necessary.

1418 (g) *Cut and fill slopes.* Cut and fill slopes must be designed and constructed in a manner which  
1419 will minimize erosion. Consideration must be given to the length and steepness of the slope, the  
1420 soil type, upslope drainage area, groundwater conditions and other applicable factors. Slopes  
1421 which are found to be eroding excessively within one year of permanent stabilization must be  
1422 provided with additional slope stabilizing measures until the problem is corrected. Any bond  
1423 may be held until the expiration of one year after permanent stabilization is established or longer,  
1424 if the director determines further stabilization or measures are required. The following guidelines  
1425 are provided to aid site planners and plan reviewers in developing an adequate design:

1426 (1) Roughened soil surfaces are generally preferred to smooth surfaces on slopes.

1427 (2) Diversions should be constructed at the top of long, steep slopes which have significant  
1428 drainage areas above the slope. Diversion or terraces may also be used to reduce slope  
1429 length.

1430 (3) Concentrated stormwater should not be allowed to flow down cut or fill slopes unless  
1431 contained within an adequate temporary or permanent channel, flume or slope drain  
1432 structure.

1433 (4) Wherever a slope face crosses a water seepage plain which endangers the stability of the  
1434 slope, adequate drainage or other protection should be provided.

1435 (h) *Storm sewer inlet protection.* All storm sewer inlets which are made operable during  
1436 construction shall be protected so that sediment-laden water will not enter the conveyance  
1437 system without first being filtered or otherwise treated to remove sediment.

1438 (i) *Working in or crossing watercourses.*

1439 (1) Construction vehicles should be kept out of watercourses to the extent possible. Where  
1440 in-channel work is necessary, precautions must be taken to stabilize the work area during  
1441 construction to minimize erosion. The channel (including bed and banks) must always be  
1442 restabilized immediately after inchannel work is completed.

1443 (2) Where a live (wet) watercourse must be crossed by construction vehicles more than twice  
1444 in any six-month period during construction, a temporary stream crossing constructed of  
1445 nonerodible materials must be provided.

1446 (3) When work in a live watercourse is performed, precautions shall be taken to minimize  
1447 encroachment, control sediment transport and stabilize the work area to the greatest extent  
1448 possible during construction. Nonerodible material shall be used for the construction of  
1449 causeways and cofferdams. Earthen fill may be used for these structures if armored by  
1450 nonerodible cover materials.

1451 (4) All applicable federal, state, and local regulations pertaining to working in or crossing  
1452 live watercourses shall be met.

1453 (5) The temporary crossing shall be removed as soon as possible and the stream shall be  
1454 restored to its pre-development state, or to a condition of appropriate vegetation, as  
1455 established by the director and the director.

1456 (j) *Underground utility construction.*

1457 (1) The construction of nonexempt underground utility lines shall be subject to the following  
1458 criteria:

1459 a. No more than 100 feet of trench are to be opened at one time.

1460 b. Where consistent with safety and space considerations, excavated material is to be  
1461 placed on the uphill side of trenches.

1462 c. Effluent from dewatering operations shall be filtered or passed through an approved  
1463 sediment-trapping device, or both, and discharged in a manner that does not adversely  
1464 affect flowing streams or off-site property.

1465 d. Restabilization shall be accomplished in accordance with these regulations.

1466 e. Applicable safety regulations shall be complied with.

1467 (2) Nonexempt utility construction includes the installation, maintenance or repair of all  
1468 utilities which disturb more than 10,000 square feet except:

1469 a. Individual service connections.

1470 b. Underground public utility lines under existing hard-surfaced roads, streets or  
1471 sidewalks, provided such land disturbing activity is confined to the area which is hard-  
1472 surfaced.

1473 (k) *Construction access routes.* Wherever construction vehicle access routes intersect paved  
1474 public roads, provisions must be made to eliminate the transport of sediment (mud) by runoff or  
1475 vehicle tracking onto the paved surface. Where sediment is transported onto a public road  
1476 surface, the roads shall be cleaned immediately and cleaned thoroughly at the end of each day.  
1477 Sediment shall be removed from roads by shoveling or sweeping and be transported to a  
1478 sediment controlled disposal area. Street washing shall be allowed only after sediment is  
1479 removed in this manner. This provision shall apply to individual subdivision lots as well as to  
1480 larger land disturbing activities.

1481 (l) *Disposition of temporary measures.* All temporary erosion and sediment control measures  
1482 shall be disposed of within 30 days after final site stabilization is achieved or after the temporary  
1483 measures are no longer needed, unless otherwise authorized by the director. Trapped sediment  
1484 and other disturbed soil areas resulting from the disposition of temporary measures shall be  
1485 permanently stabilized to prevent further erosion and sedimentation.

1486 (m) *Maintenance.* All temporary and permanent erosion and sediment control practices must be  
1487 maintained, inspected, and repaired as needed to assure continued performance of their intended

1488 function. A statement describing the maintenance responsibilities of the permittee shall be  
1489 included in the approved erosion and sediment control plan.

1490 (1) The Virginia Erosion and Sediment Control Handbook, Second Edition, 1980, or current  
1491 edition shall be used by any applicant making a submittal under this article and by the  
1492 director in review and consideration of the adequacy of any erosion and sediment control  
1493 plan submitted.

1494 (2) This article and the Virginia Erosion and Sediment Control Handbook, Second Edition,  
1495 1980, or current edition shall be an integral part of the city's erosion and sediment control  
1496 program and shall comprise the city's Erosion and Sediment Control Handbook.

1497 (n) *Dormant land use activities.* Should a land disturbing activity cease for more than 180 days,  
1498 the director shall evaluate the existing approved erosion and sediment control plan to determine  
1499 whether the plan still satisfies local and state erosion and sediment control criteria and to verify  
1500 that all design factors are still valid. If the director finds the previously filed plan to be  
1501 inadequate, a modified plan shall be submitted and approved prior to the resumption of land  
1502 disturbing activity.

1503 (o) *Exemptions for certain agricultural, horticultural, or forest management activities.* Any  
1504 person who owns, occupies, or operates private agricultural, horticultural, or forest lands shall  
1505 not be deemed to be in violation of this article for land disturbing activities, which result from  
1506 the tilling, planting, or harvesting of agricultural, horticultural or forest crops or products or  
1507 engineering operations such as the construction of terraces, terrace outlets, check dams, desilting  
1508 basins, floodwater retarding structures, channel improvements, floodways, dikes, ponds, ditches  
1509 and the like; the utilization of strip cropping, lister furrowing; land drainage; land irrigation,  
1510 seeding and planting of waste, sloping, abandoned, or eroded lands and grasses; forestation and  
1511 reforestation; rotation of crops; soil stabilization with trees, grasses, legumes, and other thick  
1512 growing, soil holding crops; retardation of runoff by increasing absorption of rainfall; and  
1513 retirement from cultivation of steep, highly erosive areas and areas now badly gullied or  
1514 otherwise eroded.

1515 (p) *Exceptions and modifications.* The director may provide an exception or modification of the  
1516 requirements of this section that are deemed inappropriate or too restrictive for site conditions.  
1517 Exceptions may be granted under these conditions:

1518 (1) At the time of plan submission, an applicant may request a modification to become part  
1519 of the approved erosion and sediment control plan. The applicant shall explain the reasons  
1520 for requesting modifications in writing. Specific modifications which are allowed by the  
1521 director shall be documented in the plan.

1522 (2) During construction, the person responsible for implementing the approved plan may  
1523 request a modification in writing from the director. The director shall respond in writing  
1524 either approving or disapproving such a request. If the director does not approve a  
1525 modification within ten days of receipt of the request, the request shall be considered to be  
1526 disapproved. Following disapproval, the applicant may resubmit a modification request with  
1527 additional documentation.

1528 (3) The director shall consider modification requests judiciously, keeping in mind both the  
1529 need of the applicant to maximize cost effectiveness and the need to protect offsite properties  
1530 and resources from damage.

1531 (4) The department of public works shall file a quarterly report on significant complaints  
1532 filed under this section and on any modifications granted. The report shall summarize the  
1533 complaint, the determination of the director on its merits, and any required corrective action.  
1534 A copy of the quarterly report shall be transmitted to the planning director who shall transmit  
1535 it to the planning commission.

1536

1537 **Sec. 35-103. Erosion and sediment control plan review.**

1538 (a) *Plan review.* The director shall approve, within 60 days, the erosion and sediment control  
1539 plan if such plan satisfies the following standards:

1540 (1) The development plan shall be fitted to the topography and soils so as to create the least  
1541 erosion potential.

1542 (2) Wherever feasible, allowing for development permitted in the zoning district in which the  
1543 land is situated, natural vegetation shall be retained and protected. If necessary to accomplish  
1544 the purposes of this section, the director may increase the coverage restrictions contained in  
1545 other sections of this chapter to the extent necessary to accomplish the purposes of this  
1546 section.

1547 (3) Provisions shall be made to effectively accommodate the increased runoff caused by  
1548 changed soil and surface conditions during and after development.

1549 (4) Sediment basins and similar structural measures shall be installed below high sediment-  
1550 producing areas to remove sediment from runoff waters from land undergoing development.  
1551 The owner or his agent shall make provision for regular inspection of these devices after  
1552 every period of heavy rainfall; if more than 30 percent of the collecting volume is used up,  
1553 the owner or agent shall cause accumulated silt to be removed therefrom.

1554 (5) The plan shall establish the construction schedule and the sequence for installing  
1555 protective measures and facilities and shall include provisions for the following:

1556 a. The smallest practicable area of land shall be exposed at any one time through  
1557 appropriate planning and sequential phasing at development.

1558 b. All erosion and siltation control structures shall be placed prior to or as the first step in  
1559 grading.

1560 c. Special measures shall be provided to protect any disturbed area not paved, sodded or  
1561 built upon by the November 1 in each year by seeding, mulching or other appropriate  
1562 means.

1563 (6) Conservation practices for erosion and sediment control shall equal or exceed the  
1564 specifications of those contained in the Virginia Erosion and Sediment Control Handbook  
1565 and any amendments thereto.

1566 (b) The director shall act on all plans submitted to it within 45 days from receipt thereof by either  
1567 approving such plan in writing or by disapproving such plan in writing and giving the specific  
1568 reasons for disapproval. When a plan submitted for approval, pursuant to this article, is found  
1569 upon review by the director to be inadequate, the director shall specify such modifications,  
1570 terms, and conditions as will permit approval of the plan and shall communicate these  
1571 requirements to the applicant. If no action is taken by the director within the time specified in  
1572 this section, the plan shall be deemed approved and the permit issued; provided, that the bond  
1573 required in section 35-105 has been deposited.

- 1574 (c) *Plan modifications.* An approved plan may be changed by the director in the following cases:  
1575 (1) Where inspection has revealed the inadequacy of the plan to accomplish the erosion and  
1576 sediment control objectives of the plan, and appropriate modifications to correct the  
1577 deficiencies of the plan are specified by the director; or  
1578 (2) Where the person responsible for carrying out the approved plan finds that because of  
1579 changed circumstances or for other reasons the approved plan cannot be effectively carried  
1580 out, and proposed amendments to the plan, consistent with the requirements of this article,  
1581 are agreed to by the director and the person responsible for carrying out the plan.

1582

1583 **Sec. 35-104. Landscape conservation plan.**

1584 (a) All development, redevelopment, or land disturbance subject to this article shall include a  
1585 landscape conservation plan. No stormwater management permit shall be approved without an  
1586 approved landscape conservation plan. The landscape conservation plan shall include a scaled  
1587 drawing, shall meet all of the requirements of this section, and shall be prepared and/or certified  
1588 by a landscape architect, arborist, and/or horticulturalist.

1589 (b) *Preliminary vegetative survey.* The plan shall include a preliminary vegetative survey of all  
1590 existing trees on the site, measuring at least two inches in DBH and shrubs that are greater than  
1591 five feet in height. A chart shall be provided showing common and botanical name, size,  
1592 condition, life expectancy, and required preservation measures of all woody vegetation. All trees  
1593 shall be identified by an International Society of Arboriculture (ISA) certified arborist.

1594 (c) *Existing vegetation preservation plan.* The plan shall include an existing vegetation  
1595 preservation component that shall illustrate any grade changes or other work adjacent to trees  
1596 that would affect them adversely. Specifications shall be provided showing how grade, drainage  
1597 and aeration will be maintained around vegetation to be preserved to ensure the protection of  
1598 existing trees and other woody vegetation during clearing, grading and all phases of construction.

1599 (1) Locations of tree preservation fencing, root pruning and other required tree preservation  
1600 measures shall be shown on the plan.

1601 (2) Proposed vegetation to be removed to create the desired construction footprint shall be  
1602 clearly illustrated on the plan and labeled as "to be removed." Vegetation to be preserved  
1603 outside the building envelope shall be shown on the plan and labeled as "to be preserved."

1604 (3) The location of the critical root zone (CRZ) of any vegetation shown on the plan or  
1605 located on adjacent properties, including city rights-of-way, where the critical root zone  
1606 (CRZ) extends onto the site, shall be shown on the plan.

1607 (4) Tree canopy coverage calculations provided by woody vegetation pre-development and  
1608 post-development and/or redevelopment on the site shall be shown on the plan along with the  
1609 driplines.

1610 (5) The City of Falls Church Tree Standards and Specifications for Planting shall be included  
1611 on the plan.

1612 (6) Within the RPA buffer, trees and other woody vegetation to be removed for sight lines,  
1613 vistas, access paths, best management practices, and shoreline stabilization projects shall be  
1614 shown on the plan.

1615 (d) *Landscape revegetation plan.* The plan shall include a landscape revegetation component  
1616 that illustrates the proposed locations of vegetation that is required by this article and section 48-  
1617 1180, tree canopy coverage required on residential lots zoned R1-A, low density and R1-B  
1618 medium density.

1619 (1) A chart shall be provided listing canopy coverage calculations and any required  
1620 replacement canopy coverage vegetation pursuant to section 48-1180, tree canopy coverage  
1621 required on residential lots zoned R1-A, low density and/or R1-B medium density.

1622 (2) A landscape schedule shall be provided that lists species, size, quantity, root condition  
1623 and any credited tree canopy coverage pursuant to section 48-1180, shall be shown on the  
1624 plan.

1625 (3) The planting of woody vegetation shall be in accordance with locally approved  
1626 specifications and these specifications and details shall be included on the plan.

1627 (4) Any required RPA buffer shall be clearly delineated and any woody vegetation to be  
1628 added to establish, supplement or replace existing vegetation within the RPA buffer, as  
1629 required under this Code, shall be shown on this plan.

1630

1631 **Sec. 35-105. Bonding requirements; installation and maintenance agreement.**

1632 (a) *When bonds and inspections required pertaining to site plans.* All development, land  
1633 disturbance, and redevelopment in an RPA or RMA shall be subject to the bond and inspection  
1634 provisions, pursuant to sections 48-1143 and 48-1144, pertaining to site plans.

1635 (b) *When bonds required pertaining to stormwater management permit.* Prior to approval of a  
1636 stormwater management permit, there shall be executed by the owner or his agent and submitted  
1637 with the permit an agreement in form and substance as approved by the city to establish the  
1638 measures provided for on the stormwater management plan and erosion and sediment control  
1639 plan together with a cash bond to be deposited and held in escrow by the city, and no interest  
1640 shall be paid by the city for any funds held in escrow. The agreement and bond shall be provided  
1641 to ensure the installation, maintenance and performance of such measures. The bond shall be in  
1642 the amount of the estimated cost of such measures as determined by certified cost estimates  
1643 submitted by the applicant's engineer or land surveyor and approved by the director. The  
1644 minimum amount of bond to be posted is to be \$750.00. In any case where the director rejects  
1645 any such agreement or bond, the owner or agent of the owner may appeal from such decision  
1646 first to the city manager and, if not resolved at that level, should then appeal to the city council;  
1647 provided the owner or agent of the owner has paid to the city the required filing fee.

1648 (c) *When bond released.* After achieving the components required by the erosion and sediment  
1649 control plan and stormwater management plan for which the city has issued a permit and  
1650 received a bond as required by this section, the owner or agent of the owner may apply to the  
1651 director in writing for a certificate of completion and discharge of the unexpended or unobligated  
1652 portion of such bond. If the work is found by the director to conform to the approved plan  
1653 provided for in section 35-92 and section 35-101 and other applicable regulations and city  
1654 ordinances, such director shall issue the certificate and release of bond within 60 days of receipt  
1655 of the application.

1656 (d) *Stormwater management system maintenance.* The owner of any component of the  
1657 stormwater management system shall provide adequate maintenance to ensure that the system  
1658 functions as designed.



1659 (1) The owner shall enter into a maintenance agreement with the city that outlines facility-  
1660 specific maintenance requirements. The maintenance agreement shall be set forth in an  
1661 instrument recorded in the land records and shall provide all necessary provisions to ensure  
1662 compliance with this section, including all necessary access to the property for the purposes  
1663 of maintenance and regulatory inspections. Maintenance agreement forms shall be prepared  
1664 in a format acceptable to the director and the city attorney.

1665 (2) The maintenance agreement shall require that the owner prepare and submit an annual  
1666 certification of maintenance to the city.

1667 a. Certification shall be made by a registered engineer or licensed surveyor (qualified to  
1668 perform such routine inspections) using a certification of maintenance form provided by  
1669 the director. However, the director may specify that other individuals other than a  
1670 registered engineer or licensed surveyor may provide certification at his discretion.

1671 b. Such certification shall state the general condition of the facility and also state whether  
1672 the infrastructure is functioning properly as originally designed.

1673 c. If the facility is not functioning as designed, a plan for proposed remedial actions and a  
1674 timeline for completion shall be noted in the certification report. The plan and timeline  
1675 for completion are subject to the approval of the director. If the director determines that  
1676 the proposed plan and timeline for completion is insufficient to protect the public health,  
1677 safety, and welfare, the owner of the facility must either submit a new plan and timeline,  
1678 or alternatively, the director may take action in accordance with section 35-109. Once  
1679 remedial actions have been completed, the owner shall submit a new certification in  
1680 accordance with this subsection.

1681

1682 **Sec. 35-106. Appeals and hearings.**

1683 (a) *Appeals.*

1684 (1) Final decisions of the director under this article shall be in writing and be subject to  
1685 review by the city manager. Any appeal shall be filed with the city manager within 30 days  
1686 from the date of any written decision by the director that adversely affects the rights, duties,  
1687 or privileges of the persons engaging in or proposing to engage in land disturbing activities.

1688 (2) All appeals must be written and must contain sufficient information to acquaint the city  
1689 manager with the facts involved.

1690 (3) The city manager, as part of his review, will notify and seek advice and recommendations  
1691 from appropriate boards and commissions. The city manager shall hear the appeal, and  
1692 render a written decision within 30 working days of receipt of the notice of appeal. An  
1693 appeal stays all compliance with the action being appealed, unless the director certifies to the  
1694 city manager that by reason of stated facts a stay would, in the opinion of the director, cause  
1695 imminent endangerment to life or property. In such cases, compliance shall not be stayed  
1696 other than by a restraining order which may be granted by the city manager, or by a court of  
1697 record, on application and on due cause shown.

1698 (4) A final decision of the city manager may be appealed to the city council, provided that a  
1699 written appeal is filed with the city manager within 30 days after the date of his decision.

1700 (5) An appeal by any person aggrieved by any decision of the city council relative to the  
1701 administration of this article shall be made to a court of record. An appeal shall be made

1702 within 30 working days from the date of the issuance of the city council's written decision,  
1703 by filing with a court of record.

1704 (b) *Hearings.*

1705 (1) Any applicant, or person subject to this article aggrieved by any action of the city taken  
1706 without a formal hearing, or by inaction of the city, may demand in writing a formal hearing  
1707 by the city council, provided a petition requesting such hearing is filed with the director  
1708 within 30 days after notice of such action is given by the director.

1709 (2) The hearings held under this section shall be conducted by the city council at a regular or  
1710 special meeting of the city council or by at least one member of the city council designated  
1711 by the city council to conduct such hearings on behalf of the city council at any other time  
1712 and place authorized by the city council.

1713 (3) A verbatim record of the proceedings of such hearing shall be taken and filed with the  
1714 city council. Depositions may be taken and read as in actions at law.

1715 (4) The city council or its designated member, as the case may be, shall have power to issue  
1716 subpoenas and subpoenas duces tecum, and at the request of any party shall issue such  
1717 subpoenas. The failure of a witness without legal excuse to appear or testify or to produce  
1718 documents shall be acted upon by the town whose action may include the procurement of an  
1719 order of enforcement from the circuit court. Witnesses who are subpoenaed shall receive the  
1720 same fees and reimbursements for mileage as in civil actions.

1721

1722 **Sec. 35-107. Monitoring and inspections.**

1723 (a) *General monitoring and inspection requirements.* The director shall inspect any land-  
1724 disturbing activity during construction for:

1725 (1) Compliance with the approved stormwater management plan;

1726 (2) Compliance with the approved erosion and sediment control plan;

1727 (3) Development, updating, and implementation of a stormwater pollution prevention plan  
1728 and pollution prevention plan; and,

1729 (4) Development and implementation of any additional control measures necessary to  
1730 address a TMDL.

1731 (b) *Entry upon property; enforcement generally.* The director may, at reasonable times and  
1732 under reasonable circumstances, enter any establishment or upon any property, public or private,  
1733 for the purpose of obtaining information or conducting surveys or investigations necessary in the  
1734 enforcement of this article.

1735 (c) *Entry upon property; failure to take action after proper notice.* In accordance with a  
1736 performance bond with surety, cash escrow, letter of credit, any combination thereof, or such  
1737 other legal arrangement or instrument, the director may also enter any establishment or upon any  
1738 property, public or private, for the purpose of initiating or maintaining appropriate actions which  
1739 are required by the permit conditions associated with a land-disturbing activity when a permittee,  
1740 after proper notice, has failed to take acceptable action within the time frame specified.

1741 (d) *Furnishing materials, plans, specifications, etc.* Pursuant to section 10.1-603.12:2 of the  
1742 Code of Virginia, the director may require every stormwater management permit applicant or  
1743 permittee, or any such person subject to the requirements of this article, to furnish when

1744 requested such application materials, plans, specifications, and other pertinent information as  
1745 may be necessary to determine the effect of his discharge on the quality of state waters, or such  
1746 other information as may be necessary to accomplish the purposes of this article.

1747 (e) *Additional requirements for erosion and sediment control.* The director may require at his  
1748 sole discretion monitoring and reports from the person responsible for carrying out the erosion  
1749 and sediment control plan, to ensure compliance with the approved plan and to determine  
1750 whether the measures required in the plan are effective in controlling erosion and sediment. The  
1751 owner, permittee, or person responsible for carrying out the plan shall be given notice of the  
1752 inspection. If the director determines that there is a failure to comply with the plan, notice shall  
1753 be served upon the permittee or person responsible for carrying out the plan by registered or  
1754 certified mail to the address specified in the permit application or in the plan certification, or by  
1755 delivery at the site of the land disturbing activities to the agent or employee supervising such  
1756 activities. The notice shall specify the measures needed to comply with the plan and shall specify  
1757 the time within which such measures shall be completed. Upon failure to comply within the time  
1758 specified, the permit may be revoked and the permittee or person responsible for carrying out the  
1759 plan shall be deemed to be in violation of this article and shall be subject to the penalties  
1760 provided by section 35-109. The owner/occupant as operator shall be given an opportunity to  
1761 accompany the inspector. The city shall be permitted to inspect the site at any time during the  
1762 course of the project. Inspections are, at a minimum, to be made at the following times:

- 1763 (1) Immediately following initial installation of erosion and sediment controls;  
1764 (2) At least once in every two-week period;  
1765 (3) Within 48 hours following a runoff producing storm event; and  
1766 (4) At the completion of the project prior to the release of any performance bonds.

1767 (f) *Post-construction inspection of stormwater management facilities.* The director shall, at  
1768 reasonable times and under reasonable circumstances, inspect post-construction stormwater  
1769 management facilities required under the provisions of this article on a schedule determined  
1770 sufficient by the director except that such an inspection shall occur at least once every five years.

1771

1772 **Sec. 35-108. Prohibition against illicit discharges.**

1773 (a) *Prohibited discharges.* It shall be unlawful to:

- 1774 (1) Cause or allow illicit discharges to the stormwater management system or state waters;  
1775 (2) Cause a connection to the stormwater management system that will or has the potential to  
1776 allow for an illicit discharge to enter the system; or,  
1777 (3) Violate any permit granted for stormwater discharges.

1778 (b) *Discharges permitted by a VPDES or VSMP permit or waiver.* The prohibition in subsection (a) shall  
1779 not apply to a discharge permitted under a VPDES or VSMP permit or waiver, provided that the  
1780 discharge is in full compliance with all requirements of the VPDES or VSMP permit or waiver as well as  
1781 any other applicable laws or regulations pertaining to the discharge.

1782 (c) *Unpermitted or unapproved connections.* Causing any new connection to the stormwater  
1783 management system that is not approved in accordance with a stormwater management permit,  
1784 or is not otherwise approved by the director if it is not part of a regulated land disturbing activity,  
1785 shall be considered an illicit discharge for the purpose of this article.

1786 (d) *Erosion impact areas.* Any land identified by the director as an erosion impact area shall be  
1787 considered to be contributing an illicit discharge and be required to submit for approval and  
1788 implement an erosion and sediment control plan. This shall be required whether or not there is  
1789 any construction activity on the site. The plan shall be prepared as specified in section 35-101.

1790 (e) *Inspections and monitoring.* The director shall have the authority to inspect and monitor  
1791 discharges and sources of potential discharges to the storm drainage system to ensure compliance  
1792 with this article, including the authority to enter upon private property to inspect or monitor such  
1793 discharges or sources of potential discharge. The director shall also have the authority to initiate  
1794 enforcement action in accordance with section 35-109.

1795

1796 **Sec. 35-109. Failure to comply; penalties and other legal actions.**

1797 (a) *Notice of violation; stop work orders; reimbursement of costs.*

1798 (1) In addition to all other remedies in this section, if the director determines that the  
1799 stormwater management permit holder has failed to comply with any plan required under 35-  
1800 94, the director shall immediately serve upon the permit holder, by registered or certified  
1801 mail to the address specified by the permit holder in his permit application, a notice to  
1802 comply. Such notice shall set forth specifically the measures needed to come into compliance  
1803 with such plan or plans and shall specify the time within which such measures shall be  
1804 completed. If the permit holder fails to comply within the time specified, he may be subject  
1805 to revocation of the permit and/or the cash bond may be used by the city at the direction of  
1806 the director to correct the noted deficiencies. Any person may file a complaint under this  
1807 section. Upon receipt of a sworn complaint of a substantial violation of this section, the  
1808 director may, in conjunction with or subsequent to a notice to comply as specified above,  
1809 issue a stop work order requiring that all or part of the land disturbing activities permitted on  
1810 the site be stopped until the specified corrective measures have been taken or, if land  
1811 disturbing activities have commenced without an approved plan, as provided in section 35-  
1812 91, requiring that all of the land disturbing activities be stopped until an approved plan or any  
1813 required permits are obtained. Where the alleged noncompliance is causing or is in imminent  
1814 danger of causing harmful erosion of lands or sediment deposition in waters within the  
1815 watersheds of the Commonwealth, such an order may be issued whether or not the alleged  
1816 violator has been issued a notice to comply as specified above. Otherwise, such an order may  
1817 be issued only after the alleged violator has failed to comply with a notice to comply. The  
1818 order shall be served in the same manner as a notice to comply, and shall remain in effect for  
1819 seven days from the date of service pending application by the director or the alleged violator  
1820 for appropriate relief to the circuit court. If the alleged violator has not obtained an approved  
1821 plan or any required permits within seven days from the date of service of the order, the  
1822 director may issue an order to the owner requiring that all construction and other work on the  
1823 site, other than corrective measures, be stopped until an approved plan and any required  
1824 permits have been obtained. Such an order shall be served upon the owner by registered or  
1825 certified mail to the address specified in the permit application or the land records of the  
1826 locality in which the site is located. The owner may appeal the issuance of an order to the  
1827 circuit court. Any person violating or failing, neglecting or refusing to obey an order issued  
1828 by the director may be compelled in a proceeding instituted in the circuit court to obey same  
1829 and to comply therewith by injunction, mandamus, or other appropriate remedy. Upon

1830 completion and approval of corrective action or obtaining an approved plan or any required  
1831 permits, the order shall immediately be lifted.

1832 (2) If the city takes action upon failure to do so by the permittee, the city may collect from  
1833 the permittee for the difference should the amount of the reasonable cost of such action  
1834 exceed the amount of the surety held. Furthermore, he could be deemed to be in violation of  
1835 this article and upon conviction could be subject to the penalties provided by this article.

1836 (3) In the event that the violation of the approved landscape conservation plan was an  
1837 encroachment or evidence of an encroachment into a tree preservation area, the applicant  
1838 shall submit a mitigation plan subject to the approval of the director. This plan shall list  
1839 remedial measures and the time within which such measures shall be completed by the  
1840 applicant to ensure the continued preservation of the existing trees. This may include, but is  
1841 not limited to, pruning, vertical mulching, and aerating. Bonding of the existing vegetation,  
1842 in accordance with chapter 44, article II, division 5, may be required by the director.

1843 (4) The director may require the replacement of any vegetation damaged in violation of the  
1844 approved landscape conservation plan as part of the mitigation plan. The size, species and  
1845 quantity of the replacement trees shall be calculated by the director based on the value of the  
1846 trees removed as calculated by the latest formula published by the International Society of  
1847 Arboriculture. The required replacement trees shall be included in the "mitigation plan"  
1848 submitted by the applicant. Bonding of the replacement vegetation, in accordance with  
1849 section 48-1143(b), may be required by the director.

1850 (b) *Failure to comply with stormwater management permit.*

1851 (1) If the director determines that there is a failure to comply with the conditions of  
1852 stormwater management permit conditions, notice shall be served upon the permittee or  
1853 person responsible for carrying out the permit conditions by registered or certified mail to the  
1854 address specified in the permit application, or by delivery at the site of the development  
1855 activities to the agent or employee supervising such activities.

1856 a. The notice shall specify the measures needed to comply with the permit conditions and  
1857 shall specify the time within which such measures shall be completed. Upon failure to  
1858 comply within the time specified, a stop work order may be issued in accordance with  
1859 subsection b or the permit may be revoked by the director. The director may also pursue  
1860 enforcement in accordance with this section.

1861 b. If a permittee fails to comply with a notice issued in accordance with this section  
1862 within the time specified, the director may issue an order requiring the owner, permittee,  
1863 person responsible for carrying out an approved plan, or the person conducting the land-  
1864 disturbing activities without an approved plan or required permit to cease all land-  
1865 disturbing activities until the violation of the permit has ceased, or an approved plan and  
1866 required permits are obtained, and specified corrective measures have been completed.

1867 Such orders shall be issued in accordance with (local procedures). Such orders shall  
1868 become effective upon service on the person by certified mail, return receipt requested,  
1869 sent to his address specified in the land records of the locality, or by personal delivery by  
1870 an agent of the director. However, if the director finds that any such violation is grossly  
1871 affecting or presents an imminent and substantial danger of causing harmful erosion of  
1872 lands or sediment deposition in waters within the watersheds of the Commonwealth or  
1873 otherwise substantially impacting water quality, it may issue, without advance notice or

1874 hearing, an emergency order directing such person to cease immediately all land-  
1875 disturbing activities on the site and shall provide an opportunity for a hearing, after  
1876 reasonable notice as to the time and place thereof, to such person, to affirm, modify,  
1877 amend, or cancel such emergency order. If a person who has been issued an order is not  
1878 complying with the terms thereof, the director may institute a proceeding for an  
1879 injunction, mandamus, or other appropriate remedy in accordance with subsection 2.

1880 (2) In addition to any other remedy provided by this article, if the director or his or her  
1881 designee determines that there is a failure to comply with the provisions of this article, they  
1882 may initiate such informal and/or formal administrative enforcement procedures in a manner  
1883 that is consistent with [reference local public facilities/engineering manual and/or specific  
1884 policy].

1885 (3) Any person violating or failing, neglecting, or refusing to obey any rule, regulation,  
1886 ordinance, order, or any permit condition issued by the director or any provisions of this  
1887 article may be compelled in a proceeding instituted in any appropriate court by the town to  
1888 obey same and to comply therewith by injunction, mandamus or other appropriate remedy.

1889 (c) *Failure to comply with Chesapeake Bay preservation area requirements.* In addition to any  
1890 other penalties that may apply in this section, any person, whether as an owner, lessee, principal,  
1891 agent, employee or otherwise, who violates any of the provisions of section 35-97 or section 35-  
1892 98 or permits any such violation, or fails to comply with any of the requirements shall be subject  
1893 to a civil penalty not to exceed \$2,500.00 for each violation. Each day upon which such violation  
1894 continues shall constitute a separate violation. Furthermore, the director, through the city  
1895 attorney, may apply to the circuit court of the county for injunctive relief to enjoin a violation or  
1896 a threatened violation of this division.

1897 (d) *Failure to comply with erosion and sediment control requirements.* In addition to any other  
1898 penalties that may apply in this section, the following additional penalties may be applied to a  
1899 person who violates the provisions of section 35-101.

1900 (1) Violators under this section shall be guilty of a class 1 misdemeanor.

1901 (2) Any person who violates any regulation or order of the board, any condition of a permit,  
1902 any provision of its program, or any provision of this article shall, upon a finding of an  
1903 appropriate general district court, be assessed a civil penalty in accordance with the schedule  
1904 listed under subsection (9) of this section. A civil action for such violation may be brought by  
1905 the locality wherein the land lies. In any trial for a scheduled violation, it shall be the burden  
1906 of the locality to show the liability of the violator by a preponderance of the evidence. An  
1907 admission or finding of liability shall not be a criminal conviction for purpose. Any civil  
1908 penalties assessed by a court shall be paid into the treasury of the locality wherein the land  
1909 lies, except that where the violator is the locality itself, or its agent, the court shall direct the  
1910 penalty to be paid into the state treasury.

1911 (3) The city may apply to the circuit court in any jurisdiction wherein the land lies to enjoin  
1912 a violation or a threatened violation, under section 35-101, without the necessity of showing  
1913 that an adequate remedy at law does not exist.

1914 (4) In addition to any criminal or civil penalties provided under this section, any person who  
1915 violates any provision of this article may be liable to the program authority, or the board, as  
1916 appropriate, in a civil action for damages.

1917 (5) Without limiting the remedies which may be obtained in this section, any person violating

1918 or failing, neglecting or refusing to obey any injunction, mandamus or other remedy obtained  
1919 pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to  
1920 exceed \$2,000.00 for each violation. A civil action for such violation or failure may be  
1921 brought by the locality wherein the land lies. Any civil penalties assessed by a court shall be  
1922 paid into the treasury of the locality wherein the land lies, except that where the violator is  
1923 the locality itself, or its agent, the court shall direct the penalty to be paid into the state  
1924 treasury.

1925 (6) With the consent of any person who has violated or failed, neglected or refused to obey  
1926 any regulation or order of the board, or any condition of a permit or any provision of this  
1927 article, the board, the director or plan approving or permit issuing authority may provide, in  
1928 an order issued by the board or plan approving or permit issuing authority against such  
1929 person, for the payment of civil charges for violations in specific sums, not to exceed the  
1930 limit specified in subsection (5) of this section. Such civil charges shall be instead of any  
1931 appropriate civil penalty which could be imposed under subsection (2) or (5) of this section.

1932 (7) Upon request of the city, the attorney for the commonwealth shall take legal action to  
1933 enforce the provisions of this article. Upon request of the board, the attorney general shall  
1934 take appropriate legal action on behalf of the board to enforce the provisions of this article.

1935 (8) Compliance with the provisions of this article shall be prima facie evidence in any legal  
1936 or equitable proceeding for damages caused by erosion or sedimentation that all requirements  
1937 of law have been met and the complaining party must show negligence in order to recover  
1938 any damages.

1939 (9) Any violations of any regulation or order of the board, any provision of its program, any  
1940 condition of a permit, or any provision of this article shall be subject to a civil penalty. The  
1941 civil penalty for any one violation shall be not less than \$100.00, nor more than \$1,000.00.  
1942 Each day during which the violation is found to have existed shall constitute a separate  
1943 offense. In no event shall a series of specified violations arising from the same operative set  
1944 of facts result in civil penalties which exceed a total of \$10,000.00 except that a series of  
1945 violations arising from the commencement of land disturbing activities without an approved  
1946 plan for any site shall not result in civil penalties which exceed a total of \$10,000.00.  
1947 Adoption of such an ordinance providing that violations are subject to a civil penalty shall be  
1948 in lieu of criminal sanctions and shall preclude the prosecution of such violation as a  
1949 misdemeanor under subsection (1).

1950 (10) Any person who violates any regulation or order of the board, any condition of a permit,  
1951 any provision of its program, or any provision of this article shall, upon a finding of an  
1952 appropriate general district court, be assessed a civil penalty in accordance with the schedule.  
1953 A civil action for such violation may be brought by the locality wherein the land lies. In any  
1954 trial for a scheduled violation, it shall be the burden of the locality to show the liability of the  
1955 violator by a preponderance of the evidence. An admission or finding of liability shall not be  
1956 a criminal conviction for any purpose. Any civil penalties assessed by a court shall be paid  
1957 into the treasury of the locality wherein the land lies, except that where the violator is the  
1958 locality itself, or its agent, the court shall direct the penalty to be paid into the state treasury.

1959

1960 **Sec. 35-110. Fees.**

1961 (a) *Erosion and sediment control review and inspection fee.* An erosion and sediment control  
1962 review and inspection fee of \$100.00, plus \$20.00 per acre, or any fraction thereof, shall be paid  
1963 to the city at the time of submission of plans to the director.

1964 (b) *Stormwater management permit fee.* A stormwater management permit fee shall be paid to  
1965 the city at the time of submission for a stormwater management permit. No stormwater  
1966 management permit shall be issued or effective until the fee is paid.

1967 (1) Fees associated with an initial stormwater management permit issuance shall be in  
1968 accordance with the table titled “Stormwater Management Fees – Initial Permit Issuance.”  
1969 When a site or sites has been purchased for development within a previously permitted  
1970 common plan of development or sale, the applicant shall be subject to fees in accordance  
1971 with the disturbed acreage of their site or sites in the aforementioned table.

1972 (2) Fees for the modification or transfer of general permit registration statements issued by  
1973 the state board shall be imposed in accordance with the table titled “Stormwater Management  
1974 Fees – Modifications or Transfers.” If the general permit modifications result in changes to  
1975 stormwater management plans that require additional review by the city, such reviews shall  
1976 be subject to the fees set out in the aforementioned table. The fee assessed shall be based on  
1977 the total disturbed acreage of the site. In addition to the modification fee, modifications  
1978 resulting in an increase in total disturbed acreage shall pay the difference in the initial permit  
1979 fee paid and the permit fee that would have been applied for the total disturbed acreage in  
1980 accordance with subsection (1).

1981 (3) General permit coverage maintenance fees shall be paid annually to the city, by the  
1982 anniversary date of general permit coverage, in accordance with the table titled “Stormwater  
1983 Management Fees – Permit Maintenance.” No permit will be reissued or automatically  
1984 continued without payment of the required fee. General permit coverage maintenance fees  
1985 shall be applied until the permit coverage is terminated. Permit maintenance fees shall apply  
1986 to expired permits that have been administratively continued.

1987 (4) Persons whose coverage under the general permit has been revoked shall apply to the  
1988 Virginia Department of Environmental Quality for an Individual Permit for Discharges of  
1989 Stormwater from Construction Activities.

1990 (5) Fees shall not be assessed to the following:

1991 a. Permittees who request minor modifications to general permits as defined in section  
1992 35-89. Permit modifications at the request of the permittee resulting in changes to the  
1993 stormwater management plan that require additional review by the director shall not be  
1994 exempt pursuant to this subsection.

1995 b. Permittees whose general permits are modified or amended at the initiative of the  
1996 Virginia Department of Environmental Quality, excluding errors in the registration  
1997 statement identified by the director or errors related to the acreage of the site.

1998 (6) All incomplete payments will be deemed as nonpayments, and the applicant shall be  
1999 notified of any incomplete payments. Interest shall be charged for late payments at the  
2000 underpayment rate set forth in Code of Virginia §58.1-15 and is calculated on a monthly  
2001 basis at the applicable periodic rate. A 10% late payment fee shall be charged to any  
2002 delinquent account, defined as over 90 days past due. The city is entitled to all remedies  
2003 under the Code of Virginia in collecting any past due amount.

2004



STORMWATER MANAGEMENT FEES – INITIAL PERMIT ISSUANCE:	Total Fee	Portion Paid to DEQ <sup>1</sup>
Chesapeake Bay Preservation Act Land Disturbing Activity (sites equal to or greater than 2,500 SF and less than 1 acre within Chesapeake Bay Preservation Areas but not subject to General Permit coverage)	\$290	\$0
General/Stormwater Management – Small Activity (areas within common plans of development or sale with land disturbance acreage less than 1 acre)	\$290	\$81
General/Stormwater Management – Small Activity (sites or areas within common plans of development or sale with land disturbance acreage equal or greater than 1 acre and less than 5 acres)	\$2,700	\$756
General/Stormwater Management – Large Activity (sites or areas within common plans of development or sale with land disturbance acreage equal or greater than 5 acres and less than 10 acres)	\$3,400	\$952
General/Stormwater Management – Large Activity (sites or areas within common plans of development or sale with land disturbance acreage equal or greater than 10 acres and less than 50 acres)	\$4,500	\$1,260
General/Stormwater Management – Large Activity (sites or areas within common plans of development or sale with land disturbance acreage equal or greater than 50 acres and less than 100 acres)	\$6,100	\$1,708
General/Stormwater Management – Large Activity (sites or areas within common plans of development or sale with land disturbance acreage equal or greater than 100 acres)	\$9,600	\$2,688
STORMWATER MANAGEMENT FEES – MODIFICATIONS OR TRANSFERS:	Total Fee	
General/Stormwater Management – Small Activity (areas within common plans of development or sale with land disturbance acreage less than 1 acre)	\$20	
General/Stormwater Management – Small Activity (sites or areas within common plans of development or sale with land disturbance acreage equal or greater than 1 acre and less than 5 acres)	\$200	
General/Stormwater Management – Large Activity (sites or areas within common plans of development or sale with land disturbance acreage equal or greater than 5 acres and less than 10 acres)	\$250	
General/Stormwater Management – Large Activity (sites or areas within common plans of development or sale with land disturbance acreage equal or greater than 10 acres and less than 50 acres)	\$300	
General/Stormwater Management – Large Activity (sites or areas within common plans of development or sale with land disturbance acreage equal or greater than 50 acres and less than 100 acres)	\$450	

General/Stormwater Management – Large Activity (sites or areas within common plans of development or sale with land disturbance acreage equal or greater than 100 acres)	\$700
STORMWATER MANAGEMENT FEES – PERMIT MAINTENANCE:	Total Fee
Chesapeake Bay Preservation Act Land Disturbing Activity (sites equal to or greater than 2,500 SF and less than 1 acre within Chesapeake Bay Preservation Areas but not subject to General Permit coverage)	\$50
General/Stormwater Management – Small Activity (areas within common plans of development or sale with land disturbance acreage less than 1 acre)	\$50
General/Stormwater Management – Small Activity (sites or areas within common plans of development or sale with land disturbance acreage equal or greater than 1 acre and less than 5 acres)	\$400
General/Stormwater Management – Large Activity (sites or areas within common plans of development or sale with land disturbance acreage equal or greater than 5 acres and less than 10 acres)	\$500
General/Stormwater Management – Large Activity (sites or areas within common plans of development or sale with land disturbance acreage equal or greater than 10 acres and less than 50 acres)	\$650
General/Stormwater Management – Large Activity (sites or areas within common plans of development or sale with land disturbance acreage equal or greater than 50 acres and less than 100 acres)	\$900
General/Stormwater Management – Large Activity (sites or areas within common plans of development or sale with land disturbance acreage equal or greater than 100 acres)	\$1,400

2005 <sup>1</sup>This is the portion of the total fee that is paid to the Virginia Department of Environmental Quality. If the project is  
 2006 completely administered by the Department such as may be the case for a state or federal project or projects covered  
 2007 by individual state permits, the entire applicant fee shall be paid to the Department.

2008

2009 **Secs. 35-111--35-126. Reserved.**

2010

2011 [ATTACHEMENT 2 – All wording removed and merged into Chapter 35, “Stormwater”]

2012

2013 Chapter 48 - ZONING

2014 ARTICLE IV. - DISTRICTS

2015 ***~~DIVISION 16. -- CBPA, CHESAPEAKE BAY PRESERVATION AREA OVERLAY~~***  
 2016 ***~~DISTRICT~~***

2017 **~~Sec. 48-824. -- Purpose.~~**

2018 **~~Sec. 48-825. -- Overlay concept.~~**

- 2019 ~~Sec. 48-826.— Authority.~~
- 2020 ~~Sec. 48-827.— Conflict with other regulations.~~
- 2021 ~~Sec. 48-828.— Definitions.~~
- 2022 ~~Sec. 48-829.— Areas of applicability.~~
- 2023 ~~Sec. 48-830.— Use regulations.~~
- 2024 ~~Sec. 48-831.— Lot size.~~
- 2025 ~~Sec. 48-832.— Chesapeake Bay preservation area designation.~~
- 2026 ~~Sec. 48-833.— Permitted development or uses, etc., within resource protection areas.~~
- 2027 ~~Sec. 48-834.— Performance and development criteria within Chesapeake Bay preservation~~
- 2028 ~~areas.~~
- 2029 ~~Sec. 48-835.— Additional requirements for development within resource protection areas.~~
- 2030 ~~Sec. 48-836.— Application requirements for development projects — Within RMAs.~~
- 2031 ~~Sec. 48-837.— Same — Within RPAs.~~
- 2032 ~~Sec. 48-838.— Water quality impact assessment.~~
- 2033 ~~Sec. 48-839.— Installation and bonding requirements.~~
- 2034 ~~Sec. 48-840.— Administrative responsibility and procedure.~~
- 2035 ~~Sec. 48-841.— Administrative waivers and nonconformities, exemptions, and exceptions.~~
- 2036 ~~Sec. 48-842.— Appeals.~~
- 2037 ~~Sec. 48-843.— Violations and penalties; remedies.~~
- 2038 ~~Secs. 48-844 — 48-866. — Reserved.~~
- 2039
- 2040 ~~Sec. 48-824.— Purpose.~~

2041 The purpose of the CBPA, Chesapeake Bay preservation area overlay district requirements  
2042 in this division are to protect and improve the water quality of the Chesapeake Bay, its  
2043 tributaries, and other state waters by minimizing the effects of human activity upon these waters.  
2044 This division defines certain lands called Chesapeake Bay preservation areas, which, if  
2045 improperly used or developed, may result in substantial damage to the water quality of the  
2046 Chesapeake Bay and its tributaries. This division establishes criteria for the city to use in  
2047 determining whether or not to grant, deny, or modify requests to rezone, subdivide, obtain  
2048 grading permits, obtain building permits, or obtain an approved site plan in Chesapeake Bay  
2049 preservation areas.

2050 (Code 1982, § 38-42(a); Ord. No. 1335, 11-12-1990; Ord. No. 1380, 11-11-1991; Ord. No.  
2051 1748, 2-9-2004; Ord. No. 1766, 9-13-2004)

2052 ~~Sec. 48-825.— Overlay concept.~~

2053 The CBPA, Chesapeake Bay preservation area overlay district requirements in this division  
2054 shall be in addition to and shall overlay all other zoning districts where they are applied so any  
2055 parcel of land lying in the Chesapeake Bay preservation overlay district shall also lie in one or  
2056 more of the other zoning districts provided for by the this chapter. Unless otherwise stated in the  
2057 overlay district, the review and approval procedures provided for in the city zoning, site plan,

2058 erosion and sediment control, and building permits administration shall be followed in reviewing  
2059 and approving development, redevelopment, and uses governed by this article.

2060 (Code 1982, § 38-42(b); Ord. No. 1335, 11-12-1990; Ord. No. 1380, 11-11-1991; Ord. No.  
2061 1748, 2-9-2004; Ord. No. 1766, 9-13-2004)

2062 **Sec. 48-826. -- Authority.**

2063 The CBPA, Chesapeake Bay preservation area overlay district requirements in this division  
2064 a authorized by the Chesapeake Bay Preservation Act, section 10.2100 et seq. and Code of  
2065 Virginia, § 15.2-2283. Code of Virginia, § 15.2-2283 states that zoning ordinances may "also  
2066 include reasonable provisions, not inconsistent with applicable state water quality standards, to  
2067 protect surface water and groundwater as defined in Code of Virginia, § 62.1-255."

2068 (Code 1982, § 38-42(e); Ord. No. 1335, 11-12-1990; Ord. No. 1380, 11-11-1991; Ord. No.  
2069 1748, 2-9-2004; Ord. No. 1766, 9-13-2004)

2070 **Sec. 48-827. -- Conflict with other regulations.**

2071 In any case where the requirements for the CBPA, Chesapeake Bay preservation area  
2072 overlay district of this division conflict with any other provision of this Code or existing state or  
2073 federal regulations, whichever imposes the more stringent restrictions shall apply.

2074 (Code 1982, § 38-42(d); Ord. No. 1335, 11-12-1990; Ord. No. 1380, 11-11-1991; Ord. No.  
2075 1748, 2-9-2004; Ord. No. 1766, 9-13-2004)

2076 **Sec. 48-828. -- Definitions.**

2077 The following words and terms used within this division have the following meanings,  
2078 unless the context clearly indicates otherwise. Words and terms not defined herein but defined in  
2079 section 48-2 shall be given the meanings set forth therein.

2080 *Application for development within a Chesapeake Bay preservation area, Chesapeake Bay*  
2081 *preservation area* or *CBPA* means an application and process for reviewing compliance with this  
2082 division, prior to any clearing and grading of a site and issuance of building permits.

2083 *Best management practices* or *BMPs* means practices, determined by a state or designated  
2084 area-wide planning agency to be the most effective, practicable means of preventing or reducing  
2085 the amount of pollution generated by nonpoint sources to a level compatible with water quality  
2086 goals.

2087 *Buffer area* means an area of natural or established vegetation managed to protect other  
2088 components of a resource protection area and state waters from significant degradation due to  
2089 land disturbances.

2090 *Chesapeake Bay Interdisciplinary Review team* means a team composed of city staff, to  
2091 include a senior or principal planner from the development services department, the city  
2092 engineer, and the city arborist.

2093 *Chesapeake Bay preservation area* or *CBPA* means any land designated by the city pursuant  
2094 to part III of the Chesapeake Bay preservation area designation and management regulations,  
2095 9VAC10-20-1970 et seq., and the Chesapeake Bay Preservation Act, section 10.1-2107, as a  
2096 resource management area or resource protection area. A Chesapeake Bay preservation area shall  
2097 consist of a resource protection area and a resource management area.

2098 *Critical root zone (CRZ)* means the area beneath a tree that may extend well beyond the  
2099 spread of its branches. The size of the critical root zone is a function of tree type, size, health and

2100 ~~it's response to construction stresses. The size of the critical root zone should be adjusted~~  
2101 ~~according to the specific factors listed in this definition and site conditions, but generally can be~~  
2102 ~~calculated as one foot per inch of diameter at breast height (DBH) of the tree to be preserved. For~~  
2103 ~~example, a ten-inch diameter at breast height tree would have a critical root zone of ten feet from~~  
2104 ~~the tree trunk in all directions.~~

2105 ~~*Development* means any alteration of the natural environment of improved and unimproved~~  
2106 ~~real estate which requires the application and approval of a site plan, subdivision plat or~~  
2107 ~~development plan related to regulated land disturbance activities and/or requiring permits,~~  
2108 ~~including, but not limited to, demolition, grading, filling, excavation, and building.~~

2109 ~~*Diameter at breast height (DBH)* means the diameter of the tree measured outside the bark~~  
2110 ~~at a point 4½ feet above the ground.~~

2111 ~~*Dripline* means a vertical projection to the ground surface from the furthest lateral extent of~~  
2112 ~~a tree or shrub's canopy.~~

2113 ~~*Floodplain redevelopment* means a relatively flat or low land area adjoining a river, stream,~~  
2114 ~~or watercourse, which is subject to partial or complete inundation. This is also an area subject to~~  
2115 ~~the unusual and rapid accumulation of runoff or surface waters from any source.~~

2116 ~~*Impervious land cover* means a surface composed of any material that significantly impedes~~  
2117 ~~or prevents natural infiltration of water into the soil. Impervious surfaces include, but are not~~  
2118 ~~limited to:~~

2119 ~~(1) Nonvegetated roofs;~~

2120 ~~(2) Buildings;~~

2121 ~~(3) Streets;~~

2122 ~~(4) Parking areas;~~

2123 ~~(5) Sidewalks;~~

2124 ~~(6) Driveways; and~~

2125 ~~(7) Any concrete, asphalt, or compacted gravel surface.~~

2126 ~~*Infill* means the utilization of vacant land in previously developed areas.~~

2127 ~~*Land disturbing activity or land disturbance* means any land change which, by affecting the~~  
2128 ~~contour of any lot, parcel or tract of land in any zoning district by grading, filling, excavating or~~  
2129 ~~the removal or destruction of a portion of the natural topsoil or trees or other vegetative cover,~~  
2130 ~~may result in soil erosion from water or wind and the movement of sediments into state water or~~  
2131 ~~onto lands in the state or city including, but not limited to, clearing, grading, excavating, and~~  
2132 ~~transporting and filling of land, other than state lands.~~

2133 ~~*Nonpoint source pollution* means pollution consisting of constituents such as sediment,~~  
2134 ~~nutrients, and organic and toxic substances from diffuse sources, such as runoff from agriculture~~  
2135 ~~and urban land development and use.~~

2136 ~~*Nontidal wetlands* means those wetlands, other than tidal wetlands, that are inundated or~~  
2137 ~~saturated by surface water or groundwater at a frequency and duration sufficient to support, and~~  
2138 ~~that under normal circumstances do support a prevalence of vegetation typically adapted for life~~  
2139 ~~in saturated soil conditions, as defined by the U.S. Environmental Protection Agency, pursuant to~~  
2140 ~~section 404 of the Federal Clean Water Act, in 33 CFR 328.3b.~~

2141 ~~*Pervious land cover* means a surface composed of any material that allows for natural~~  
2142 ~~infiltration of water into the soil in varying degrees.~~

2143 ~~*Public road* means a publicly owned road designed and constructed in accordance with~~  
2144 ~~water quality protection criteria at least as stringent as requirements applicable to the state~~  
2145 ~~department of transportation, including regulations promulgated pursuant to:~~

2146 ~~(1) The Erosion and Sediment Control Law (Code of Virginia, § 10.1-560 et seq.); and~~

2147 ~~(2) The Virginia Stormwater Management Act (Code of Virginia, § 10.1-603.1 et seq.).~~

2148 ~~The term "public road" includes those roads where the state department of transportation~~  
2149 ~~exercises direct supervision over the design or construction activities, or both, and cases where~~  
2150 ~~secondary roads are constructed or maintained, or both, by the city in accordance with the city's~~  
2151 ~~standards.~~

2152 ~~*Redevelopment* means the process of developing land that is developed or has been~~  
2153 ~~previously developed.~~

2154 ~~*Resource management area* or *RMA* means that component of the Chesapeake Bay~~  
2155 ~~preservation area that is not classified as the resource protection area. The term "resource~~  
2156 ~~management areas" includes land types that, if improperly used or developed, have the potential~~  
2157 ~~for causing significant water quality degradation or for diminishing the functional value of the~~  
2158 ~~resource protection area.~~

2159 ~~*Resource protection area* or *RPA* means that component of the Chesapeake Bay~~  
2160 ~~preservation area as defined in section 48-832(a). Resource protection areas consist of sensitive~~  
2161 ~~lands that have an intrinsic water quality value due to the ecological and biological processes~~  
2162 ~~they perform or are sensitive to impacts which may result in significant degradation to the~~  
2163 ~~quality of state waters.~~

2164 ~~*Riparian Buffers Modification and Mitigation Guidance Manual* means the Riparian Buffers~~  
2165 ~~Modification and Mitigation Guidance Manual, published in September 2003, written and~~  
2166 ~~published by the Chesapeake Bay Local Assistance Department. The intent of the manual is to~~  
2167 ~~provide guidance and clarification for tidewater local governments, at their request, regarding the~~  
2168 ~~section of the Chesapeake Bay Preservation Act describing buffer exemptions and modifications.~~

2169 ~~*Shrub* means any self-supporting woody plant which usually has multiple trunks. For~~  
2170 ~~preservation and canopy coverage calculation purposes, a shrub shall measure no less than five~~  
2171 ~~feet in height above ground level.~~

2172 ~~*Substantial alteration* means the expansion or modification of a building or development~~  
2173 ~~that would result in a disturbance of land exceeding an area of 2,500 square feet in the resource~~  
2174 ~~management area only.~~

2175 ~~*Tree* means any self-supporting woody plant which usually provides one main trunk and~~  
2176 ~~produces a more or less distinct and elevated head with many branches. For preservation~~  
2177 ~~purposes and canopy coverage calculation purposes, a tree shall measure no less than two inches~~  
2178 ~~in DBH.~~

2179 ~~*Tree canopy* means the branches, leaves, or other foliage from any tree measuring no less~~  
2180 ~~than two inches in DBH and shrubs measuring no less than five feet in height.~~

2181 ~~*Tree canopy coverage* means the area surrounding a tree or shrub located within the dripline.~~

2182 ~~Use means an activity on the land other than development including, but not limited to,~~  
2183 ~~commercial, residential, and industrial.~~

2184 ~~Water-dependent facility means a development of land that cannot exist outside of the~~  
2185 ~~resource protection area and must be located on the shoreline by reason of the intrinsic nature of~~  
2186 ~~its operation. The term "water dependent facilities" includes, but is not limited to, the intake and~~  
2187 ~~outfall structures of water and sewer treatment plants and storm sewers, and public water~~  
2188 ~~oriented recreation areas.~~

2189 ~~Woody vegetation means and includes all trees and shrubs.~~

2190 ~~(Code 1982, § 38-42(e); Ord. No. 1335, 11-12-1990; Ord. No. 1380, 11-11-1991; Ord. No.~~  
2191 ~~1748, 2-9-2004; Ord. No. 1766, 9-13-2004)~~

2192 ~~Cross reference—Definitions and rules of construction, § 1-2.~~

2193 ~~**Sec. 48-829.—Areas of applicability.**~~

2194 ~~The Chesapeake Bay preservation overlay district shall apply to all lands generally~~  
2195 ~~identified as resource protection areas and resource management areas, or collectively as CBPAs~~  
2196 ~~on the city CBPA map. The map, together with all explanatory matter thereon, is hereby adopted~~  
2197 ~~by reference and declared to be part of the official zoning district map and of this division. The~~  
2198 ~~CBPA map is a planning tool and shows the extent of the city's Chesapeake Bay preservation~~  
2199 ~~area as a whole, not the specific boundaries of the resource protection area or resource~~  
2200 ~~management area. As such, the map should be consulted by persons contemplating activities~~  
2201 ~~within the city prior to engaging in a regulated activity. Delineation of the boundaries of the~~  
2202 ~~resource protection area on a specific lot or parcel is the responsibility of the applicant as~~  
2203 ~~described in section 48-832(b).~~

2204 ~~(Code 1982, § 38-42(f); Ord. No. 1335, 11-12-1990; Ord. No. 1380, 11-11-1991; Ord. No.~~  
2205 ~~1748, 2-9-2004; Ord. No. 1766, 9-13-2004)~~

2206 ~~**Sec. 48-830.—Use regulations.**~~

2207 ~~Permitted uses, conditional uses, special use permits, accessory uses and special~~  
2208 ~~requirements shall be as established by the underlying zoning district, unless specifically~~  
2209 ~~modified by the requirements set forth in this division.~~

2210 ~~(Code 1982, § 38-42(g); Ord. No. 1335, 11-12-1990; Ord. No. 1380, 11-11-1991; Ord. No.~~  
2211 ~~1748, 2-9-2004; Ord. No. 1766, 9-13-2004)~~

2212 ~~**Sec. 48-831.—Lot size.**~~

2213 ~~Lot size shall be subject to the requirements of the underlying zoning district, provided that~~  
2214 ~~any lot shall have sufficient area outside the RPA to accommodate an intended development, in~~  
2215 ~~accordance with the performance criteria in section 48-834, when such development is not~~  
2216 ~~otherwise allowed in the RPA.~~

2217 ~~(Code 1982, § 38-42(h); Ord. No. 1335, 11-12-1990; Ord. No. 1380, 11-11-1991; Ord. No.~~  
2218 ~~1748, 2-9-2004; Ord. No. 1766, 9-13-2004)~~

2219 ~~**Sec. 48-832.—Chesapeake Bay preservation area designation.**~~

2220 ~~(a) Resource protection areas shall consist of lands described herein that have an intrinsic water~~  
2221 ~~quality value due to the ecological and biological processes they perform or are sensitive to~~  
2222 ~~impacts which may cause significant degradation to the quality of state waters. The resource~~  
2223 ~~protection area shall consist of:~~

- 2224 (1) ~~Nontidal wetlands connected by surface flow and contiguous to water bodies with~~  
2225 ~~perennial flow;~~
- 2226 (2) ~~Such other lands considered by the city to meet some or all of the criteria described in~~  
2227 ~~subsection (a)(1) of this section, and considered to be necessary to protect the quality of~~  
2228 ~~state waters. Other lands to be included within the RPA are water bodies with perennial~~  
2229 ~~flow, all natural stream channels, and manmade open stream channels, as generally~~  
2230 ~~identified on the city's Chesapeake Bay preservation area (CBPA) map; and~~
- 2231 (3) ~~A vegetated buffer area not less than 100 feet in width located adjacent to and landward~~  
2232 ~~of the components listed in subsections (a)(1) and (2) of this section, and along both~~  
2233 ~~sides of any water body with perennial flow.~~

2234 ~~(b) Interpretation of resource protection area boundaries and delineation by the applicant. The~~  
2235 ~~city's adopted Chesapeake Bay preservation area (CBPA) map shows only the general~~  
2236 ~~location of the RPA and should be consulted by persons contemplating activities,~~  
2237 ~~modifications, or encroachments in the RPA. The specific boundaries of the RPA for each~~  
2238 ~~site or parcel shall be determined by the applicant as part of a water quality impact~~  
2239 ~~assessment, grading plan, demolition permit, building permit, site plan, subdivision plat, or~~  
2240 ~~any other application for land disturbance, and delineated on all submitted plans, subject to~~  
2241 ~~approval of the city engineer and in accordance with this division. The identification of~~  
2242 ~~resource protection area boundaries shall be established by a land surveyor authorized to~~  
2243 ~~practice in the commonwealth, and be based on reliable, scientifically valid, and specific~~  
2244 ~~information, as approved by the city engineer, from actual field evaluations of the site. The~~  
2245 ~~city CBPA map shall be used only as a guide to the general location of resource protection~~  
2246 ~~areas. The accuracy of the RPA boundary delineation submitted by the applicant, when in~~  
2247 ~~question, shall be verified by the city engineer.~~

2248 ~~(c) Resource management area designation and interpretation of boundaries. Resource~~  
2249 ~~management areas shall include:~~

2250 (1) ~~Land types that, if improperly used or developed, have a potential for causing~~  
2251 ~~significant water quality degradation or for diminishing the functional value of the~~  
2252 ~~resource protection area.~~

2253 (2) ~~All land within the city corporate boundary that is not designated as a resource~~  
2254 ~~protection area.~~

2255 ~~(Code 1982, § 38-42(i); Ord. No. 1335, 11-12-1990; Ord. No. 1380, 11-11-1991; Ord. No.~~  
2256 ~~1748, 2-9-2004; Ord. No. 1766, 9-13-2004)~~

2257 **Sec. 48-833. Permitted development or uses, etc., within resource protection areas.**

2258 (a) ~~Permitted development within RPAs. Land development may be allowed in the resource~~  
2259 ~~protection area, subject to the approval of the Chesapeake Bay Interdisciplinary Review~~  
2260 ~~Team (CBIRT), only if it falls into one of the following use categories and meets all related~~  
2261 ~~criteria and requirements of this section and those of the underlying zoning district:~~

2262 (1) ~~A new or expanded water-dependent facility may be allowed within a resource~~  
2263 ~~protection area provided that:~~

2264 a. ~~It does not conflict with the comprehensive plan;~~

2265 b. ~~It complies with the performance criteria set forth in this section;~~



- 2266 e. ~~Any nonwater dependent component is located outside of resource protection~~  
2267 ~~areas; and~~
- 2268 d. ~~Access will be provided with the minimum disturbance necessary. Where possible,~~  
2269 ~~a single point of access will be provided.~~
- 2270 (2) ~~Redevelopment shall be permitted in the resource protection area only if there is no~~  
2271 ~~increase in the amount of impervious cover and no further encroachment within the~~  
2272 ~~resource protection area, and it shall conform to the requirements contained herein, as~~  
2273 ~~well as erosion and sediment control requirements, and all applicable stormwater~~  
2274 ~~requirements of the city and other state and federal agencies.~~
- 2275 (3) ~~Roads and driveways not exempt in section 48-841(d), must comply with the provisions~~  
2276 ~~of this section. However, they may be constructed in or across resource protection areas,~~  
2277 ~~if each of the following conditions is met:~~
- 2278 a. ~~The Chesapeake Bay Interdisciplinary Review Team makes a finding that there are~~  
2279 ~~no reasonable alternatives to aligning the road or driveway in or across the resource~~  
2280 ~~protection area;~~
- 2281 b. ~~The alignment and design of the road or driveway are optimized, consistent with~~  
2282 ~~other applicable requirements, to minimize encroachment in the resource protection~~  
2283 ~~area and adverse effects on water quality;~~
- 2284 e. ~~The design and construction of the road or driveway satisfy all applicable criteria of~~  
2285 ~~this section, including submission of a water quality impact assessment; and~~
- 2286 d. ~~The Chesapeake Bay Interdisciplinary Review Team reviews the plan for the road~~  
2287 ~~or driveway proposed in or across the resource protection area in coordination with~~  
2288 ~~an application for development within a CBPA.~~
- 2289 (4) ~~Flood control and stormwater management facilities that drain or treat water from~~  
2290 ~~multiple development projects or from a significant portion of a watershed may be~~  
2291 ~~allowed in resource protection areas, provided that:~~
- 2292 a. ~~The Chesapeake Bay Interdisciplinary Review Team has conclusively established~~  
2293 ~~that the location of the facility within the resource protection area is the optimum~~  
2294 ~~location;~~
- 2295 b. ~~The size of the facility is the minimum necessary to provide necessary flood control~~  
2296 ~~or stormwater treatment, or both;~~
- 2297 e. ~~The facility must be consistent with a stormwater management program that has~~  
2298 ~~been approved by the Chesapeake Bay Local Assistance Board as a phase 1~~  
2299 ~~modification to the city's program;~~
- 2300 d. ~~All applicable permits for construction in state or federal waters must be obtained~~  
2301 ~~from the appropriate state and federal agencies;~~
- 2302 e. ~~Approval must be received from the city prior to construction; and~~
- 2303 f. ~~Routine maintenance is allowed to be performed on such facilities to assure that~~  
2304 ~~they continue to function as designed.~~
- 2305 ~~It is not the intent of this division to allow a best management practice that collects and treats~~  
2306 ~~runoff from only an individual lot or some portion of the lot to be located within a resource~~  
2307 ~~protection area.~~

2308 ~~(b) Permitted modifications to resource protection area buffer areas. In order to maintain the~~  
2309 ~~functional value of the RPA buffer area, indigenous vegetation may be removed only as~~  
2310 ~~permitted by the city arborist to provide for reasonable sight lines, access paths, general~~  
2311 ~~woodlot management, and best management practices, including those that prevent upland~~  
2312 ~~erosion and concentrated flows of stormwater, as follows. All requests for vegetation~~  
2313 ~~removal shall be submitted in writing to the city arborist for evaluation.~~

2314 ~~(1) Trees may be pruned or removed as necessary subject to the written approval of the city~~  
2315 ~~arborist to provide for sight lines and vistas, provided that, where removed, they shall~~  
2316 ~~be replaced with other vegetation that is equally effective in retarding runoff, preventing~~  
2317 ~~erosion, and filtering nonpoint source pollution from runoff.~~

2318 ~~(2) Any path shall be constructed and surfaced so as to effectively control erosion.~~

2319 ~~(3) Dead, diseased, or dying trees or shrubbery and noxious weeds (such as Johnson grass,~~  
2320 ~~kudzu, and multiflora rose) may be removed and thinning of trees may be allowed~~  
2321 ~~subject to the written approval of the city arborist, pursuant to sound horticultural~~  
2322 ~~practice incorporated into locally adopted standards.~~

2323 ~~(4) For shoreline erosion control projects, trees and woody vegetation may be removed,~~  
2324 ~~necessary control techniques employed, and appropriate vegetation established to~~  
2325 ~~protect or stabilize the shoreline in accordance with the best available technical advice~~  
2326 ~~and applicable permit conditions or requirements.~~

2327 ~~(c) Permitted encroachments into the buffer area.~~

2328 ~~(1) When the application of the buffer area would result in the loss of a buildable area or a~~  
2329 ~~lot or parcel recorded prior to October 1, 1989, encroachments into the buffer area may~~  
2330 ~~be allowed by the Chesapeake Bay Interdisciplinary Review Team, through an~~  
2331 ~~administrative process, and in accordance with the following criteria:~~

2332 ~~a. Encroachments into the buffer area shall be the minimum necessary to achieve a~~  
2333 ~~reasonable buildable area for a principal structure and necessary utilities;~~

2334 ~~b. Where practicable, a vegetated area that will maximize water quality protection,~~  
2335 ~~mitigate the effects of buffer encroachment, and is equal to the area of~~  
2336 ~~encroachment into the buffer area shall be established elsewhere on the lot or~~  
2337 ~~parcel; and~~

2338 ~~c. The encroachment shall not extend into the seaward 50 feet of the buffer area.~~

2339 ~~(2) When the application of the buffer area would result in the loss of a buildable area on a~~  
2340 ~~lot or parcel recorded between October 1, 1989, and March 1, 2002, encroachments into~~  
2341 ~~the buffer area may be allowed by the Chesapeake Bay Interdisciplinary Review Team~~  
2342 ~~in accordance with the following criteria:~~

2343 ~~a. The lot or parcel was created as a result of a legal process conducted in conformity~~  
2344 ~~with the city's subdivision regulations;~~

2345 ~~b. Conditions or mitigation measures imposed through a previously approved~~  
2346 ~~exception shall be met;~~

2347 ~~c. If the use of a best management practice was previously required, the best~~  
2348 ~~management practice shall be evaluated to determine if it continues to function~~  
2349 ~~effectively, and if necessary, the best management practice shall be reestablished or~~  
2350 ~~repaired and maintained as required; and~~

2351 d.— The criteria in subsection (c)(1) of this section shall be met.

2352 (Code 1982, § 38-42(j); Ord. No. 1335, 11-12-1990; Ord. No. 1380, 11-11-1991; Ord. No.  
2353 1748, 2-9-2004; Ord. No. 1766, 9-13-2004)

2354 **Sec. 48-834. — Performance and development criteria within Chesapeake Bay preservation**  
2355 **areas.**

2356 (a) ~~Purpose and intent.~~ The following set of performance criteria establish the means to prevent  
2357 a net increase in nonpoint source pollution from new development and achieve a ten percent  
2358 reduction in nonpoint source pollution from redevelopment. These criteria also set standards  
2359 to minimize erosion and sedimentation potential, reduce land application of nutrients and  
2360 toxics, maximize rainwater infiltration, and ensure the longterm performance of the  
2361 measures employed.

2362 (b) ~~Criteria for development, redevelopment, or land disturbance.~~ The following criteria apply  
2363 to all applications for development, redevelopment, or land disturbance within RMAs for  
2364 projects that will disturb 2,500 square feet of land or more. The criteria also apply to all  
2365 applications for development, redevelopment, or land disturbance within RPAs, regardless  
2366 of the amount of land disturbance.

2367 (1) ~~All development, redevelopment, or land disturbance within RMAs that exceeds 2,500~~  
2368 ~~square feet of land disturbance and all development, redevelopment, or land disturbance~~  
2369 ~~in the RPA, regardless of the amount of land disturbance, shall be subject to a~~  
2370 ~~Chesapeake Bay preservation area review process. This process will begin at the time of~~  
2371 ~~applications for site plans, subdivision plats, grading plans, building permits, demolition~~  
2372 ~~permits, or water quality impact assessments, in accordance with applicable sections of~~  
2373 ~~this Code.~~

2374 (2) ~~Land disturbance shall be limited to the area necessary to provide for the proposed use~~  
2375 ~~or development. In accordance with an approved grading plan, the limits of land~~  
2376 ~~disturbance, including clearing or grading, shall be strictly defined. These limits shall be~~  
2377 ~~clearly shown on submitted plans and physically marked on the development site.~~

2378 (3) ~~Existing indigenous vegetation and trees shall be preserved to the maximum extent~~  
2379 ~~practicable, consistent with the proposed use or development, in accordance with~~  
2380 ~~chapters 14 and 44, pertaining respectively to environment and vegetation, and as~~  
2381 ~~follows.~~

2382 a. ~~Existing trees over two inches in DBH and shrubs greater than five feet in height~~  
2383 ~~shall be preserved outside the approved construction footprint consistent with~~  
2384 ~~subsection (b)(2) of this section. Diseased or weakened trees, by age, storm, fire or~~  
2385 ~~other injury, may be required to be removed, by the city arborist.~~

2386 b. ~~The regulation of any historic, specimen, street, park, memorial and other public~~  
2387 ~~trees shall be regulated in accordance with chapter 44, pertaining to vegetation.~~  
2388 ~~This may include the bonding of these types of trees in situations where the critical~~  
2389 ~~root zone (CRZ) or canopies extend onto the site.~~

2390 c. ~~Clearing shall be allowed only to provide necessary access, positive site drainage,~~  
2391 ~~water quality best management practices (BMPs) and the installation of utilities.~~

- 2392 ~~d. Tree preservation shall be in accordance with the City of Falls Church Tree~~  
2393 ~~Preservation Standards and Specifications. A copy of the approved plan and the~~  
2394 ~~specifications shall be kept on site at all times.~~
- 2395 ~~e. Prior to clearing and grading, tree preservation fencing, consistent with the City of~~  
2396 ~~Falls Church Tree Preservation Standards and Specifications, signs, or other such~~  
2397 ~~material may be required by the city arborist. These preservation measures shall be~~  
2398 ~~installed to protect the critical root zone (CRZ) of any woody vegetation to be~~  
2399 ~~preserved on the site, as well as to protect the critical root zone (CRZ) of any~~  
2400 ~~woody vegetation trees on adjacent properties including rights-of-way that extend~~  
2401 ~~onto the site.~~
- 2402 ~~f. Tree preservation fencing shall remain in place throughout all phases of~~  
2403 ~~construction. Fencing shall not be removed until all construction equipment has left~~  
2404 ~~the site and written approval is granted by the city arborist.~~
- 2405 ~~g. Exceptions may be granted to allow access to the site and work area, with specific~~  
2406 ~~conditions established by the city arborist.~~
- 2407 ~~h. The storage of equipment, materials, debris, or fill shall not be allowed within the~~  
2408 ~~enclosure of the tree preservation fencing.~~
- 2409 ~~i. The applicant shall submit, in writing to the city arborist, a verification that all~~  
2410 ~~required tree preservation fencing and required preservation measures have been~~  
2411 ~~completed. The city arborist shall inspect and approve this verification, within three~~  
2412 ~~business days, prior to the issuance of any permits.~~
- 2413 ~~(4) Natural ground cover, especially woody vegetation, shall be used to the extent that is~~  
2414 ~~practicable, as it is most effective in holding soil in place and preventing site erosion.~~  
2415 ~~Adaptability to local conditions without the use of harmful fertilizers or pesticides, and~~  
2416 ~~the ability to filter runoff, make the use of indigenous vegetation preferable to~~  
2417 ~~nonindigenous plantings.~~
- 2418 ~~(5) Land development shall minimize impervious cover associated with the proposed use or~~  
2419 ~~development. Keeping impervious cover to a minimum enhances rainwater infiltration~~  
2420 ~~and effectively reduces stormwater runoff potential.~~
- 2421 ~~(6) Where the best management practices (BMPs) utilized require regular or periodic~~  
2422 ~~maintenance in order to continue their functions, such maintenance shall be ensured by~~  
2423 ~~the city through a maintenance agreement with the owner or developer or some other~~  
2424 ~~mechanism that achieves an equivalent objective.~~
- 2425 ~~(7) Notwithstanding any other provisions of this division or exceptions or exemptions, any~~  
2426 ~~land disturbing activity exceeding 2,500 square feet, including construction of all~~  
2427 ~~single family houses, shall comply with the requirements of chapter 14 and section 48-~~  
2428 ~~1180, tree canopy coverage required on residential lots zoned R1-A, low density and~~  
2429 ~~R1-B, medium density.~~
- 2430 ~~(8) The following stormwater quality/pollutant removal requirements shall be met within~~  
2431 ~~the RPA and RMA. However, only certain types of development, uses, land~~  
2432 ~~disturbances, or redevelopment are permitted in the RPA, as described in section 48-~~  
2433 ~~833(a), and as such, some of the following requirements may not be applicable.~~  
2434 ~~Additional requirements specific to the RPA are described in sections 48-835, 48-837,~~  
2435 ~~and 48-838~~

- 2436 a. ~~Within the R-1A, low density residential, and R-1B, medium residential, zoning~~  
2437 ~~districts, a maximum impervious land cover of 35 percent is permitted with no~~  
2438 ~~other requirements for reducing pollutant load.~~
- 2439 b. ~~Within the R-C, cluster residence; R-TH, townhouse residence; R-M, multifamily~~  
2440 ~~residence; T-1, transitional; B-1, limited business; B-2, central business; B-3,~~  
2441 ~~general business; O-D, official design; and M-1, light industry zoning districts:~~
- 2442 1. ~~If the pre-development impervious land cover is less than or equal to 50~~  
2443 ~~percent, the post-development pollutant load shall be reduced to a load that is~~  
2444 ~~not greater than the pre-development pollutant load. See sections 48-835, 48-~~  
2445 ~~837 and 48-838 for regulations pertaining to the RPA.~~
- 2446 2. ~~If the pre-development impervious land cover is greater than 50 percent, the~~  
2447 ~~post-development pollutant load shall be reduced to 90 percent of the pre-~~  
2448 ~~development pollutant load. See sections 48-835, 48-837, and 48-838 for~~  
2449 ~~regulations pertaining to the RPA.~~
- 2450 3. ~~In cases where pollutant load reduction is required, it shall be achieved through~~  
2451 ~~the application of best management practices, and the 2002, or most recently~~  
2452 ~~published version of the Virginia Stormwater Management Handbook, method~~  
2453 ~~for calculating pollution load shall be utilized to determine the appropriate~~  
2454 ~~measures.~~
- 2455 4. ~~The Chesapeake Bay interdisciplinary review team may waive or modify the~~  
2456 ~~pollutant load reduction requirement in cases where the sites originally~~  
2457 ~~incorporated best management practices for stormwater runoff quality control,~~  
2458 ~~provided the following provisions are satisfied:~~
- 2459 (i) ~~In no case may the post-development nonpoint source pollution runoff~~  
2460 ~~load exceed the pre-development load;~~
- 2461 (ii) ~~Runoff pollution loads must have been calculated and the BMPs selected~~  
2462 ~~for the expressed purpose of controlling nonpoint source pollution; and~~
- 2463 (iii) ~~If existing best management practices are structural, evidence shall be~~  
2464 ~~provided that facilities are currently in good working order and performing~~  
2465 ~~at the design levels of service. The Chesapeake Bay Interdisciplinary~~  
2466 ~~Review Team may require a review of both the original structural design~~  
2467 ~~and maintenance plans to verify this provision. A new maintenance~~  
2468 ~~agreement may be required to ensure compliance with this division.~~
- 2469 5. ~~For redevelopment, both the pre-development and post-development loadings~~  
2470 ~~shall be calculated by the same procedures. However, where the design data is~~  
2471 ~~available, the original post-development nonpoint source pollution loadings~~  
2472 ~~can be substituted for the existing development loadings.~~
- 2473 6. ~~The use of approved semipervious materials in lieu of impervious materials on~~  
2474 ~~a property may result in modified percentage impervious coverage calculations~~  
2475 ~~for that property. The city engineer will maintain a list of approved~~  
2476 ~~semipervious materials and the relative ratios of imperviousness, and will~~  
2477 ~~apply said ratios to the overall impervious calculation for the subject property.~~

2478 ~~(9) Prior to initiating grading or other on site activities on any portion of a lot or parcel, all~~  
2479 ~~wetlands permits required by federal, state, and local laws and regulations, shall be~~  
2480 ~~obtained and evidence of such submitted to the city engineer as part of the required~~  
2481 ~~development application submittals.~~

2482 ~~All stormwater management options utilized shall comply with this division and shall also be in~~  
2483 ~~compliance with the city's adopted stormwater management plan. For the purposes of this~~  
2484 ~~section, the term "site" may include multiple projects that are adjacent to one another or lie~~  
2485 ~~within the same drainage area where a single best management practice will be utilized by those~~  
2486 ~~projects to satisfy water quality protection requirements.~~

2487 ~~(Code 1982, § 38-42(k); Ord. No. 1335, 11-12-1990; Ord. No. 1380, 11-11-1991; Ord. No.~~  
2488 ~~1748, 2-9-2004; Ord. No. 1766, 9-13-2004)~~

2489 **~~Sec. 48-835. Additional requirements for development within resource protection areas.~~**

2490 ~~In addition to the general performance and development criteria for CBPAs, the~~  
2491 ~~requirements in this section shall be met for any proposed land disturbance within an RPA.~~

2492 ~~(1) *Water quality.* A water quality impact assessment shall be required for any proposed~~  
2493 ~~land disturbance, development, or redevelopment within RPAs, including any~~  
2494 ~~development projects that are permitted within the RPA, as well as any RPA buffer~~  
2495 ~~modification or encroachment, in accordance with the provisions of this division. See~~  
2496 ~~section 48-838 for specific water quality impact requirements.~~

2497 ~~(2) *Buffer area requirements.* To minimize the adverse effects of human activities on the~~  
2498 ~~other components of the RPA, state waters, and aquatic life, a buffer area of vegetation~~  
2499 ~~that is effective in retarding runoff, preventing erosion, and filtering nonpoint source~~  
2500 ~~pollution from runoff shall be retained, if present and established where it does not~~  
2501 ~~exist.~~

2502 ~~a. The buffer area shall be 100 feet wide and located adjacent to and landward of~~  
2503 ~~other RPA components and along both sides of any water body with perennial~~  
2504 ~~flow. This distance shall be measured from the top of the stream bank or the edge~~  
2505 ~~of stream if there is no bank. Notwithstanding permitted uses, encroachments, and~~  
2506 ~~vegetation clearing, as set forth in this division, the 100-foot-wide buffer area is~~  
2507 ~~never reduced in width.~~

2508 ~~b. The sections of water bodies for which the RPA shall be applied are generally~~  
2509 ~~labeled as such on the city's CBPA map. However, precise delineation of the 100-~~  
2510 ~~foot buffer area shall be prepared by the applicant, pursuant to this division.~~

2511 ~~c. The 100-foot buffer area shall be deemed to achieve a 75 percent reduction of~~  
2512 ~~sediments and a 40 percent reduction of nutrients. This must be demonstrated~~  
2513 ~~through the water quality impact assessment.~~

2514 ~~d. Where buffer areas are to be established, they shall consist of a mixture of shade~~  
2515 ~~trees, understory trees, shrubs and groundcovers. Density of the buffer shall be as~~  
2516 ~~described in the Riparian Buffers Modification and Mitigation Guidance Manual~~  
2517 ~~restoration and/or establishment tables.~~

2518 ~~e. Vegetation shall be chosen from the city recommended lists of trees and/or native~~  
2519 ~~floodplain species. Wetland plantings, including herbaceous plantings, and/or~~  
2520 ~~wetland seed mix shall be used where site conditions warrant. Plant materials and~~

2521 planting techniques shall be in accordance with The City of Falls Church  
2522 Specifications for Planting.

2523 (Code 1982, § 38-42(1); Ord. No. 1335, 11-12-1990; Ord. No. 1380, 11-11-1991; Ord. No.  
2524 1748, 2-9-2004; Ord. No. 1766, 9-13-2004)

2525 **Sec. 48-836. -- Application requirements for development projects -- Within RMAs.**

2526 (a) ~~Any applicant for development of land, redevelopment, or land disturbance within the city~~  
2527 ~~must file an application for development within a Chesapeake Bay reservation area with the~~  
2528 ~~city's department of environmental services. This will begin the city's process of review for~~  
2529 ~~development within these areas. These applications shall include the application form in~~  
2530 ~~addition to any required components of application for grading, stormwater, or building~~  
2531 ~~permits and the elements listed in section 48-838, if deemed necessary by the Chesapeake~~  
2532 ~~Bay Interdisciplinary Review Team, and a landscape conservation plan as described in~~  
2533 ~~subsection (b) of this section.~~

2534 (b) ~~All development, redevelopment, or land disturbance subject to this division, Chesapeake~~  
2535 ~~Bay preservation area overlay district, shall also include a landscape conservation plan as~~  
2536 ~~part of plan review and approval. No clearing or grading of any lot shall be permitted~~  
2537 ~~without an approved landscape conservation plan prepared and/or certified by a landscape~~  
2538 ~~architect, arborist and/or horticulturalist. A landscape conservation plan shall be a sealed~~  
2539 ~~drawing including the following components:~~

2540 (1) ~~A preliminary vegetative survey of all existing trees on the site, measuring at least two~~  
2541 ~~inches in DBH and shrubs that are greater than five feet in height.~~

2542 a. ~~A chart shall be provided showing common and botanical name, size, condition,~~  
2543 ~~life expectancy, and required preservation measures of all woody vegetation.~~

2544 b. ~~All trees shall be identified by an International Society of Arboriculture (ISA)~~  
2545 ~~certified arborist.~~

2546 (2) ~~An existing vegetation preservation plan that shall illustrate any grade changes or other~~  
2547 ~~work adjacent to trees that would affect them adversely. Specifications shall be~~  
2548 ~~provided showing how grade, drainage and aeration will be maintained around~~  
2549 ~~vegetation to be preserved to ensure the protection of existing trees and other woody~~  
2550 ~~vegetation during clearing, grading and all phases of construction.~~

2551 a. ~~Locations of tree preservation fencing, root pruning and other required tree~~  
2552 ~~preservation measures shall be shown on the plan.~~

2553 b. ~~Proposed vegetation to be removed to create the desired construction footprint shall~~  
2554 ~~be clearly illustrated on the plan and labeled as "to be removed." Vegetation to be~~  
2555 ~~preserved outside the building envelope shall be shown on the plan and labeled as~~  
2556 ~~"to be preserved."~~

2557 c. ~~The location of the critical root zone (CRZ) of any vegetation shown on the plan or~~  
2558 ~~located on adjacent properties, including city rights-of-way, where the critical root~~  
2559 ~~zone (CRZ) extends onto the site, shall be shown on the plan.~~

2560 d. ~~Tree canopy coverage calculations provided by woody vegetation pre-development~~  
2561 ~~and post-development and/or redevelopment on the site shall be shown on the plan~~  
2562 ~~along with the driplines.~~

- 2563 e. ~~The City of Falls Church Tree Standards and Specifications for Planting shall be~~  
2564 ~~included on the plan.~~
- 2565 f. ~~Within the RPA buffer, trees and other woody vegetation to be removed for sight~~  
2566 ~~lines, vistas, access paths, best management practices, and shoreline stabilization~~  
2567 ~~projects shall be shown on the plan.~~
- 2568 (3) ~~A landscape revegetation plan that shall illustrate the proposed locations of vegetation~~  
2569 ~~that is required by this division and section 48-1180, tree canopy coverage required on~~  
2570 ~~residential lots zoned R1-A, low density and R1-B medium density.~~
- 2571 a. ~~A chart shall be provided listing canopy coverage calculations and any required~~  
2572 ~~replacement canopy coverage vegetation pursuant to section 48-1180, tree canopy~~  
2573 ~~coverage required on residential lots zoned R1-A, low density and/or R1-B medium~~  
2574 ~~density.~~
- 2575 b. ~~A landscape schedule shall be provided that lists species, size, quantity, root~~  
2576 ~~condition and any credited tree canopy coverage pursuant to section 48-1180, shall~~  
2577 ~~be shown on the plan.~~
- 2578 e. ~~The planting of woody vegetation shall be in accordance with locally approved~~  
2579 ~~specifications and these specifications and details shall be included on the plan.~~
- 2580 d. ~~Any required RPA buffer shall be clearly delineated and any woody vegetation to~~  
2581 ~~be added to establish, supplement or replace existing vegetation within the RPA~~  
2582 ~~buffer, as required under this Code, shall be shown on this plan.~~
- 2583 (4) ~~In the event that any construction or work is performed in violation of the approved~~  
2584 ~~landscape conservation plan, the city arborist may issue a written notice to the~~  
2585 ~~responsible party to stop work. The notice to comply shall be immediately served upon~~  
2586 ~~the permit holder, by registered or certified mail to the address specified by the permit~~  
2587 ~~holder in his permit application. Such notice shall set forth specifically the measures~~  
2588 ~~needed to come into compliance with the plan and shall specify the time within which~~  
2589 ~~such measures shall be completed. If the permit holder fails to comply within the time~~  
2590 ~~specified, the permit holder may be subject to revocation of the permit and/or any cash~~  
2591 ~~bonds held by the city may be used at the direction of the city arborist to correct the~~  
2592 ~~noted deficiencies; furthermore, the permit holder could be deemed to be in violation of~~  
2593 ~~this division and upon conviction could be subject to the penalties provided by this~~  
2594 ~~division. Each notification that has not been resolved within the specified timeframe in~~  
2595 ~~the stop work order shall constitute a separate violation.~~
- 2596 (5) ~~In the event that the violation of the approved landscape conservation plan was an~~  
2597 ~~encroachment or evidence of an encroachment into a tree preservation area, the~~  
2598 ~~applicant shall submit a mitigation plan subject to the approval of the city arborist. This~~  
2599 ~~plan shall list remedial measures and the time within which such measures shall be~~  
2600 ~~completed by the applicant to ensure the continued preservation of the existing trees.~~  
2601 ~~This may include, but is not limited to, pruning, vertical mulching, and aerating.~~  
2602 ~~Bonding of the existing vegetation, in accordance with chapter 44, article II, division 5,~~  
2603 ~~may be required by the city arborist.~~
- 2604 (6) ~~The city arborist may require the replacement of any vegetation damaged in violation of~~  
2605 ~~the approved landscape conservation plan as part of the mitigation plan. The size,~~  
2606 ~~species and quantity of the replacement trees shall be calculated by the city arborist~~



2607 based on the value of the trees removed as calculated by the latest formula published by  
2608 the International Society of Arboriculture. The required replacement trees shall be  
2609 included in the "mitigation plan" submitted by the applicant. Bonding of the  
2610 replacement vegetation, in accordance with section 48-1143(b), may be required by the  
2611 city arborist.

2612 (Code 1982, § 38-42(m); Ord. No. 1335, 11-12-1990; Ord. No. 1380, 11-11-1991; Ord. No.  
2613 1748, 2-9-2004; Ord. No. 1766, 9-13-2004)

2614 **Sec. 48-837. ~~Same~~ Within RPAs.**

2615 Any applicant for development of land or land disturbance within a RPA must file an  
2616 application for development within a Chesapeake Bay preservation area with the city's  
2617 department of environmental services. This will begin the city's process of review for  
2618 development within these special areas. These applications shall include the application form in  
2619 addition to any required components of application for site plan, grading, subdivision,  
2620 stormwater, or building permits and the elements listed in section 48-838, water quality impact  
2621 assessment, and a landscape conservation plan as described in section 48-836.

2622 (Code 1982, § 38-42(n); Ord. No. 1335, 11-12-1990; Ord. No. 1380, 11-11-1991; Ord. No.  
2623 1748, 2-9-2004; Ord. No. 1766, 9-13-2004)

2624 **Sec. 48-838. ~~Water quality impact assessment.~~**

2625 (a) ~~When required.~~ A water quality impact assessment shall be required for any:

- 2626 (1) ~~Proposed land disturbance, development or redevelopment activity within the resource~~  
2627 ~~protection area;~~  
2628 (2) ~~Buffer encroachment, as provided for in section 48-833(e); and~~  
2629 (3) ~~Other development in resource management areas if regarded as appropriate by the~~  
2630 ~~Chesapeake Bay Interdisciplinary Review Team due to unique site characteristics or the~~  
2631 ~~intensity of the proposed use or development and its potential impact on water quality.~~

2632 (b) ~~Contents.~~ The requirements for the water quality impact assessment will vary depending on  
2633 the magnitude of the proposed development project.

2634 (1) ~~Identification of impacts with specificity.~~ The purpose of the water quality impact  
2635 assessment is to identify the impacts of proposed development, redevelopment, or land  
2636 disturbance on water quality, lands within the resource protection area, and other  
2637 environmentally sensitive lands, and to determine specific measures for mitigation of  
2638 these impacts. The water quality impact assessment must be of sufficient specificity to  
2639 demonstrate compliance with the criteria of this division. See section 48-835 for  
2640 specific buffer requirements.

2641 (2) ~~Site drawing.~~ A water quality assessment shall include a site drawing to scale which  
2642 shows the following:

2643 a. ~~Location of the components of the RPA and the 100-foot buffer area measured~~  
2644 ~~from the top of the stream bank or edge of stream when there is no bank. The~~  
2645 ~~location of the RPA line shall be prepared and certified by a land surveyor~~  
2646 ~~authorized to practice in the commonwealth;~~

2647 b. ~~Location and nature of the proposed encroachment into the RPA buffer area,~~  
2648 ~~including:~~

- 2649 1. Type of paving material;
- 2650 2. Areas of clearing or grading;
- 2651 3. Location of any structures, drives, or other impervious cover; and
- 2652 4. Sewage disposal systems or other utilities;
- 2653 e. Estimation of pre-development and post-development impervious surfaces on the
- 2654 site and stormwater calculations;
- 2655 d. Type and location of proposed best management practices to mitigate the proposed
- 2656 encroachment and the location of existing and proposed runoff outfalls or drainage
- 2657 pathways from the property, including the location of erosion and sediment control
- 2658 devices such as silt fencing, stormwater inlet protection, and temporary soil
- 2659 storage; and
- 2660 e. Pollutant load calculations to display that the vegetative buffer and/or best
- 2661 management practice will reduce the sediment load by 75 percent and nutrient load
- 2662 by 40 percent.
- 2663 (3) ~~Modifications.~~ Certain water quality impact requirements modifications are as follows:
- 2664 a. Additional hydrogeological and other information may be required by the
- 2665 Chesapeake Bay Interdisciplinary Review Team if the size and scope of the
- 2666 proposed project is large enough to require additional analysis to ensure the
- 2667 protection of the CBPA.
- 2668 b. Applicants for development and redevelopment of land or land disturbance within
- 2669 the RPA may apply, in writing, to the city engineer for a modification to the
- 2670 application requirements for a water quality impact assessment, described in this
- 2671 section.
- 2672 (4) ~~Submission and review.~~ Submission and review requirements are as follows:
- 2673 a. Five copies of all site drawings and other applicable information as required by this
- 2674 division shall be submitted to the city engineer for review by the Chesapeake Bay
- 2675 Interdisciplinary Review Team.
- 2676 b. All information required in this division shall be certified as complete and accurate
- 2677 by a professional engineer or a certified land surveyor.
- 2678 e. As part of any water quality impact assessment submittal, the Chesapeake Bay
- 2679 Interdisciplinary Review Team may require review by the Northern Virginia
- 2680 Regional Commission or the Chesapeake Bay Local Assistance Department. Any
- 2681 comments will be incorporated into the final review by the Chesapeake Bay
- 2682 Interdisciplinary Review Team, provided that such comments are provided within
- 2683 30 days of the request.
- 2684 (5) ~~Evaluation.~~ The evaluation procedure is as follows:
- 2685 a. Upon the completed review of a water quality impact assessment and the landscape
- 2686 conservation plan, the Chesapeake Bay Interdisciplinary Review Team will
- 2687 determine if any proposed encroachment into the buffer area is consistent with the
- 2688 provisions of this division and make a finding based upon the following criteria:
- 2689 1. The necessity of the proposed encroachment and the ability to place
- 2690 improvements elsewhere on the site to avoid disturbance of the buffer area;

- 2691 2. ~~Impervious surfaces are minimized;~~  
2692 3. ~~Proposed mitigation measures, including the landscape conservation plan and~~  
2693 ~~site design, result in minimal disturbance to all components of the RPA,~~  
2694 ~~including the 100-foot buffer area;~~  
2695 4. ~~Proposed mitigation measures will work to retain all buffer area functions,~~  
2696 ~~pollutant removal, erosion and runoff control;~~  
2697 5. ~~Proposed best management practices, where required, achieve the requisite~~  
2698 ~~reductions in pollutant loadings;~~  
2699 6. ~~The development as proposed, meets the purpose and intent of this division;~~  
2700 7. ~~The cumulative impact of the proposed development, when considered in~~  
2701 ~~relation to other development in the vicinity, both existing and proposed, will~~  
2702 ~~not result in a significant degradation of water quality;~~  
2703 8. ~~Within any RPA, the proposed development is water dependent or~~  
2704 ~~redevelopment; and~~  
2705 9. ~~The development will not result in significant disruption of the hydrology of~~  
2706 ~~the site.~~  
2707 b. ~~The Chesapeake Bay Interdisciplinary Review Team shall require additional~~  
2708 ~~mitigation where potential impacts have not been adequately addressed. Evaluation~~  
2709 ~~of mitigation measures will be made based on the criteria listed in this subsection.~~  
2710 e. ~~The Chesapeake Bay Interdisciplinary Review Team shall find the proposal to be~~  
2711 ~~inconsistent with the purpose and intent of this division when the impacts created~~  
2712 ~~by the proposal cannot be mitigated.~~

2713 (Code 1982, § 38-42(o); Ord. No. 1335, 11-12-1990; Ord. No. 1380, 11-11-1991; Ord. No.  
2714 1748, 2-9-2004; Ord. No. 1766, 9-13-2004)

2715 **Sec. 48-839. ~~Installation and bonding requirements.~~**

2716 All development, land disturbance, and redevelopment in an RPA or RMA shall be subject  
2717 to the bond and inspection provisions, pursuant to sections 48-1143 and 48-1144, pertaining to  
2718 site plans.

2719 (Code 1982, § 38-42(p); Ord. No. 1335, 11-12-1990; Ord. No. 1380, 11-11-1991; Ord. No.  
2720 1748, 2-9-2004; Ord. No. 1766, 9-13-2004)

2721 **Sec. 48-840. ~~Administrative responsibility and procedure.~~**

2722 Administration of the site plan process shall be in accordance with article V, division 7 of  
2723 this chapter, pertaining to site plans, or chapter 38, pertaining to subdivision. The Chesapeake  
2724 Bay Interdisciplinary Review Team (CBIRT) shall approve, approve subject to conditions, or  
2725 disapprove any development application for property that is located within the city resource  
2726 protection area and any development application for property within the city resource  
2727 management area in accordance with this division. The CBIRT shall review and return the  
2728 development plan review results to the applicant, including required conditions or modifications  
2729 if the applicant wishes to proceed. If the applicant decides to proceed, the plans shall be modified  
2730 by the applicant to reflect any required conditions or modifications and submitted for approval.  
2731 The CBIRT will meet bimonthly. Public comment will be received at such meetings and outside  
2732 of these meetings in writing. The CBIRT meetings will be advertised on the public notice boards

2733 within city hall. Property owners within 150 feet of properties that are the subject of  
2734 development applications to be reviewed by CBIRT will be mailed notification of applicable  
2735 CBIRT meetings.

2736 (Code 1982, § 38-42(q); Ord. No. 1335, 11-12-1990; Ord. No. 1380, 11-11-1991; Ord. No.  
2737 1748, 2-9-2004; Ord. No. 1766, 9-13-2004)

2738 **Sec. 48-841. Administrative waivers and nonconformities, exemptions, and exceptions.**

2739 (a) ~~Nonconforming structures.~~ Any structure or nonagricultural use that was legally established  
2740 in accordance with the provisions of this Code and was in existence on the date of the  
2741 adoption of the ordinance from which this division is derived, and made nonconforming by  
2742 operation of this division, may continue and be maintained, but shall not be enlarged or  
2743 expanded, with the exception that the Chesapeake Bay Interdisciplinary Review Team may  
2744 grant a waiver for structures on legal nonconforming lots or parcels to provide for  
2745 remodeling and alterations to such nonconforming structures, provided there will be no  
2746 increase in nonpoint source pollution load and any development or land disturbance  
2747 exceeding an area of 2,500 square feet complies with all erosion and sediment control  
2748 requirements in chapter 14, article IV. A nonconforming use development waiver shall  
2749 become null and void if substantial work on the project has not commenced within 12  
2750 months of the date of permit issuance.

2751 (b) ~~Reconstruction of preexisting structures.~~ It is not the intent of this division to prevent the  
2752 reconstruction of preexisting structures within Chesapeake Bay preservation areas from  
2753 occurring as a result of casualty loss, unless otherwise restricted by city ordinance. Such  
2754 reconstruction shall occur within two years after the destruction or damage and there shall  
2755 be no increase in the amount of impervious area and no further encroachment into the RPA,  
2756 to the extent possible by sound engineering practices.

2757 (c) ~~Administrative waivers for the expansion of preexisting structures.~~ An application for the  
2758 expansion or modification of an existing legal principle structure on legal nonconforming  
2759 lots or parcels may be approved by the Chesapeake Bay Interdisciplinary Review Team  
2760 through an administrative process for additions to the existing legal principal structures, and  
2761 additions of attached decks, garages, and other customary and incidental structures attached  
2762 to the principal structure; provided the following findings are made:

- 2763 (1) ~~The request for the waiver is the minimum necessary to afford relief;~~  
2764 (2) ~~Granting the waiver will not confer upon the applicant any specific privileges that are~~  
2765 ~~denied by this division to other property owners in similar situations;~~  
2766 (3) ~~The waiver is in harmony with the purpose and intent of this division and does not~~  
2767 ~~result in a net increase in nonpoint source pollution load;~~  
2768 (4) ~~The waiver is not based on conditions or circumstances that are self-created or self-~~  
2769 ~~imposed;~~  
2770 (5) ~~Reasonable and appropriate conditions are imposed, as warranted, that will prevent the~~  
2771 ~~waiver from causing a degradation of water quality;~~  
2772 (6) ~~Other findings, as appropriate and required by the city are met; and~~

2773 in no case shall this provision apply to accessory structures. Such requests shall be heard by the  
2774 planning commission through the exceptions process described in subsection (e) of this section.

2775 (d) ~~Exemptions for public utilities, railroads, public roads, and facilities.~~

- 2776 (1) ~~Construction, installation, operation, and maintenance of electric, natural gas, fiber-~~  
2777 ~~optic, and telephone transmission lines, railroads, and public roads and their appurtenant~~  
2778 ~~structures in accordance with:~~
- 2779 a. ~~Regulations promulgated pursuant to the Erosion and Sediment Control Law (Code~~  
2780 ~~of Virginia, § 10.1-560 et seq.) and the Stormwater Management Act (Code of~~  
2781 ~~Virginia, § 10.1-603.1 et seq.);~~
- 2782 b. ~~An erosion and sediment control plan and a stormwater management plan approved~~  
2783 ~~by the state department of conservation and recreation; or~~
- 2784 c. ~~Local water quality protection criteria at least as stringent as the above state~~  
2785 ~~requirements will be deemed to constitute compliance with this division.~~
- 2786 (2) ~~The exemption of public roads and drives is further conditioned on the optimization of~~  
2787 ~~the road alignment and design, consistent with other applicable requirements, to prevent~~  
2788 ~~or otherwise minimize:~~
- 2789 a. ~~Encroachment in the resource protection area; and~~
- 2790 b. ~~Adverse effects on water quality.~~
- 2791 (3) ~~Construction, installation and maintenance of water, sewer, natural gas, and~~  
2792 ~~underground fiber optic telecommunications and cable television lines owned,~~  
2793 ~~permitted, or both, by the city or regional service authority shall be exempt from the~~  
2794 ~~criteria in this division; provided that:~~
- 2795 a. ~~To the degree possible, the location of such utilities and facilities should be outside~~  
2796 ~~resource protection areas;~~
- 2797 b. ~~No more land shall be disturbed than is necessary to provide for the proposed~~  
2798 ~~utility installation;~~
- 2799 c. ~~All such construction, installation and maintenance of such utilities and facilities~~  
2800 ~~shall be in compliance with all applicable state and federal permits and designed~~  
2801 ~~and conducted in a manner that protects water quality; and~~
- 2802 d. ~~Any land disturbance exceeding an area of 2,500 square feet complies with all~~  
2803 ~~erosion and sediment control requirements of this division.~~
- 2804 (4) ~~Exemptions in resource protection areas. Passive recreation facilities such as~~  
2805 ~~boardwalks, trails and pathways; and historic preservation and archaeological activities~~  
2806 ~~may be exempt from the requirements of this division, as determined by the Chesapeake~~  
2807 ~~Bay Interdisciplinary Review Team; provided that any land disturbance exceeding an~~  
2808 ~~area of 2,500 square feet shall comply with the erosion and sediment control~~  
2809 ~~requirements of this division.~~
- 2810 ~~(e) *Exceptions in Chesapeake Bay preservation areas.*~~
- 2811 (1) ~~Requests for planning commission review. Requests for exceptions to the requirements~~  
2812 ~~of section 48-833, permitted development or uses, modifications, and encroachments~~  
2813 ~~within resource protection areas, and requests for exceptions to modify nonconforming,~~  
2814 ~~or construct new, nonattached accessory structures and uses in the RPA buffer, as noted~~  
2815 ~~in subsection (c) of this section, shall be made, in writing, to the city engineer. This~~  
2816 ~~request shall identify the impacts of the proposed exception on water quality and on~~  
2817 ~~lands within the resource protection area through the performance of a water quality~~

2818 impact assessment, which complies with the provisions of section 48-838. The  
2819 Chesapeake Bay Interdisciplinary Review Team will forward the request and the water  
2820 quality impact assessment to the planning commission for its consideration. The city  
2821 shall notify the affected public of any such exception requests and the planning  
2822 commission shall consider these requests in a public hearing in accordance with Code  
2823 of Virginia, § 15.2-2204, except only one hearing shall be required.

2824 ~~(2) Request for administrative review.~~ Requests for exceptions to provisions other than  
2825 section 48-833, permitted development or uses, modifications, and encroachments  
2826 within resource protection areas, and subsection (c) of this section. Exceptions to  
2827 modify nonconforming, or construct new nonattached accessory structures and uses in  
2828 the RPA buffer, may be made in writing to the city engineer for administrative review  
2829 by the Chesapeake Bay Interdisciplinary Review Team, as described in section 48-840

2830 ~~(3) Evaluation criteria for administrative or planning commission review of exceptions as~~  
2831 ~~applied to subsections (c)(1) and (2) of this section.~~ The Chesapeake Bay  
2832 interdisciplinary review team or the planning commission shall review the request for  
2833 an exception and the water quality impact assessment and may grant the exception with  
2834 such conditions and safeguards as deemed necessary to further the purpose and intent of  
2835 this division, and if the Chesapeake Bay Interdisciplinary Review Team or the planning  
2836 commission finds that:

2837 a. ~~Granting the exception will not confer upon the applicant any special privileges~~  
2838 ~~denied by this division to other property owners in the overlay district;~~

2839 b. ~~The exception request is not based on conditions or circumstances that are self-~~  
2840 ~~created or self-imposed, nor does the request arise from conditions or~~  
2841 ~~circumstances either permitted or nonconforming that are related to adjacent~~  
2842 ~~parcels;~~

2843 c. ~~The exception request is the minimum necessary to afford relief;~~

2844 d. ~~The exception request will be in harmony with the purpose and intent of this~~  
2845 ~~division, not injurious to the neighborhood or otherwise detrimental to the public~~  
2846 ~~welfare, and is not of substantial detriment to water quality; and~~

2847 e. ~~Reasonable and appropriate conditions are imposed which will prevent the~~  
2848 ~~exception request from causing a degradation of water quality.~~

2849 If the planning commission or Chesapeake Bay Interdisciplinary Review Team cannot make the  
2850 required findings or refuses to grant the exception, the request for an exception together with the  
2851 water quality impact assessment and the written findings and rationale for the decision shall be  
2852 returned to the applicant.

2853 (Code 1982, § 38-42(r); Ord. No. 1335, 11-12-1990; Ord. No. 1380, 11-11-1991; Ord. No.  
2854 1748, 2-9-2004; Ord. No. 1766, 9-13-2004)

2855 **Sec. 48-842.— Appeals.**

2856 (a) ~~An appeal to the planning commission may be made by any person aggrieved by any~~  
2857 ~~decision of the city arborist, city engineer or Chesapeake Bay Interdisciplinary Review~~  
2858 ~~Team relative to the administration of this section. An appeal shall be made within 15~~  
2859 ~~working days from the date of the issuance of the city arborist's, city engineer's or~~  
2860 ~~Chesapeake Bay Interdisciplinary Review Team's written order, by filing with the planning~~

2861 director a notice of appeal specifying the grounds. The planning director shall then transmit  
2862 to the planning commission the record upon which the appeal is based. The planning  
2863 commission as part of their review should notify and seek advice and recommendations  
2864 from appropriate boards and commissions all decisions by the planning commission can be  
2865 appealed to a court of record. The planning commission shall hear the appeal, and render a  
2866 written decision within 30 working days of receipt of the notice of appeal. An appeal stays  
2867 all compliance with the action being appealed, unless the city arborist or city engineer  
2868 certifies to the planning commission that by reason of stated facts a stay would, in the  
2869 opinion of the city arborist or city engineer, cause imminent endangerment to life or  
2870 property. In such cases, compliance shall not be stayed other than by a restraining order  
2871 which may be granted by the city manager, or by a court of record, on application and on  
2872 due cause shown.

2873 (b) An appeal by any person aggrieved by any decision of the planning commission relative to  
2874 the administration of this division shall be made to a court of record. An appeal shall be  
2875 made within 30 working days from the date of the issuance of the planning commission's  
2876 written decision, by filing with a court of record.

2877 (Code 1982, § 38-42(s); Ord. No. 1335, 11-12-1990; Ord. No. 1380, 11-11-1991; Ord. No.  
2878 1748, 2-9-2004; Ord. No. 1766, 9-13-2004)

2879 **Sec. 48-843. -- Violations and penalties; remedies.**

2880 Any person, whether as an owner, lessee, principal, agent, employee or otherwise, who  
2881 violates any of the provisions of this division or permits any such violation, or fails to comply  
2882 with any of the requirements shall be subject to a civil penalty not to exceed \$2,500.00 for each  
2883 violation. Each day upon which such violation continues shall constitute a separate violation.  
2884 Furthermore, the city arborist and city engineer, through the city attorney, may apply to the  
2885 circuit court of the county for injunctive relief to enjoin a violation or a threatened violation of  
2886 this division.

2887 (Code 1982, § 38-42(t); Ord. No. 1335, 11-12-1990; Ord. No. 1380, 11-11-1991; Ord. No.  
2888 1748, 2-9-2004; Ord. No. 1766, 9-13-2004)

2889 **Secs. 48-844 -- 48-866. -- Reserved.**

2890

2891

2892 [ATTACHEMENT 3 – All wording removed and merged into Chapter 35, “Stormwater”]

2893

2894

2895

CHAPTER 14 - ENVIRONMENT

2896

2897

**ARTICLE IV. -- EROSION AND SEDIMENT CONTROL**

2898

**Sec. 14-88. -- Purpose.**

2899

**Sec. 14-89. -- Definitions.**

2900

**Sec. 14-90. -- Requirements for engaging in land disturbing activity; bond; permit;**

2901

**exceptions.**

- 2902 ~~Sec. 14-91.-- Regulated land disturbing activities.~~  
2903 ~~Sec. 14-92.-- Plan required for issuance of permit.~~  
2904 ~~Sec. 14-93.-- Standards for approval of plan.~~  
2905 ~~Sec. 14-94.-- Installation and maintenance agreement; bond.~~  
2906 ~~Sec. 14-95.-- Failure to comply with plan.~~  
2907 ~~Sec. 14-96.-- Permit does not authorize changes in floodplain.~~  
2908 ~~Sec. 14-97.-- Review and inspection fee.~~  
2909 ~~Sec. 14-98.-- Administrative appeal; judicial review.~~  
2910 ~~Sec. 14-99.-- Penalties, injunctions and other legal actions; prima facie evidence of~~  
2911 ~~compliance.~~  
2912 ~~Secs. 14-100—14-126.-- Reserved.~~  
2913

2914 ~~Sec. 14-88.-- Purpose.~~

2915 ~~The purpose of this article is to prevent the degradation of properties, stream channels,~~  
2916 ~~waters, and other natural resources by providing that adequate soil erosion and sediment control~~  
2917 ~~measures are taken before, during, and after the period of site clearance, development, and~~  
2918 ~~construction; and to implement the requirements of Code of Virginia, § 10.1-2100 et seq. (the~~  
2919 ~~Chesapeake Bay Preservation Act). The Erosion and Sediment Control Regulations of the~~  
2920 ~~Virginia Soil and Water Conservation Board, effective July 1, 1994, and as subsequently~~  
2921 ~~amended, are incorporated herein by reference. The text of these regulations is on file in the~~  
2922 ~~office of the director of public works.~~

2923 ~~(Code 1982, § 9-1; Ord. No. 718; Ord. No. 1412, 9-14-1992; Ord. No. 1530, 11-27-1995)~~

2924 ~~Sec. 14-89.-- Definitions.~~

2925 ~~As used in this article, unless the context clearly indicates otherwise, the following words~~  
2926 ~~and phrases shall have the meanings ascribed to them by this section:~~

2927 ~~*Adequate channel* means a watercourse that will convey a chosen frequency storm event~~  
2928 ~~without overtopping its banks or causing erosive damage to the bed, banks, and overbank~~  
2929 ~~sections of the same.~~

2930 ~~*Applicant* means any person submitting an erosion and sediment control plan for approval or~~  
2931 ~~requesting the issuance of a permit, when required, authorizing land disturbing activities to~~  
2932 ~~commence.~~

2933 ~~*Board* refers to the Virginia Soil and Water Conservation Board.~~

2934 ~~*Dam* means a barrier to confine or raise water for storage or diversion, to create a hydraulic~~  
2935 ~~head, to prevent gully erosion, or to retain soil, rock or other debris.~~

2936 ~~*Denuded* refers to a term applied to land that has been physically disturbed and no longer~~  
2937 ~~supports vegetative cover.~~

2938 ~~*Department* refers to the Virginia Department of Conservation and Recreation.~~

2939 ~~*Dike* means an embankment to confine or control water, especially one built along the banks~~  
2940 ~~of a river to prevent overflow of lowlands; a levee.~~



2941 ~~*Director of public works* refers to the representative of the city who has been appointed to~~  
2942 ~~serve as the agent of the city in administering this article, or a duly appointed representative. As~~  
2943 ~~used in this article, the term "director" shall mean the director of public works.~~

2944 ~~*Disturbed acreage* means that portion of the project that will be disturbed, denuded, graded,~~  
2945 ~~cut, or filled.~~

2946 ~~*Diversion* means a channel with a supporting ridge on the lower side constructed across or at~~  
2947 ~~the bottom of a slope for the purpose of intercepting surface runoff.~~

2948 ~~*Erosion and sediment control plan* means a document containing material for the~~  
2949 ~~conservation of soil and water resources of a unit or group of units of land. It may include~~  
2950 ~~appropriate maps, an appropriate soil and water plan inventory and management information~~  
2951 ~~with needed interpretations, and a record of decisions contributing to conservation treatment. The~~  
2952 ~~plan shall contain all major conservation decisions to assure that the entire unit or units of land~~  
2953 ~~will be so treated to achieve the conservation objectives.~~

2954 ~~*Erosion impact area* means an area of land not associated with current land disturbing~~  
2955 ~~activity but subject to persistent soil erosion resulting in the delivery of sediment onto~~  
2956 ~~neighboring properties or into state waters. This definition shall not apply to any lot or parcel of~~  
2957 ~~land of 10,000 square feet or less used for residential purposes or to shorelines where the erosion~~  
2958 ~~results from wave action or other coastal processes.~~

2959 ~~*Land disturbing activity:*~~

2960 ~~(1) The term "land disturbing activity" means any land change that may result in soil~~  
2961 ~~erosion from water or wind and the movement of sediments into state waters or onto~~  
2962 ~~lands in the commonwealth, including, but not limited to, clearing, grading, excavating,~~  
2963 ~~transporting and filling of land.~~

2964 ~~(2) The term "land disturbing activity" shall not include:~~

2965 ~~a. Minor land disturbing activities such as home gardens and individual home~~  
2966 ~~landscaping, repairs and maintenance work;~~

2967 ~~b. Individual service connections;~~

2968 ~~c. Installation, maintenance, or repair of any underground public utility lines when~~  
2969 ~~such activity occurs on an existing hard surfaced road, street or sidewalk provided~~  
2970 ~~the land disturbing activity is confined to the area of the road, street or sidewalk~~  
2971 ~~that is hard surfaced;~~

2972 ~~d. Septic tank lines or drainage fields unless included in an overall plan for land~~  
2973 ~~disturbing activity relating to construction of the building to be served by the septic~~  
2974 ~~tank system;~~

2975 ~~e. Surface or deep mining activities authorized under a permit issued by the~~  
2976 ~~department of mines, minerals and energy;~~

2977 ~~f. Exploration or drilling for oil and gas including the well site, roads, feeder lines~~  
2978 ~~and off-site disposal areas;~~

2979 ~~g. Tilling, planting, or harvesting of agricultural, horticultural, or forest crops, or~~  
2980 ~~livestock feedlot operations; including engineering operations as follows:~~  
2981 ~~construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds,~~  
2982 ~~ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing,~~

2983 ~~land drainage and land irrigation; however, this exception shall not apply to~~  
2984 ~~harvesting of forest crops unless the area on which harvesting occurs is reforested~~  
2985 ~~artificially or naturally in accordance with the provisions of Code of Virginia, §~~  
2986 ~~10.1-1100 et seq., or is converted to bona fide agricultural or improved pasture use~~  
2987 ~~as described in Code of Virginia, § 10.1-1163 B;~~

2988 ~~h. Repair or rebuilding of the tracks, right of way, bridges, communication facilities~~  
2989 ~~and other related structures and facilities of a railroad company;~~

2990 ~~i. Agricultural engineering operations including but not limited to the construction of~~  
2991 ~~terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to~~  
2992 ~~comply with the provisions of the Dam Safety Act, Code of Virginia, § 10.1-604 et~~  
2993 ~~seq., ditches, strip cropping, lister furrowing, contour cultivating, contour~~  
2994 ~~furrowing, land drainage and land irrigation;~~

2995 ~~j. Disturbed land areas of less than 10,000 square feet in size; however, the governing~~  
2996 ~~body of the program authority may reduce this exception to a smaller area of~~  
2997 ~~disturbed land or qualify the conditions under which this exception shall apply;~~

2998 ~~k. Installation of fence and sign posts or telephone and electric poles and other kinds~~  
2999 ~~of posts or poles;~~

3000 ~~l. Shoreline erosion control projects on tidal waters when all of the land disturbing~~  
3001 ~~activities are within the regulatory authority of and approved by local wetlands~~  
3002 ~~boards, the marine resources commission or the United States Army Corps of~~  
3003 ~~Engineers; however, any associated land that is disturbed outside of this exempted~~  
3004 ~~area shall remain subject to this article and the regulations adopted pursuant~~  
3005 ~~thereto; and~~

3006 ~~m. Emergency work to protect life, limb or property, and emergency repairs; however,~~  
3007 ~~if the land disturbing activity would have required an approved erosion and~~  
3008 ~~sediment control plan, if the activity were not an emergency, then the land area~~  
3009 ~~disturbed shall be shaped and stabilized in accordance with the requirements of the~~  
3010 ~~plan approving authority.~~

3011 ~~*Local erosion and sediment control program* refers to an outline of the various methods~~  
3012 ~~employed by a district or locality to regulate land disturbing activities and thereby minimize~~  
3013 ~~erosion and sedimentation in compliance with the state program and may include such items as~~  
3014 ~~local ordinances, policies and guidelines, technical materials, inspection, enforcement and~~  
3015 ~~evaluation.~~

3016 ~~*Natural channel design concepts* means the utilization of engineering analysis and fluvial~~  
3017 ~~geomorphic processes to create, rehabilitate, restore or stabilize an open conveyance system for~~  
3018 ~~the purpose of creating or recreating a stream that conveys its bankfull storm event within its~~  
3019 ~~banks and allows larger flows to access its bankfull bench and its floodplain.~~

3020 ~~*Natural stream* means nontidal waterways that are part of the natural topography. Natural~~  
3021 ~~streams usually maintain a continuous or seasonal flow during the year and are characterized as~~  
3022 ~~being irregular in cross section with a meandering course. Constructed channels such as drainage~~  
3023 ~~ditches or swales are not to be considered as natural streams.~~

3024 ~~*Owner* means the owner of the freehold of the premises or lesser estate, a mortgagee or~~  
3025 ~~vendee in possession, assignee of rents, receiver, executor, trustee, lessee or other person, firm or~~  
3026 ~~corporation in control of a property.~~

3027 ~~*Peak flow rate* means the maximum instantaneous flow from a given storm condition at a~~  
3028 ~~particular location.~~

3029 ~~*Person* means any individual, partnership, firm, association, joint venture, public or private~~  
3030 ~~corporation, trust, estate, commission, board, public or private institution, utility, cooperative,~~  
3031 ~~county, city, town, or other political subdivision of the commonwealth, any interstate body, or~~  
3032 ~~any legal entity.~~

3033 ~~*Plan approving authority* refers to the board, the district, or a city, or a department of a city,~~  
3034 ~~responsible for determining the adequacy of a conservation plan submitted for land disturbing~~  
3035 ~~activities on a unit of land and for approving plans. The term "plan approving authority" means~~  
3036 ~~the director of public works (or a designee) in the context of this article. Any plan approving~~  
3037 ~~authority shall be certified in soil and erosion control management by the state soil and water~~  
3038 ~~conservation division.~~

3039 ~~*Predevelopment conditions* refers to conditions at the time the erosion and sediment control~~  
3040 ~~plan is submitted to the plan approving authority. Where phased development or plan approval~~  
3041 ~~occurs (preliminary grading, roads and utilities, etc.), the existing conditions at the time the~~  
3042 ~~erosion and sediment control plan for the initial phase is submitted for approval shall establish~~  
3043 ~~predevelopment conditions.~~

3044 ~~*Runoff volume* means the volume of water that runs off the land development project from a~~  
3045 ~~prescribed storm event.~~

3046 ~~*Sediment basin* means a depression formed from the construction of a barrier or dam built to~~  
3047 ~~retain sediment and debris.~~

3048 ~~*Stabilized* means an area that can be expected to withstand normal exposure to atmospheric~~  
3049 ~~conditions without incurring erosion damage.~~

3050 ~~*State waters* means all waters on the surface and under the ground wholly or partially within~~  
3051 ~~or bordering the commonwealth or within its jurisdiction.~~

3052 ~~*Stormwater detention* means the process of temporarily impounding runoff to reduce flood~~  
3053 ~~peaks.~~

3054 ~~*Stormwater retention* means the process by which an impoundment structure stores the total~~  
3055 ~~runoff of a given storm and then releases the flow at a controlled rate over an extended period.~~

3056 ~~*Water quality volume* means the volume equal to the first one-half inch of runoff multiplied~~  
3057 ~~by the impervious surface of the land development project.~~

3058 ~~(Code 1982, § 9-2; Ord. No. 718; Ord. No. 1412, 9-14-1992; Ord. No. 1530, 11-27-1995)~~

3059 ~~**Cross reference**—Definitions and rules of construction, § 1-2.~~

3060 ~~**State law reference**—Definitions, Code of Virginia, § 10.1-560.~~

3061 ~~**Sec. 14-90. – Requirements for engaging in land disturbing activity; bond; permit;**~~  
3062 ~~**exceptions.**~~

3063 ~~It shall be unlawful for any person to engage in land disturbing activities of 2,500 square~~  
3064 ~~feet or more until an erosion and sediment plan has been submitted to the director of public~~  
3065 ~~works, a bond posted, and a permit issued by the director of public works to the owner of the~~  
3066 ~~land involved or the agent of such owner. The following exceptions shall be granted unless the~~  
3067 ~~activity is within a Chesapeake Bay preservation area overlay district, wherein it shall comply~~  
3068 ~~with the provisions of chapter 48, article IV, division 16:~~

- 3069       ~~(1) Such minor land disturbing activities as home gardens and individual home~~  
3070       ~~landscaping, repairs and maintenance work.~~
- 3071       ~~(2) Individual service connections.~~
- 3072       ~~(3) Installation, maintenance, or repair of any underground public utility lines when such~~  
3073       ~~activity occurs on an existing hard surfaced road, street or sidewalk provided the land~~  
3074       ~~disturbing activity is confined to the area of the road, street or sidewalk which is hard~~  
3075       ~~surfaced.~~
- 3076       ~~(4) Septic tank lines or drainage fields, unless included in an overall plan for land~~  
3077       ~~disturbing activity relating to construction of the building to be serviced by the septic~~  
3078       ~~tank system.~~
- 3079       ~~(5) Tilling, planting or harvesting of agricultural, horticultural or forest crops, livestock~~  
3080       ~~feedlot operations; however, this exception shall not apply to harvesting of forest crops~~  
3081       ~~unless the area on which harvesting occurs is reforested artificially or naturally in~~  
3082       ~~accordance with the provisions of Code of Virginia, § 10.1-1100 et seq., or is converted~~  
3083       ~~to bona fide agricultural or improved pasture use, as described in Code of Virginia, §~~  
3084       ~~10.1-1163 B.~~
- 3085       ~~(6) Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities and~~  
3086       ~~other related structures and licensed public conveyances.~~
- 3087       ~~(7) Disturbed land areas for commercial or noncommercial uses to less than 2,500 square~~  
3088       ~~feet in size.~~
- 3089       ~~(8) Installation of fence and sign posts or telephone and electric poles and other kinds of~~  
3090       ~~posts or poles.~~
- 3091       ~~(9) Emergency work to protect life, limb or property, and emergency repairs. However, if~~  
3092       ~~the land disturbing activity would have required an approved erosion and sediment~~  
3093       ~~control plan, if the activity were not an emergency, then the land area disturbed shall be~~  
3094       ~~shaped and stabilized in accordance with the requirements of the plan approving~~  
3095       ~~authority.~~
- 3096       ~~(10) Surface or deep mining.~~
- 3097       ~~(11) Exploration or drilling for oil and gas, including the well site, roads, feeder lines and~~  
3098       ~~off-site disposal areas.~~
- 3099       ~~(12) Agricultural engineering operations, including but not limited to the construction of~~  
3100       ~~terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to~~  
3101       ~~comply with the provisions of the Dam Safety Act, article 2 of chapter 6 (Code of~~  
3102       ~~Virginia, § 10.1-604 et seq.), ditches, strip cropping, lister furrowing, contour~~  
3103       ~~cultivating, contour furrowing, land drainage and land irrigation.~~
- 3104       ~~(Code 1982, § 9-3; Ord. No. 718; Ord. No. 997, 2-8-1982; Ord. No. 1412, 9-14-1992; Ord.~~  
3105       ~~No. 1530, 11-27-1995)~~

3106       ~~State law reference—Permits, Code of Virginia, § 10.1-565.~~

3107       ~~**Sec. 14-91. Regulated land disturbing activities.**~~

- 3108       ~~(a) Except as provided in subsections (b), (c) and (d) of this section, no person shall engage in~~  
3109       ~~any land disturbing activity until such person has submitted to the director of public works~~  
3110       ~~an erosion and sediment plan for such land disturbing activity and until that plan has been~~

3111 reviewed and approved by the director of public works, and the necessary bond has been  
3112 posted pursuant to section 14-94 and a permit issued therefore pursuant to this article.

3113 (b) ~~Any person who owns, occupies, or operates private agricultural, horticultural, or forest~~  
3114 ~~lands shall not be deemed to be in violation of this article for land disturbing activities,~~  
3115 ~~which result from the tilling, planting, or harvesting of agricultural, horticultural or forest~~  
3116 ~~crops or products or engineering operations such as the construction of terraces, terrace~~  
3117 ~~outlets, check dams, desilting basins, floodwater retarding structures, channel~~  
3118 ~~improvements, floodways, dikes, ponds, ditches and the like; the utilization of strip~~  
3119 ~~cropping, lister furrowing; land drainage; land irrigation, seeding and planting of waste,~~  
3120 ~~sloping, abandoned, or eroded lands and grasses; forestation and reforestation; rotation of~~  
3121 ~~crops; soil stabilization with trees, grasses, legumes, and other thick growing, soil holding~~  
3122 ~~crops; retardation of runoff by increasing absorption of rainfall; and retirement from~~  
3123 ~~cultivation of steep, highly erosive areas and areas now badly gullied or otherwise eroded.~~

3124 (c) ~~Any state agency that undertakes a project involving a land disturbing activity shall have the~~  
3125 ~~erosion and sediment control plan approved by the state department of conservation and~~  
3126 ~~recreation and be in compliance with chapter 48, article IV, division 16, Chesapeake Bay~~  
3127 ~~preservation overlay district.~~

3128 (d) ~~Any person whose land disturbing activities involve lands which extend into the jurisdiction~~  
3129 ~~of another local erosion and sediment control program shall have either an erosion and~~  
3130 ~~sediment plan approved by the state soil and water conservation board, or Fairfax County or~~  
3131 ~~Arlington County or the city. Such persons shall comply with the requirements of section~~  
3132 ~~14-94 concerning an installation and maintenance agreement and bond.~~

3133 (e) ~~Whenever a land disturbing activity is proposed to be conducted by a contractor performing~~  
3134 ~~construction work pursuant to a construction contract, the preparation, submission and~~  
3135 ~~approval of the required erosion and sediment control plan shall be the responsibility of the~~  
3136 ~~owner of the land.~~

3137 (f) ~~Any land identified as an erosion impact area shall be required to submit a conservation plan~~  
3138 ~~for approval. This shall be required whether or not there is any construction activity on the~~  
3139 ~~site. The plan shall be prepared as specified in section 14-93~~

3140 (g) ~~In accordance with Code of Virginia, § 10.1-561, stream restoration and relocation projects~~  
3141 ~~that incorporate natural channel design concepts are not manmade channels and shall be~~  
3142 ~~exempt from any flow rate capacity and velocity requirements for natural or manmade~~  
3143 ~~channels.~~

3144 (h) ~~In accordance with Code of Virginia, § 10.1-561, any land disturbing activity that provides~~  
3145 ~~for stormwater management intended to address any flow rate capacity and velocity~~  
3146 ~~requirements for natural or manmade channels shall satisfy the flow rate capacity and~~  
3147 ~~velocity requirements for natural or manmade channels, if the practices are designed to:~~

3148 (1) ~~Detain the water quality volume and to release it over 48 hours;~~

3149 (2) ~~Detain and release over a 24-hour period the expected rainfall resulting from the one~~  
3150 ~~year, 24-hour storm; and~~

3151 (3) ~~Reduce the allowable peak flow rate resulting from the 1.5-, two- and ten-year, 24-hour~~  
3152 ~~storms to a level that is less than or equal to the peak flow rate from the site, assuming it~~  
3153 ~~was in a good forested condition, achieved through multiplication of the forested peak~~  
3154 ~~flow rate by a reduction factor that is equal to the runoff volume from the site when it~~

3155 was in a good forested condition divided by the runoff volume from the site in its  
3156 proposed condition, and shall be exempt from any flow rate capacity and velocity  
3157 requirements for natural or manmade channels.

3158 (Code 1982, § 9-4; Ord. No. 718; Ord. No. 997, 2-8-1982; Ord. No. 1412, 9-14-1992; Ord.  
3159 No. 1530, 11-27-1995)

3160 **State law reference**— Land disturbing activities, Code of Virginia, § 10.1-563.

3161 **Sec. 14-92.— Plan required for issuance of permit.**

3162 (a) ~~A permit for grading, filling, excavating or altering shall be issued upon submission to and~~  
3163 ~~approval by the director of public works of a plan prepared and certified by a registered~~  
3164 ~~engineer or land surveyor in the state; provided, that the director of public works may~~  
3165 ~~require upon inspection additional or revised measures from time to time in the event~~  
3166 ~~originally approved measures prove to be inadequate. This plan may be contained on a~~  
3167 ~~separate sheet or included with the drainage or grading plan submitted as a part of the~~  
3168 ~~development plans required in chapter 6, pertaining to buildings, chapter 28, pertaining to~~  
3169 ~~subdivisions, or chapter 48, pertaining to zoning.~~

3170 (b) ~~In accordance with the procedure set forth in Code of Virginia, § 10.1-563 E, any person~~  
3171 ~~engaging in the creation and operation of wetland mitigation banks in multiple jurisdictions,~~  
3172 ~~which have been approved and are operated in accordance with applicable federal and state~~  
3173 ~~guidance, laws or regulations for the establishment, use and operation of mitigation banks~~  
3174 ~~pursuant to a permit issued by the state department of environmental quality, the marine~~  
3175 ~~resources commission or the U.S. Army Corps of Engineers, may at the option of that~~  
3176 ~~person, file general erosion and sediment control specifications for wetland mitigation banks~~  
3177 ~~annually with the soil and water conservation board for review and approval consistent with~~  
3178 ~~guidelines established by the state department of conservation and recreation.~~

3179 (c) ~~The responsible land disturber shall be designated prior to land disturbing activity. In~~  
3180 ~~addition, as a prerequisite to engaging in the land disturbing activities shown on the~~  
3181 ~~approved plan, the person responsible for carrying out the plan shall provide the name of an~~  
3182 ~~individual holding a certificate of competence to the program authority, as provided by Code~~  
3183 ~~of Virginia, § 10.1-561, who will be in charge of and responsible for carrying out the land~~  
3184 ~~disturbing activity. However, any plan approving authority may waive the certificate of~~  
3185 ~~competence requirement for an agreement in lieu of a plan for construction of a single-~~  
3186 ~~family residence. If a violation occurs during the land disturbing activity, then the person~~  
3187 ~~responsible for carrying out the agreement in lieu of a plan shall correct the violation and~~  
3188 ~~provide the name of an individual holding a certificate of competence, as provided by Code~~  
3189 ~~of Virginia, § 10.1-561. Failure to provide the name of an individual holding a certificate of~~  
3190 ~~competence prior to engaging in land disturbing activities may result in revocation of the~~  
3191 ~~approval of the plan and the person responsible for carrying out the plan shall be subject to~~  
3192 ~~the penalties as provided in this article.~~

3193 (Code 1982, § 9-5; Ord. No. 178)

3194 **State law reference**— Regulated land disturbing activities, Code of Virginia, § 10.1-563.

3195 **Sec. 14-93. Standards for approval of plan.**

3196 ~~(a) The director of public works shall approve, within 45 days, the plan referred to in section~~  
3197 ~~14-92 and issue the permit provided for in section 14-90, if such plan satisfies the following~~  
3198 ~~standards:~~

3199 ~~(1) The development plan shall be fitted to the topography and soils so as to create the least~~  
3200 ~~erosion potential.~~

3201 ~~(2) Wherever feasible, allowing for development permitted in the zoning district in which~~  
3202 ~~the land is situated, natural vegetation shall be retained and protected. If necessary to~~  
3203 ~~accomplish the purposes of this section, the director of public works may increase the~~  
3204 ~~coverage restrictions contained in other sections of this chapter to the extent necessary~~  
3205 ~~to accomplish the purposes of this section.~~

3206 ~~(3) Provisions shall be made to effectively accommodate the increased runoff caused by~~  
3207 ~~changed soil and surface conditions during and after development.~~

3208 ~~(4) Sediment basins and similar structural measures shall be installed below high sediment-~~  
3209 ~~producing areas to remove sediment from runoff waters from land undergoing~~  
3210 ~~development. The owner or his agent shall make provision for regular inspection of~~  
3211 ~~these devices after every period of heavy rainfall; if more than 30 percent of the~~  
3212 ~~collecting volume is used up, the owner or agent shall cause accumulated silt to be~~  
3213 ~~removed.~~

3214 ~~(5) The plan shall establish the construction schedule and the sequence for installing~~  
3215 ~~protective measures and facilities and shall include provisions for the following:~~

3216 ~~a. The smallest practicable area of land shall be exposed at any one time through~~  
3217 ~~appropriate planning and sequential phasing at development.~~

3218 ~~b. All erosion and siltation control structures shall be placed prior to or as the first~~  
3219 ~~step in grading.~~

3220 ~~c. Special measures shall be provided to protect any disturbed area not paved, sodded~~  
3221 ~~or built upon by the November 1 in each year by seeding, mulching or other~~  
3222 ~~appropriate means.~~

3223 ~~(6) Conservation practices for erosion and sediment control shall equal or exceed the~~  
3224 ~~specifications of those contained in the Virginia Erosion and Sediment Control~~  
3225 ~~Handbook and any amendments thereto.~~

3226 ~~(b) The director of public works shall act on all plans submitted within 45 days from receipt~~  
3227 ~~thereof by either approving such plan in writing or by disapproving such plan in writing and~~  
3228 ~~giving the specific reasons for disapproval. When a plan submitted for approval, pursuant to~~  
3229 ~~this article, is found upon review by the director of public works to be inadequate, the~~  
3230 ~~director of public works shall specify such modifications, terms, and conditions as will~~  
3231 ~~permit approval of the plan and shall communicate these requirements to the applicant. If no~~  
3232 ~~action is taken by the director of public works within the time specified in this section, the~~  
3233 ~~plan shall be deemed approved and the permit issued; provided, that the bond required in~~  
3234 ~~section 14-94 has been deposited.~~

3235 ~~(c) An approved plan may be changed by the director of public works which has approved the~~  
3236 ~~plan in the following cases:~~

- 3237 (1) ~~Where inspection has revealed the inadequacy of the plan to accomplish the erosion and~~  
3238 ~~sediment control objectives of the plan, and appropriate modifications to correct the~~  
3239 ~~deficiencies of the plan are specified by the director of public works; or~~
- 3240 (2) ~~Where the person responsible for carrying out the approved plan finds that because of~~  
3241 ~~changed circumstances or for other reasons the approved plan cannot be effectively~~  
3242 ~~carried out, and proposed amendments to the plan, consistent with the requirements of~~  
3243 ~~this article, are agreed to by the director of public works and the person responsible for~~  
3244 ~~carrying out the plan.~~
- 3245 (d) ~~The state erosion and sediment control regulations minimum standards are:~~
- 3246 (1) ~~*Stabilization of denuded areas and soil stockpiles.*~~
- 3247 a. ~~Permanent or temporary soil stabilization shall be applied to denuded areas within~~  
3248 ~~seven days after final grade is reached on any portion of the site. Temporary soil~~  
3249 ~~stabilization shall also be applied within seven days to denuded areas which may~~  
3250 ~~not be at final grade but will remain dormant (undisturbed) for longer than 30 days.~~  
3251 ~~Permanent soil stabilization shall be applied to areas that are to be left dormant for~~  
3252 ~~more than one year. Soil stabilization refers to measures which protect soil from the~~  
3253 ~~erosive forces of raindrop impact and flowing water. Applicable practices include~~  
3254 ~~vegetative establishment, mulching and the early application of gravel base on~~  
3255 ~~areas to be paved. Soil stabilization measures should be selected to be appropriate~~  
3256 ~~for the time of year, site conditions, and estimated duration of use.~~
- 3257 b. ~~During construction of the project soil stockpiles shall be sterilized or protected~~  
3258 ~~with sediment trapping measures to prevent soil loss. The applicant is responsible~~  
3259 ~~for the temporary protection and permanent stabilization of all soil stockpiles on~~  
3260 ~~site as well as soil transported from the project site.~~
- 3261 (2) ~~*Establishment of permanent vegetation.* A permanent and appropriate vegetative cover~~  
3262 ~~shall be established on denuded areas not otherwise permanently stabilized. Permanent~~  
3263 ~~vegetation shall not be considered established until a ground cover is achieved that, in~~  
3264 ~~the opinion of the director, is uniform enough to control soil erosion satisfactorily and~~  
3265 ~~to survive severe weather conditions.~~
- 3266 (3) ~~*Protection of adjacent properties.* Properties adjacent to the site of a land disturbance~~  
3267 ~~shall be protected from sediment deposition. This may be accomplished by preserving a~~  
3268 ~~well-vegetated buffer strip around the lower perimeter of the land disturbance, by~~  
3269 ~~installing perimeter controls such as sediment barriers, filters, dikes, sediment basins or~~  
3270 ~~by a combination of such measures. Vegetated buffer strips may be used alone only~~  
3271 ~~where runoff in sheet flow is expected. Buffer strips should be at least 20 feet in width.~~  
3272 ~~If at any time it is found that a vegetated buffer strip alone is ineffective in stopping~~  
3273 ~~sediment movement onto adjacent property, additional perimeter controls must be~~  
3274 ~~provided.~~
- 3275 (4) ~~*Timing and stabilization of sediment trapping measures.* Sediment basins and traps,~~  
3276 ~~perimeter dikes, sediment barriers and other measures intended to trap sediment on-site~~  
3277 ~~must be constructed as a first step in grading and be made functional before upslope~~  
3278 ~~land disturbance takes place. Earthen structures such as dams, dikes and diversions must~~  
3279 ~~be seeded and mulched immediately after installation.~~



- 3280 ~~(5) *Sediment basins.* Stormwater runoff from drainage areas with three acres or greater~~  
3281 ~~disturbed area must pass through a sediment basin. The sediment basin shall be~~  
3282 ~~designed and constructed to accommodate the anticipated sediment loading from the~~  
3283 ~~land disturbing activity. The outfall device or system design shall take into account the~~  
3284 ~~total drainage area flowing through the disturbed area to be served by the basin. The~~  
3285 ~~director may require sediment basins or traps for smaller disturbed areas where deemed~~  
3286 ~~necessary.~~
- 3287 ~~(6) *Cut and fill slopes.* Cut and fill slopes must be designed and constructed in a manner~~  
3288 ~~which will minimize erosion. Consideration must be given to the length and steepness~~  
3289 ~~of the slope, the soil type, upslope drainage area, groundwater conditions and other~~  
3290 ~~applicable factors. Slopes which are found to be eroding excessively within one year of~~  
3291 ~~permanent stabilization must be provided with additional slope stabilizing measures~~  
3292 ~~until the problem is corrected. Any bond may be held until the expiration of one year~~  
3293 ~~after permanent stabilization is established or longer, if the director determines further~~  
3294 ~~stabilization or measures are required. The following guidelines are provided to aid site~~  
3295 ~~planners and plan reviewers in developing an adequate design:~~
- 3296 ~~a. Roughened soil surfaces are generally preferred to smooth surfaces on slopes.~~
- 3297 ~~b. Diversions should be constructed at the top of long, steep slopes which have~~  
3298 ~~significant drainage areas above the slope. Diversion or terraces may also be used~~  
3299 ~~to reduce slope length.~~
- 3300 ~~c. Concentrated stormwater should not be allowed to flow down cut or fill slopes~~  
3301 ~~unless contained within an adequate temporary or permanent channel, flume or~~  
3302 ~~slope drain structure.~~
- 3303 ~~d. Wherever a slope face crosses a water seepage plain which endangers the stability~~  
3304 ~~of the slope, adequate drainage or other protection should be provided.~~
- 3305 ~~(7) *Stormwater management criteria for controlling off site erosion.* Properties and~~  
3306 ~~waterways downstream from development sites shall be protected from erosion due to~~  
3307 ~~increases in the volume, velocity and peak flow rate of stormwater runoff and the~~  
3308 ~~following criteria shall apply:~~
- 3309 ~~a. Concentrated stormwater runoff leaving a development site must be discharged~~  
3310 ~~directly into a well-defined, natural or manmade, off-site receiving channel or pipe.~~  
3311 ~~For those sites where runoff is discharged into a pipe or pipe system, downstream~~  
3312 ~~stability analyses at the outfall of the pipe or pipe system shall be performed. Such~~  
3313 ~~analyses, related channel construction, and all associated costs shall be the~~  
3314 ~~responsibility of the property owner. If there is no well defined, off site receiving~~  
3315 ~~channel or pipe, one must be constructed to convey stormwater to the nearest~~  
3316 ~~adequate channel. Newly constructed channels and conduits carrying a flow of~~  
3317 ~~1,000 or more cubic feet per second shall be designed for a 100-year storm~~  
3318 ~~frequency and newly constructed channels and conduits carrying a flow of less than~~  
3319 ~~1,000 cubic feet per second shall be designed for a ten year storm frequency and~~  
3320 ~~for a two-year storm to verify that stormwater will not cause erosion of the channel~~  
3321 ~~bed or banks. All hydrologic analyses shall be based on the existing watershed~~  
3322 ~~characteristics, and the ultimate developed condition of the subject property.~~

- 3323 1. ~~An adequate channel shall be defined as a natural or manmade channel or pipe~~  
3324 ~~which is capable of conveying the runoff from a ten year storm without~~  
3325 ~~overtopping its banks or eroding after development at the site in question. The~~  
3326 ~~channel shall also be checked with the two-year storm to verify that~~  
3327 ~~stormwater will not cause erosion of the channel bed or banks. A receiving~~  
3328 ~~channel may also be considered adequate at any point where the total~~  
3329 ~~contributing drainage area is at least 100 times greater than the drainage area of~~  
3330 ~~the development site in question, or where it can be shown that the peak rate of~~  
3331 ~~runoff from the site for a ten-year storm will not be increased after~~  
3332 ~~development. The runoff from the site for a two-year storm shall also be~~  
3333 ~~checked to verify that it will not be increased after development.~~
- 3334 2. ~~Runoff rate and channel adequacy must be verified with engineering~~  
3335 ~~calculations to the satisfaction of the director.~~
- 3336 b. ~~If an existing off site receiving channel is not an adequate channel, the applicant~~  
3337 ~~must choose one of the following options:~~
- 3338 1. ~~Obtain permission from downstream property owners to improve the receiving~~  
3339 ~~channel to an adequate condition. Such improvements shall extend~~  
3340 ~~downstream until an adequate channel section is reached;~~
- 3341 2. ~~Develop a site design that will not cause the predevelopment peak runoff rate~~  
3342 ~~from a ten year storm and also the two year storm to increase. Such a design~~  
3343 ~~may be accomplished by enhancing the infiltration capability of the site or by~~  
3344 ~~providing on-site stormwater detention measures. The predevelopment and~~  
3345 ~~postdevelopment peak runoff rates must be verified by engineering~~  
3346 ~~calculations. Within the Four Mile Run Watershed postdevelopment peak~~  
3347 ~~runoff during a 100 year frequency storm shall not increase the peak runoff of~~  
3348 ~~the Four Mile Run Flood Control Channel as required by the city's contract~~  
3349 ~~with the United States Army Corps of Engineers. Within the remainder of the~~  
3350 ~~city, postdevelopment peak runoff shall be designed so as not to increase the~~  
3351 ~~peak flow in any critical downstream channel or culvert during a ten year and~~  
3352 ~~two year storm;~~
- 3353 3. ~~Provide a combination of channel improvement, stormwater detention,~~  
3354 ~~retention or other measures which are satisfactory to the director or prevent~~  
3355 ~~downstream channel erosion;~~
- 3356 4. ~~Improve the pipe or pipe system to a condition where the ten-year frequency~~  
3357 ~~storm is contained within the appurtenances.~~
- 3358 e. ~~All channel improvements or modifications must comply with all applicable laws~~  
3359 ~~and regulations. Modifications to flowing streams should be made in accordance~~  
3360 ~~with Best Management Practices Handbook Hydrologic Modifications, Virginia~~  
3361 ~~State Water Control Board Planning Bulletin 319, 1979, or most recent edition.~~
- 3362 d. ~~If the applicant chooses an option which includes stormwater detention, he must~~  
3363 ~~provide the city with a plan for maintenance of the detention facilities. The plan~~  
3364 ~~shall set forth the maintenance requirements of the facility and the party responsible~~  
3365 ~~for performing the maintenance. The responsible party may be an individual,~~  
3366 ~~organization, or the city, whichever has consented to carry out the maintenance. If~~

- 3367 the designated maintenance responsibility is with an individual or organization  
3368 other than the city, a maintenance agreement should be executed between the  
3369 responsible party and the city.
- 3370 e. ~~Increased volumes of unconcentrated sheet flows which will cause erosion or~~  
3371 ~~sedimentation on adjacent property must be diverted to a stable outlet or detention~~  
3372 ~~facility.~~
- 3373 f. ~~In applying these stormwater management criteria, individual lots in subdivision~~  
3374 ~~developments shall not be considered separate development projects, but rather the~~  
3375 ~~subdivision development, as a whole, shall be considered a single development~~  
3376 ~~project. The following guidelines shall also apply:~~
- 3377 1. ~~An erosion and sediment control plan shall be filed, as required in section 14-~~  
3378 ~~92, for a residential development and the buildings constructed within,~~  
3379 ~~regardless of the phasing of construction.~~
- 3380 2. ~~If individual lots or sections in a residential development are being developed~~  
3381 ~~by different property owners, all land disturbing activities related to the~~  
3382 ~~building construction shall be covered by an erosion and sediment control plan~~  
3383 ~~or an agreement in lieu of a plan signed by the property owner.~~
- 3384 3. ~~Land disturbing activity of less than 2,500 square feet on individual lots in a~~  
3385 ~~residential development shall not be considered exempt from the provisions of~~  
3386 ~~the Chesapeake Bay Preservation Act and these regulations.~~
- 3387 4. ~~The construction of permanent roads or driveways that disturb in excess of~~  
3388 ~~2,500 square feet and that serve more than one single family residence~~  
3389 ~~separately built is not exempt from the requirements of the Chesapeake Bay~~  
3390 ~~Preservation Act and these regulations.~~
- 3391 g. ~~All stormwater calculations, routings, forms, and methods shall conform to the~~  
3392 ~~1988 Fairfax County Public Facilities Manual, or most recent edition.~~
- 3393 (8) ~~Stabilization of waterways and outlets. All on-site stormwater conveyance channels~~  
3394 ~~shall be designed and constructed to withstand the expected velocity of flow from a ten-~~  
3395 ~~year frequency storm without erosion. All channels must also be checked with the two-~~  
3396 ~~year storm to verify that the stormwater will not cause erosion of the channel bed or~~  
3397 ~~banks. Stabilization adequate to prevent erosion must also be provided at the outlets of~~  
3398 ~~all pipes and paved channels. Before newly constructed stormwater conveyance~~  
3399 ~~channels are made operational, adequate outlet protection and any required temporary~~  
3400 ~~or permanent channel lining shall be installed in both the conveyance channel and~~  
3401 ~~receiving channel. All plans must be approved by the director.~~
- 3402 (9) ~~Storm sewer inlet protection. All storm sewer inlets which are made operable during~~  
3403 ~~construction shall be protected so that sediment laden water will not enter the~~  
3404 ~~conveyance system without first being filtered or otherwise treated to remove sediment.~~
- 3405 (10) ~~Working in or crossing watercourses.~~
- 3406 a. ~~Construction vehicles should be kept out of watercourses to the extent possible.~~  
3407 ~~Where in-channel work is necessary, precautions must be taken to stabilize the~~  
3408 ~~work area during construction to minimize erosion. The channel (including bed and~~

3409 ~~banks) must always be restabilized immediately after in channel work is~~  
3410 ~~completed.~~

3411 ~~b. Where a live (wet) watercourse must be crossed by construction vehicles more than~~  
3412 ~~twice in any six-month period during construction, a temporary stream crossing~~  
3413 ~~constructed of nonerodible materials must be provided.~~

3414 ~~e. When work in a live watercourse is performed, precautions shall be taken to~~  
3415 ~~minimize encroachment, control sediment transport and stabilize the work area to~~  
3416 ~~the greatest extent possible during construction. Nonerodible material shall be used~~  
3417 ~~for the construction of causeways and cofferdams. Earthen fill may be used for~~  
3418 ~~these structures if armored by nonerodible cover materials.~~

3419 ~~d. All applicable federal, state, and local regulations pertaining to working in or~~  
3420 ~~crossing live watercourses shall be met.~~

3421 ~~e. The temporary crossing shall be removed as soon as possible and the stream shall~~  
3422 ~~be restored to its predevelopment state, or to a condition of appropriate vegetation,~~  
3423 ~~as established by the director and the city arborist.~~

3424 ~~(11) *Underground utility construction.*~~

3425 ~~a. The construction of nonexempt underground utility lines shall be subject to the~~  
3426 ~~following criteria:~~

3427 ~~1. No more than 100 feet of trench are to be opened at one time.~~

3428 ~~2. Where consistent with safety and space considerations, excavated material is to~~  
3429 ~~be placed on the uphill side of trenches.~~

3430 ~~3. Effluent from dewatering operations shall be filtered or passed through an~~  
3431 ~~approved sediment trapping device, or both, and discharged in a manner that~~  
3432 ~~does not adversely affect flowing streams or off-site property.~~

3433 ~~4. Restabilization shall be accomplished in accordance with these regulations.~~

3434 ~~5. Applicable safety regulations shall be complied with.~~

3435 ~~b. Nonexempt utility construction includes the installation, maintenance or repair of~~  
3436 ~~all utilities which disturb more than 10,000 square feet except:~~

3437 ~~1. Individual service connections.~~

3438 ~~2. Underground public utility lines under existing hard-surfaced roads, streets or~~  
3439 ~~sidewalks, provided such land disturbing activity is confined to the area which~~  
3440 ~~is hard-surfaced.~~

3441 ~~(12) *Construction access routes.* Wherever construction vehicle access routes intersect paved~~  
3442 ~~public roads, provisions must be made to eliminate the transport of sediment (mud) by~~  
3443 ~~runoff or vehicle tracking onto the paved surface. Where sediment is transported onto a~~  
3444 ~~public road surface, the roads shall be cleaned immediately and cleaned thoroughly at~~  
3445 ~~the end of each day. Sediment shall be removed from roads by shoveling or sweeping~~  
3446 ~~and be transported to a sediment controlled disposal area. Street washing shall be~~  
3447 ~~allowed only after sediment is removed in this manner. This provision shall apply to~~  
3448 ~~individual subdivision lots as well as to larger land disturbing activities.~~

3449 ~~(13) *Disposition of temporary measures.* All temporary erosion and sediment control~~  
3450 ~~measures shall be disposed of within 30 days after final site stabilization is achieved or~~

3451 after the temporary measures are no longer needed, unless otherwise authorized by the  
3452 director. Trapped sediment and other disturbed soil areas resulting from the disposition  
3453 of temporary measures shall be permanently stabilized to prevent further erosion and  
3454 sedimentation.

3455 (14) ~~Maintenance.~~ All temporary and permanent erosion and sediment control practices must  
3456 be maintained, inspected, and repaired as needed to assure continued performance of  
3457 their intended function. A statement describing the maintenance responsibilities of the  
3458 permittee shall be included in the approved erosion and sediment control plan.

3459 a. ~~The Virginia Erosion and Sediment Control Handbook, Second Edition, 1980, or~~  
3460 ~~current edition shall be used by any applicant making a submittal under this article~~  
3461 ~~and by the director in review and consideration of the adequacy of any erosion and~~  
3462 ~~sediment control plan submitted.~~

3463 b. ~~This article and the Virginia Erosion and Sediment Control Handbook, Second~~  
3464 ~~Edition, 1980, or current edition shall be an integral part of the city's erosion and~~  
3465 ~~sediment control program and shall comprise the city's Erosion and Sediment~~  
3466 ~~Control Handbook.~~

3467 (15) ~~Criteria for determining status of land disturbing activity.~~

3468 a. ~~A property owner who disturbs 2,500 square feet, or more, of land and claims that~~  
3469 ~~the activity is exempted from the requirements of the Chesapeake Bay Preservation~~  
3470 ~~Act, as shown in Code of Virginia, § 10.1-560, shall have seven days from the date~~  
3471 ~~of commencement of the activity to demonstrate to the director that the activity is~~  
3472 ~~exempt. As soon as an exempt status is rejected, the requirements of the~~  
3473 ~~Chesapeake Bay Preservation Act shall be immediately enforced.~~

3474 b. ~~Should a land disturbing activity cease for more than 180 days, the director shall~~  
3475 ~~evaluate the existing approved erosion and sediment control plan to determine~~  
3476 ~~whether the plan still satisfies local and state erosion and sediment control criteria~~  
3477 ~~and to verify that all design factors are still valid. If the director finds the~~  
3478 ~~previously filed plan to be inadequate, a modified plan shall be submitted and~~  
3479 ~~approved prior to the resumption of land disturbing activity.~~

3480 (e) ~~Agencies authorized under any other law to issue grading, building or other permits for~~  
3481 ~~activities involving land disturbing activities may not issue any such permit unless the~~  
3482 ~~applicant submits with his application an approved erosion and sediment control plan and~~  
3483 ~~certification that the plan will be followed.~~

3484 (Code 1982, § 9-6; Ord. No. 718; Ord. No. 997, 2-8-1982; Ord. No. 1412, 9-14-1992; Ord.  
3485 No. 1530, 11-27-1995)

3486 **State law reference**— Approval of control plan, Code of Virginia, § 10.1-563.

3487 **Sec. 14-94. - Installation and maintenance agreement; bond.**

3488 (a) ~~Prior to approval of the plan, there shall be executed by the owner or his agent and~~  
3489 ~~submitted with the plan an agreement in form and substance as approved by the city to~~  
3490 ~~establish the measures provided for on the plan for the control of siltation and erosion,~~  
3491 ~~together with a cash bond to be deposited and held in escrow by the city, and no interest~~  
3492 ~~shall be paid by the city for any funds held in escrow. The agreement and bond shall be~~  
3493 ~~provided to ensure the installation, maintenance and performance of such measures. The~~

3494 ~~bond shall be in the amount of the estimated cost of such measures as determined by~~  
3495 ~~certified cost estimates submitted by the applicant's engineer or land surveyor and approved~~  
3496 ~~by the director of public works. The minimum amount of bond to be posted is to be \$750.00.~~  
3497 ~~In any case where the director of public works rejects any such agreement or bond, the~~  
3498 ~~owner or agent of the owner may appeal from such decision first to the city manager and, if~~  
3499 ~~not resolved at that level, should then appeal to the city council; provided the owner or agent~~  
3500 ~~of the owner has paid to the city the required filing fee.~~

3501 ~~(b) After achieving adequate stabilization of the work for which the city has issued a permit and~~  
3502 ~~received a bond as required by sections 14-90 and this section, the owner or agent of the~~  
3503 ~~owner may apply to the director of public works in writing for a certificate of completion~~  
3504 ~~and discharge of the unexpended or unobligated portion of such bond. If the work is found~~  
3505 ~~by the director of public works to conform to the approved plan provided for in section 14-~~  
3506 ~~92 and other applicable regulations and city ordinances, such director shall issue the~~  
3507 ~~certificate and release of bond within 60 days of receipt of the application.~~

3508 ~~(Code 1982, § 9-7; Ord. No. 718; Ord. No. 1412, 9-14-1992; Ord. No. 1530, 11-27-1995)~~

3509 **Sec. 14-95. - Failure to comply with plan.**

3510 ~~(a) If the director of public works determines that the permit holder has failed to comply with~~  
3511 ~~the plan, the director of public works shall immediately serve upon the permit holder, by~~  
3512 ~~registered or certified mail to the address specified by the permit holder in his permit~~  
3513 ~~application, a notice to comply. Such notice shall set forth specifically the measures needed~~  
3514 ~~to come into compliance with such plan and shall specify the time within which such~~  
3515 ~~measures shall be completed. If the permit holder fails to comply within the time specified,~~  
3516 ~~he may be subject to revocation of the permit and/or the cash bond may be used by the city~~  
3517 ~~at the direction of the director of public works to correct the noted deficiencies. Any person~~  
3518 ~~may file a complaint under this section. Upon receipt of a sworn complaint of a substantial~~  
3519 ~~violation of this section, the director of public works may, in conjunction with or subsequent~~  
3520 ~~to a notice to comply as specified above, issue a stop work order requiring that all or part of~~  
3521 ~~the land disturbing activities permitted on the site be stopped until the specified corrective~~  
3522 ~~measures have been taken or, if land disturbing activities have commenced without an~~  
3523 ~~approved plan, as provided in section 14-93, requiring that all of the land disturbing~~  
3524 ~~activities be stopped until an approved plan or any required permits are obtained. Where the~~  
3525 ~~alleged noncompliance is causing or is in imminent danger of causing harmful erosion of~~  
3526 ~~lands or sediment deposition in waters within the watersheds of the Commonwealth, such an~~  
3527 ~~order may be issued whether or not the alleged violator has been issued a notice to comply~~  
3528 ~~as specified above. Otherwise, such an order may be issued only after the alleged violator~~  
3529 ~~has failed to comply with a notice to comply. The order shall be served in the same manner~~  
3530 ~~as a notice to comply, and shall remain in effect for seven days from the date of service~~  
3531 ~~pending application by the director or the alleged violator for appropriate relief to the circuit~~  
3532 ~~court. If the alleged violator has not obtained an approved plan or any required permits~~  
3533 ~~within seven days from the date of service of the order, the director of public works may~~  
3534 ~~issue an order to the owner requiring that all construction and other work on the site, other~~  
3535 ~~than corrective measures, be stopped until an approved plan and any required permits have~~  
3536 ~~been obtained. Such an order shall be served upon the owner by registered or certified mail~~  
3537 ~~to the address specified in the permit application or the land records of the locality in which~~  
3538 ~~the site is located. The owner may appeal the issuance of an order to the circuit court. Any~~

3539 ~~person violating or failing, neglecting or refusing to obey an order issued by the director of~~  
3540 ~~public works may be compelled in a proceeding instituted in the circuit court to obey same~~  
3541 ~~and to comply therewith by injunction, mandamus, or other appropriate remedy. Upon~~  
3542 ~~completion and approval of corrective action or obtaining an approved plan or any required~~  
3543 ~~permits, the order shall immediately be lifted. Nothing in this section shall prevent the~~  
3544 ~~director from taking any other action specified in section 14-99~~

3545 (b) ~~If the city takes conservation action upon failure to do so by the permittee, the city may~~  
3546 ~~collect from the permittee for the difference should the amount of the reasonable cost of~~  
3547 ~~such action exceed the amount of the surety held. Furthermore, he could be deemed to be in~~  
3548 ~~violation of this article and upon conviction could be subject to the penalties provided by~~  
3549 ~~this article.~~

3550 ~~(Code 1982, § 9-8; Ord. No. 718; Ord. No. 1412, 9-14-1992; Ord. No. 1530, 11-27-1995)~~

3551 **Sec. 14-96. -- Permit does not authorize changes in floodplain.**

3552 ~~Approval of the plan shall not be construed to authorize the construction of any structure~~  
3553 ~~within the floodplain or to authorize any filling, grading or other change of the contour of such~~  
3554 ~~floodplain area without such permit, authorization or approval as may be required by this article.~~

3555 ~~(Code 1982, § 9-9; Ord. No. 718)~~

3556 **Sec. 14-97. -- Review and inspection fee.**

3557 (a) ~~An erosion and sediment control review and inspection fee of \$100.00, plus \$20.00 per acre,~~  
3558 ~~or any fraction thereof, shall be paid to the city at the time of submission of plans to the~~  
3559 ~~director of public works.~~

3560 (b) ~~The director shall provide for periodic inspections of the land disturbing activity to ensure~~  
3561 ~~compliance with approved plans and/or this article, and may require (at the option of the~~  
3562 ~~director) monitoring and reports from the person responsible for carrying out the plan, to~~  
3563 ~~ensure compliance with the approved plan and to determine whether the measures required~~  
3564 ~~in the plan are effective in controlling erosion and sediment. The owner, permittee, or person~~  
3565 ~~responsible for carrying out the plan shall be given notice of the inspection. If the permit~~  
3566 ~~issuing authority or plan approving authority determines that there is a failure to comply~~  
3567 ~~with the plan, notice shall be served upon the permittee or person responsible for carrying~~  
3568 ~~out the plan by registered or certified mail to the address specified in the permit application~~  
3569 ~~or in the plan certification, or by delivery at the site of the land disturbing activities to the~~  
3570 ~~agent or employee supervising such activities. The notice shall specify the measures needed~~  
3571 ~~to comply with the plan and shall specify the time within which such measures shall be~~  
3572 ~~completed. Upon failure to comply within the time specified, the permit may be revoked and~~  
3573 ~~the permittee or person responsible for carrying out the plan shall be deemed to be in~~  
3574 ~~violation of this article and shall be subject to the penalties provided by section 14-99. The~~  
3575 ~~owner/occupant as operator shall be given an opportunity to accompany the inspector. The~~  
3576 ~~city shall be permitted to inspect the site at any time during the course of the project.~~  
3577 ~~Inspections are, at a minimum, to be made at the following times:~~

3578 ~~(1) Immediately following initial installation of erosion and sediment controls;~~

3579 ~~(2) At least once in every two week period;~~

3580 ~~(3) Within 48 hours following a runoff producing storm event; and~~

3581 ~~(4) At the completion of the project prior to the release of any performance bonds.~~

3582 (Code 1982, § 9-10; Ord. No. 718; Ord. No. 997, 2-8-1982; Ord. No. 1412, 9-14-1992; Ord.  
3583 No. 1530, 11-27-1995)

3584 **Sec. 14-98. ~~Administrative appeal; judicial review.~~**

3585 ~~(a) Final decisions of the city, under this article, shall be subject to review by the city manager~~  
3586 ~~and if desirable by the city council, provided an appeal is filed within 30 days from the date~~  
3587 ~~of any written decision by the director of public works which adversely affects the rights,~~  
3588 ~~duties or privileges of the person engaging in or proposing to engage in land disturbing~~  
3589 ~~activities.~~

3590 ~~(b) Final decisions of city council, under this article, shall be subject to review by the Circuit~~  
3591 ~~Court of Arlington County, provided an appeal is filed within 30 days from the date of the~~  
3592 ~~final written decision which adversely affects the rights, duties or privileges of the person~~  
3593 ~~engaging in or proposing to engage in land disturbing activities.~~

3594 ~~(c) The director of public works may waive or modify any of the regulations that are deemed~~  
3595 ~~inappropriate or too restrictive for site conditions, by granting a modification. A~~  
3596 ~~modification may be granted under these conditions:~~

3597 ~~(1) At the time of plan submission, an applicant may request a modification to become part~~  
3598 ~~of the approved erosion and sediment control plan. The applicant shall explain the~~  
3599 ~~reasons for requesting modifications in writing. Specific modifications which are~~  
3600 ~~allowed by the director shall be documented in the plan.~~

3601 ~~(2) During construction, the person responsible for implementing the approved plan may~~  
3602 ~~request a modification in writing from the director. The director shall respond in writing~~  
3603 ~~either approving or disapproving such a request. If the director does not approve a~~  
3604 ~~modification within ten days of receipt of the request, the request shall be considered to~~  
3605 ~~be disapproved. Following disapproval, the applicant may resubmit a modification~~  
3606 ~~request with additional documentation.~~

3607 ~~(3) The director shall consider modification requests judiciously, keeping in mind both the~~  
3608 ~~need of the applicant to maximize cost effectiveness and the need to protect off-site~~  
3609 ~~properties and resources from damage.~~

3610 ~~(4) The department of public works shall file a quarterly report on significant complaints~~  
3611 ~~filed under this section and on any modifications granted. The report shall summarize~~  
3612 ~~the complaint, the determination of the department of public works on its merits, and~~  
3613 ~~any required corrective action. A copy of the quarterly report shall be transmitted to the~~  
3614 ~~planning director who shall transmit it to the planning commission.~~

3615 (Code 1982, § 9-11; Ord. No. 718; Ord. No. 1412, 9-14-1992)

3616 **Sec. 14-99. ~~Penalties, injunctions and other legal actions; prima facie evidence of~~**  
3617 **~~compliance.~~**

3618 ~~(a) Violators of this article shall be guilty of a class 1 misdemeanor.~~

3619 ~~(b) Any person who violates any regulation or order of the board, any condition of a permit, any~~  
3620 ~~provision of its program, or any provision of this article shall, upon a finding of an~~  
3621 ~~appropriate general district court, be assessed a civil penalty in accordance with the schedule~~  
3622 ~~listed under subsection (i) of this section. A civil action for such violation may be brought~~  
3623 ~~by the locality wherein the land lies. In any trial for a scheduled violation, it shall be the~~  
3624 ~~burden of the locality to show the liability of the violator by a preponderance of the~~



- 3625 evidence. An admission or finding of liability shall not be a criminal conviction for purpose.  
3626 Any civil penalties assessed by a court shall be paid into the treasury of the locality wherein  
3627 the land lies, except that where the violator is the locality itself, or its agent, the court shall  
3628 direct the penalty to be paid into the state treasury.
- 3629 ~~(e) The city or the board may apply to the circuit court in any jurisdiction wherein the land lies~~  
3630 ~~to enjoin a violation or a threatened violation, under sections 14-91 and 14-97, without the~~  
3631 ~~necessity of showing that an adequate remedy at law does not exist.~~
- 3632 ~~(d) In addition to any criminal or civil penalties provided under this article, any person who~~  
3633 ~~violates any provision of this article may be liable to the program authority, or the board, as~~  
3634 ~~appropriate, in a civil action for damages.~~
- 3635 ~~(e) Without limiting the remedies which may be obtained in this section, any person violating or~~  
3636 ~~failing, neglecting or refusing to obey any injunction, mandamus or other remedy obtained~~  
3637 ~~pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not~~  
3638 ~~to exceed \$2,000.00 for each violation. A civil action for such violation or failure may be~~  
3639 ~~brought by the locality wherein the land lies. Any civil penalties assessed by a court shall be~~  
3640 ~~paid into the treasury of the locality wherein the land lies, except that where the violator is~~  
3641 ~~the locality itself, or its agent, the court shall direct the penalty to be paid into the state~~  
3642 ~~treasury.~~
- 3643 ~~(f) With the consent of any person who has violated or failed, neglected or refused to obey any~~  
3644 ~~regulation or order of the board, or any condition of a permit or any provision of this article,~~  
3645 ~~the board, the director or plan approving or permit issuing authority may provide, in an order~~  
3646 ~~issued by the board or plan approving or permit issuing authority against such person, for~~  
3647 ~~the payment of civil charges for violations in specific sums, not to exceed the limit specified~~  
3648 ~~in subsection (e) of this section. Such civil charges shall be instead of any appropriate civil~~  
3649 ~~penalty which could be imposed under subsection (b) or (e) of this section.~~
- 3650 ~~(g) Upon request of a program authority, or the permit issuing authority, the attorney for the~~  
3651 ~~commonwealth shall take legal action to enforce the provisions of this article. Upon request~~  
3652 ~~of the board, the attorney general shall take appropriate legal action on behalf of the board to~~  
3653 ~~enforce the provisions of this article.~~
- 3654 ~~(h) Compliance with the provisions of this article shall be prima facie evidence in any legal or~~  
3655 ~~equitable proceeding for damages caused by erosion or sedimentation that all requirements~~  
3656 ~~of law have been met and the complaining party must show negligence in order to recover~~  
3657 ~~any damages.~~
- 3658 ~~(i) Any violations of any regulation or order of the board, any provision of its program, any~~  
3659 ~~condition of a permit, or any provision of this article shall be subject to a civil penalty. The~~  
3660 ~~civil penalty for any one violation shall be \$100.00, except that the civil penalty for~~  
3661 ~~commencement of land disturbing activities without an approved plan as provided in section~~  
3662 ~~14-91 shall be \$1,000.00. Each day during which the violation is found to have existed shall~~  
3663 ~~constitute a separate offense. In no event shall a series of specified violations arising from~~  
3664 ~~the same operative set of facts result in civil penalties which exceed a total of \$3,000.00~~  
3665 ~~except that a series of violations arising from the commencement of land disturbing~~  
3666 ~~activities without an approved plan for any site shall not result in civil penalties which~~  
3667 ~~exceed a total of \$10,000.00. Adoption of such an ordinance providing that violations are~~

3668 subject to a civil penalty shall be in lieu of criminal sanctions and shall preclude the  
3669 prosecution of such violation as a misdemeanor under subsection (a) of this section.

3670 ~~(j) Any person who violates any regulation or order of the board, any condition of a permit, any~~  
3671 ~~provision of its program, or any provision of this article shall, upon a finding of an~~  
3672 ~~appropriate general district court, be assessed a civil penalty in accordance with the~~  
3673 ~~schedule. A civil action for such violation may be brought by the locality wherein the land~~  
3674 ~~lies. In any trial for a scheduled violation, it shall be the burden of the locality to show the~~  
3675 ~~liability of the violator by a preponderance of the evidence. An admission or finding of~~  
3676 ~~liability shall not be a criminal conviction for any purpose. Any civil penalties assessed by a~~  
3677 ~~court shall be paid into the treasury of the locality wherein the land lies, except that where~~  
3678 ~~the violator is the locality itself, or its agent, the court shall direct the penalty to be paid into~~  
3679 ~~the state treasury.~~

3680 ~~(Code 1982, § 9-12; Ord. No. 718; Ord. No. 1530, 11-27-1995)~~

3681 ~~**State law reference**— Penalties authorized, Code of Virginia, § 10.1-562 J.~~

3682 ~~Secs. 14-100—14-126. Reserved.~~